R131. Capitol Preservation Board (State), Administration.
R131-2. Capitol Hill Complex Facility Use.
R131-2-1. Purpose and Application.

(1) The purpose of this rule is to define conditions for public access and use of the Capitol Hill Complex and to establish procedures for receiving and deciding complaints regarding the access or use of the Capitol Hill Complex.

(2) Except as expressly stated herein, or in rule R131-11, this rule R131-2 does not apply to free speech activities. Free speech activities conducted at the Capitol Hill Complex are governed by rule R131-11.

R131-2-2. Authority.

(1) The State Capitol Preservation Board adopts this Capitol Hill Complex Facility Use Rule pursuant to Section 63C-9-301.

R131-2-3. Definitions.

As used in this rule R131-2:

(1) "Board" means the State Capitol Preservation Board created by Section 63C-9-201.

(2) "Capitol Hill Complex" means all grounds, monuments, parking areas, buildings, including the Capitol, and other man-made and natural objects within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard. Capitol Hill Complex also includes:

(a) the White Community Memorial Chapel and the Council Hall Travel Information Center building and their grounds and parking areas;

(b) the Daughters of the Utah Pioneers museum and buildings, grounds and parking areas, and other state-owned property included within the area bounded by Columbus Street, North Main Street, and Apricot Avenue;

(c) state owned property included within the area bounded by Columbus Street, Wall Street, and 400 North Street; and

(d) state owned property included within the area bounded by Columbus Street, West Capitol Street, and 500 North Street, and any other facilities and grounds owned by the state of Utah that are located within the immediate vicinity.

(3) "Capitol Hill Facilities" means all buildings on the Capitol Hill Complex, including the Capitol, exterior steps, entrances, streets, parking areas and other paved areas of the Capitol Hill Complex.

(4) "Capitol Hill Grounds" means landscaped and unpaved public areas of the Capitol Hill Complex. Maintenance and utility structures and areas are not considered Capitol Hill Grounds for the purpose of any public use.

(5) "Catering Service(s)" means the serving of food and/or beverages on Capitol Hill.

(6) "Commercial Activities" means events that sponsored or conducted for the promotion of commercial products or services, and include advertising, private parties, private company or organization meetings, and any other non-public organization event. Commercial activities do not include private, community service, state sponsored, or free speech activities.

(7) "Community Service Activities" means events sponsored by governmental, quasi-governmental and charitable organizations, city and county government departments and agencies, public schools, and charitable organizations held to support or recognize the public or charitable functions of such sponsoring group. To the extent the event is sponsored by a private charitable organization, the organization must have an Internal Revenue Code Section 501(c)(3) active status and the event must be related to such status.

(8) "Event" or "Events" are commercial, community service, private, and state sponsored activities involving one or more persons. Events may include banquets, receptions, award ceremonies, weddings, colloquia, concerts, dances, and seminars. A free speech activity is not an event for purposes of rule R131-2 and R131-10. The term "activity" or "activities" may be substituted in this rule for the term "event" or "events."

(9) "Executive Director" means the executive director appointed by the Board under Section 63C-9-102, or a designee supervised by the executive director.

(10) "Facility Use Application" ("Application") means a form approved by the executive director used to apply to reserve Capitol Hill Facilities or Capitol Hill Grounds for an event.

(11) "Facility Use Permit" ("Permit") means a written permit issued by the executive director authorizing the use of an area of the Capitol Hill Complex for an event in accordance with this rule.

(12) "Free Speech Activity" is as defined in rule R131-11.

(13) "Cafe Operator" means the Capitol Hill cafe operator located on the first floor of the East Senate Building who is under contract with the Board to provide food/beverages in the State Room and may be allowed to cater in other areas on the Capitol Hill Complex.

(14) "Private Activity" means an event sponsored by private individuals, businesses or organizations that is not a commercial or community service activity.

(15) "Authorized Caterer" means a person or entity authorized to provide catering services on the Capitol Hill Complex, and is not the Cafe Operator.

(16) "Solicitation" is as defined in rule R131-10.

(17) "State" means the state of Utah and any of its agencies, departments, divisions, officers, legislators, members of the judiciary, persons serving on state boards or commissions, and employees of the above entities and persons.

(18) "State Sponsored Activity" means any event sponsored by the state that is related to official state business. Official state business does not include award ceremonies, lobbying activities, retirement parties, or similar social parties, social activities or social events. Management retreats may be considered a State Sponsored Activity if it has a supporting agenda and documentation establishing that the primary purpose of the retreat is to conduct official state business. In order to be considered a State Sponsored Activity, such activity must obtain written approval from the Executive Director and/or the Board's Budget Development and Board Operations Subcommittee.

(19) "User(s)" means any person that uses the facilities or grounds as well as any applicant for a facility use permit.

R131-2-4. Facility Use Permit - Application.

(1) Each person or group seeking to hold an event or solicitation at the Capitol Hill Complex shall submit a completed Facility Use Application at least fourteen calendar days prior to the anticipated date of the event. Applications may not be submitted, and facilities will not be scheduled, more than 365 calendar days before the date of the event. An applicant may only make one application for one continuous event at a time. For State Sponsored Activities that involve a reoccurring meeting schedule, one application may be used for all the reoccurring meetings. For all events, other than State Sponsored Activities or Free Speech Activities, there shall be a non-waivable and non-refundable application processing fee, which shall be paid at the time of submission of the application.

(2) The executive director shall provide a Facility Use Permit Application form. The form shall request and applicants shall provide all necessary information, including all material aspects of the proposed event or solicitation. This necessary information is required even if the Applicant requests a waiver. The application shall include the following information:

(a) the applicant's organization's name, address, telephone and facsimile number;

(b) the names and addresses of the person(s) responsible for supervising the event during set up, take down, clean up and the duration of the event;

(c) the nature of the applicant; i.e. individual, business entity, governmental department or other;

(d) the name and address of the legally recognized agent for service of process;

(e) a specific description of the area of the facility and/or grounds being requested for use;

(f) the type of proposed activity and the number of anticipated participants;

(g) the dates and times of the proposed activity and a description of the schedule and agenda of the event;

(h) a complete description of equipment and apparatus to be used for the event;

(i) any other special considerations or accommodations being requested; and

(j) whether the applicant requests exemption or waiver of any requirement of this rule or provision of the Facility Use Application.

(3) In addition, the applicant shall submit with the Facility Use Application:

(a) documentation supporting any requested exemption or waiver;

(b) proof of liability insurance covering the applicant and the event in the amount as identified in the Schedule of Costs and Fees as referred to in rule R131-2-7(1)(a);

(c) a deposit and down payment in the amounts as identified in the Schedule of Costs and Fees as described in rule R131-2-7(1)(a) for the type of event proposed; and

(d) other information as requested by the executive director.

(4) Applications shall be reviewed by the executive director for completeness, activity classification, costs and fees.

(5) Priority for use of the Capitol Hill Complex will be given to applications for state sponsored activities. During the actual hours of legislative sessions, priority will be given to free speech activities over commercial, community service and private activities. Otherwise, applications will be approved, and requested facilities reserved, on a first-come, first-serve basis.

R131-2-5. Facility Use Permit - Denial - Appeal - Cancellation - Revocation - Transfer.

(1) Within ten working days of receipt of a completed application, the executive director shall issue a Facility Use Permit or notice of denial of the application.

(2) The executive director may deny an application if:

(a) the application does not comply with the applicable rules;

(b) the event would conflict or interfere with a state sponsored activity, a time or place reserved for free speech activities, the operation of state business, or a legislative session; and/or

(c) the event poses a safety or security risk to persons or property.

(3) The executive director may place conditions on the approval that alleviates such concerns.

(4)(a) If the applicant disagrees with a denial of the application or conditions placed on the approval, the applicant may appeal the executive director's determination by delivering the written appeal and reasons for the disagreement to the executive director within five working days of the issuance of the notice of denial or approval with conditions.

(b) Within ten working days after the executive director receives the written appeal, the executive director may modify or affirm the determination.

(c) If the matter is still unresolved after the issuance of the executive director's reconsideration determination, the applicant may appeal the matter, in writing, within ten working days to the Board's Budget Development and Board Operations Subcommittee chair who will determine the process of the appeal.

(d) The applicant may appeal the Subcommittee Chair's determination in writing within ten working days of receipt of the written determination, by submitting a written appeal at the Board's office. The Board shall consider the appeal at its next regularly scheduled meeting.

(5) Facility Use Permits are non-transferable. The purpose, time, place and other conditions of the Facility Use Permit may not be changed without the advance written consent of the executive director. At least thirty calendar days advance written notice is required for the applicant to request a change in the date, time and/or place of the event or solicitation. If there is no conflict with another scheduled event or solicitation, the executive director may adjust the Facility Use Permit in regard to the date, time and/or place based upon the request.

(6) An event may be re-scheduled if the executive director determines that an event will conflict with a governmental function, free speech activity or state sponsored activity.

(a) The executive director may revoke any issued permit if this rule R131-2, any applicable law, or any provision of the permit is being violated. The permit may also be revoked if the safety or health of any person is threatened.

(b) The applicant may cancel the permit and receive a full refund of fees and any deposits if written notice of cancellation is received by the executive director at least 30 calendar days prior to the scheduled event. Failure to timely cancel the event will result in the forfeiture of any deposit and fees.

R131-2-6. General Requirements for Use of the Capitol Hill Complex.

(1) General Requirements.

(a) These are the requirements for use of the Capitol Hill Complex. This rule R131-2-6 shall apply to free speech activities, all other activities, groups and individuals using the Capitol Hill Complex.

(b) Except for state holidays, the Capitol building will be open to the general public Monday through Saturday from 8:00 a.m. to 8:00 p.m. and on Sunday from 8:00 a.m. to 6:00 p.m. Free speech activities may be conducted beyond the times identified in this subsection, as specified in rule R131-11. Unless otherwise authorized, Capitol Hill Facilities and Capitol Hill Grounds, including the Capitol Rotunda, are available for permitted use, activities or events from 8:00 a.m. to 11:00 p.m.

(c) Activities, except free speech activities, may be specifically denied during legislative sessions.

(d) No event may disrupt or interfere with any legislative session, legislative meeting, or the conduct of any state or governmental business, meeting or proceeding on the Capitol Hill Complex. No person shall unlawfully intimidate or interfere with persons seeking to enter or exit any facility, or use of the Capitol Hill Complex.

(e) Levels of audible sound generated by any individual or group, indoors or on the plaza between the House and Senate Buildings, whether amplified or not, shall not exceed 85 decibels or a more restrictive limit established by applicable laws or ordinances. All outdoor events shall not exceed noise limits established by applicable laws or ordinances.

(f) Fire exits, staircases, doorways, roads, sidewalks, hallways and pathways shall not be blocked, and the efficient flow of pedestrian traffic shall not be obstructed at any time.

(g) Alteration and damage to the Capitol Hill Grounds including grass, plants, shrubs, trees, paving or concrete is prohibited.

(h) No object or substance of any kind shall be placed on or in the Capitol Plaza fountain. Standing on or in the fountain is prohibited.

(i) All costs to repair any damage or replace any destruction, regardless of the amount or cost of restoration or refurbishing, shall be at the expense of the person(s) responsible for such damage or destruction.

(j) The consumption, distribution, or open storage of alcoholic beverages is prohibited.

(k) Service animals are permitted, but the presence of other animals is allowed only with advance written permission of the executive director. Owners/caretakers are responsible for the safety to the animal, persons, grounds and facilities.

(l) Camping is prohibited on the Capitol Hill Complex.

(m) Littering is prohibited.

(n) Commercial solicitation as defined in rule R131-10 is prohibited except as provided in rule R131-10.

(o) The use of a personal space heater is prohibited, except as provided in Subsection (i).

(i) Any person with a medical related condition may obtain approval by the Executive Director to use a personal space heater provided the person submits a signed statement by a Utah licensed physician verifying that the medical related condition requires a change in the standard room temperature and the use of the space heater meets the specifications in Subsection (ii).

(ii) If a space heater is approved by the Executive Director, the space heater shall not exceed 900 watts at its highest setting, be equipped with a self-limiting element temperature setting for the ceramic elements, have a tip-over safety device, be equipped with a built-in timer not to exceed eight hours per setting, be equipped with a programmable thermostat, and be equipped with an overheat protection feature.

(p) Tables, chairs, furniture, art and other objects in the Capitol Building shall only be moved by the Board's staff. No outside furniture, including tables or chairs, shall be allowed in the Capitol Building or any other facility on the Capitol Hill Complex without the advance written approval of the Executive Director.

(2) Decorations.

(a) All cords must be taped down with 3M #471 tape or equivalent as determined by the executive director.

(b) There shall be no posting or affixing of placards, banners, or signs to any part of any building or on the grounds. All signs or placards used at the Capitol Hill Complex shall be hand held.

(c) No adhesive material, wire, nails, or fasteners of any kind may be used on the buildings or grounds.

(d) Nothing may be used as a decoration, or be used in the process of decorating, that marks or damages structure(s).

(e) All decorations and supporting structures shall be temporary.

(f) Any writing or use of ink, paint or sprays applied to any area of any building is prohibited.

(g) Users may not decorate the inside or outside of any facility or any portion of the grounds without the advance written approval of the Executive Director. Users must submit any decoration requests in writing to the Executive Director at least ten working days in advance.

(h) Signs, posters, decorations, displays, or other media shall be in compliance with the state law regarding Pornographic and Harmful Materials and Performance, Section 76-10-1201 et seq.

(i) Leaving any item(s) against the exterior or interior walls, pillars, busts, statues, portraits or staircases of the Capitol building is prohibited.

(j) Balloons are not allowed inside the Capitol building.

(3) Set up/Clean up.

(a) All deliveries and loading/unloading of materials shall be limited to routes and elevators as specified by the executive director.

(b) All decorations, displays and exhibits shall be taken down by the designated end time of the event in a manner that is least disruptive to state business.

(c) Users shall leave all facilities and grounds in its original condition and appearance.

(4) Parking.

(a) Parking is limited. All posted parking restrictions on the Capitol Hill Complex, including reserved parking stalls, shall be observed.

(b) Parking for large vehicles or trailers shall require the prior approval of the executive director, which approval may be withheld if the large vehicle or trailer may interfere with the access or use of the Capitol Hill Complex.

(c) Except as expressly allowed by the executive director, overnight parking is prohibited.

(5) Compliance with Laws.

(a) Users shall conform to all applicable and constitutional laws and requirements, including health, safety, fire, building and other codes and similar requirements. Occupancy limits as posted in or applicable to any public area will dictate, unless otherwise limited for public safety, the number of persons who can assemble in the public areas. Under no circumstance will occupancy limits be exceeded. State Capitol security personnel shall use reasonable efforts to ensure compliance with occupancy, safety, and health requirements.

(b) Safety requirements as used in this rule include safety and security requirements made known to the executive director by the Utah Department of Public Safety or the federal government for the safety and security of special events and/or persons on the Capitol Hill Complex.

(c) "No Smoking" statutes, rules and policies, including the Utah Indoor Clean Air Act, Title 26, Chapter 38, Utah Code shall be observed.

(d) The following are all prohibited: Open flames; flammable fluids; candles with flames; burning incense; smoke; fog machines; disseminating dust, powder, glitter or confetti; and explosives; except that a gelled alcohol food warming fuel used for food preparation or warming, whether catered or not, is allowed provided that it is in:

(i) a one ounce capacity container (29.6 ml) on a noncombustible surface; or

(ii) a container on a noncombustible surface, not exceeding one quart (946.g ml) capacity with a controlled pouring device that will limit the flow to a one ounce (29.6 ml) serving.

(e) All persons must obey all applicable firearm laws, rules, and regulations.

(6) Security and Supervision.

(a) The Facility Use Application shall be reviewed by the senior ranking officer in charge of security for the Capitol Hill Complex, who shall determine the total number of uniformed security officers required for the proposed event based upon the nature of the event and the risk factors that are reasonably anticipated. Such determination by the senior ranking officer may increase the minimum number of required officers stated in this subsection. At a minimum: one uniformed security officer shall be required for any event consisting of 1-399 participants; two uniformed security officers shall be required for any event consisting of 400 or more participants. The applicant shall pay, in addition to all other required fees, the cost of the providing of all required security officers. These security fees may not be waived. This subparagraph shall not apply to free speech activities or state sponsored activities.

(b) At least one representative of the applicant identified in the application and permit shall be present during the entire activity;

(c) The activity sponsor (permit holder) is responsible for restricting the area of use by participants to the specified room and rest room areas of the reserved facilities.

(d) The activity sponsor (permit holder) shall control entrances to allow only authorized persons to enter any permitted facility or grounds.

(7) Photography, Portraits and Video/Filming.

(a) Any photography, videotaping or filming, shall require advance notice to, and permission from the executive director

for scheduling.

(b) Any photography, videotaping or filming, which includes wedding participants and family portraits, and which may take place anywhere in the facilities or grounds of the Capitol Hill Complex, will be required to comply with this Rule.

(i) Such photography, videotaping or filming, may be scheduled by the executive director on Tuesday from 3 p.m. to 6 p.m., Friday from 12 p.m. to 6 p.m., and Saturday from 8 a.m. to 4 p.m. The executive director may allow a different time than specified herein upon written request and if the executive director determines that such other time can be accommodated by any necessary state personnel and does not conflict with state business and any other scheduled events. The executive director may reschedule as needed to accommodate events and state business whether scheduled or not.

(ii) In regard to inside the Capitol building, such photography, videotaping or filming may occur in the following areas: the East grand stairs, the West grand stairs, and the center of the Rotunda or other areas as approved by the executive director.

(iii) A processing fee shall be required for such photography, videotaping or filming. Additionally, a deposit may be required to cover the costs of any anticipated cleanup by the state after the session. These fees shall be described in the Fee Schedule approved by the Board.

(c) Any photography, videotaping or filming that is for the purpose of promoting any private business purposes, including television commercials, movies and photography for business advertising, shall be required to submit a Facility Use Application, pay the required fee from the Fee Schedule approved by the Board, and the time and location must be approved by the Executive Director.

(d) Unless specifically endorsed by an authorized official of the State of Utah, any photography, videotaping or filming shall not expressly or impliedly indicate any State of Utah endorsement of any product, service or any other aspect of the depiction.

(e) This subsection (7) shall not apply to tourists and does not apply to the extent it is the exercise of a free speech activity.

(8) Liability.

(a) The state, Board, executive director and their designees, employees and agents shall not be deemed in default of any issued permit, or liable for any damages if the performance of any or all of their obligations under the permit are delayed or become impossible because of any act of God, terrorism, war, riot or civil disobedience, epidemic, strike, lock-out or labor dispute, fire, or any other cause beyond their reasonable control.

(b) Except as required by law, the state shall not be responsible for any property damage or loss, nor any personal injury sustained during, or as a result of, any use, activity or event.

(c) Users/applicants shall be responsible for any personal injury, vandalism, damage, loss, or other destruction of property caused by the user or an attendee at the applicant's event.

(9) Indemnification. Individuals and organizations using the Capitol Hill Complex do so at their own risk and shall indemnify and hold harmless the state from and against any and all suits, damages, claims or other liabilities due to personal injury or death, and from damage to or loss of property arising out of or resulting from the conduct of such use or activities on the Capitol Hill Complex.

(10) Food Services, Cafe Operator and Authorized Caterer Requirements.

(a) In General. Catering services on the Capitol Hill Complex shall be exclusively provided by the Cafe Operator and Authorized Caterer for those areas of the Capitol Hill Complex under the jurisdiction of the Board and to the extent expanded by the Legislative Management Committee or the Governor's Office, whichever is applicable. Multiple Authorized Caterers may be approved by the Executive Director. The Cafe Operator shall be responsible for all activities in the kitchen, servery, dining and conference rooms associated with the dining room, known as the "State Room," and located on the first floor of the East Senate Building. The Cafe Operator shall have the exclusive right to provide food and beverages in the State Room, but may give permission for an Authorized Caterer to provide food and beverages in the State Room.

(b) Authorized Caterer Requirements. In order to qualify as an Authorized Caterer, an application must be approved by the Executive Director based on meeting the following requirements:

(i) Quality Control Policies. The Authorized Caterer must have quality control policies that are consistent with those set forth in the contract between the Board and the Cafe Operator. The Executive Director shall provide a form describing the minimum standards.

(ii) Application Form. A person or entity seeking to be an Authorized Caterer shall complete an application form approved by the Executive Director.

(iii) Insurance. A Certificate of Insurance shall be provided to the Executive Director for all of the following insurance and such insurance shall be maintained throughout the term of the catering event and for at least one year thereafter:

(A) The Authorized Caterer shall maintain Commercial General Liability insurance with per occurrence limits of at least $1,000,000 and general aggregate limits of at least $2,000,000. The selected Authorized Caterer shall also maintain, if applicable to the Authorized Caterer's operations or the specific activity, Business Automobile Liability insurance covering Caterer's owned, non-owned, and hired motor vehicles and/or Professional Liability (errors and omissions) insurance with liability limits of at least $1,000,000 per occurrence. Such insurance policies shall be endorsed to be primary and not contributing to any other insurance maintained by the Board or the State of Utah.

(B) The Budget Development and Board Operations Subcommittee reserves the right at any time to require additional coverage from that required in this Rule, at the Authorized Caterer's expense for the additional coverage, based upon the specific risks presented by any proposed event and as recommended by the State's Risk Manager.

(C) The Authorized Caterer shall maintain all employee related insurances, in the statutory amounts, such as unemployment compensation, worker's compensation, and employer's liability, for its employees or volunteers involved in performing services pursuant to the Event. Such worker's compensation and employer's liability insurance shall be endorsed to include a waiver of subrogation against the State of Utah, the Board, its agents, officers, directors and employees. Authorized Caterer shall also maintain "all risk" property insurance at replacement cost applicable to the Authorized Caterer's property and/or its equipment.

(D) The Authorized Caterer's insurance carriers and policy provisions must be acceptable to the State of Utah's Risk Manager and remain in effect for the duration of the catering event and for at least one-year thereafter. The Board shall be named as an additional insured on the Commercial General Liability, the Professional Liability Insurance and all other required insurance policies. The Authorized Caterer will cause any of its subcontractors, who provide materials or perform services related to the catering service(s), to also maintain the insurance coverages and provisions listed above.

(E) The Authorized Caterer shall submit certificates of insurance as evidence of the above required coverage to the Executive Director prior to any entering into a contract related to the catering event. Such certificates shall provide the Board with thirty (30) calendar days written notice prior to the

cancellation or material change of the applicable coverage, as evidenced by return receipt or certified mail, sent to the office of the Executive Director.

(iv) Indemnification: The Authorized Caterer shall hold harmless, defend and indemnify the State of Utah, the Board and its officers, employees, and agents from and against any and all acts, errors or omissions which may cause damage to property or person(s), claims, losses, damages to the facilities or grounds of the Capitol Hill Complex, causes of action, judgments, damages and expenses including, but not limited to attorney's fees because of bodily injury, sickness, disease or death, or injury to or destruction of tangible property or any other injury or damage resulting from or arising out of the negligent acts or omissions or willful misconduct of the Authorized Caterer, or its agents, employees subcontractors or anyone for whom the Authorized Caterer may be liable, except where such claims, losses, causes of action, judgments, damages and expenses result solely from the negligent acts or omissions or willful misconduct of the Board, its officers, employees or agents.

(v) Record Keeping and Audit Rights: The Authorized Caterer shall maintain accurate accounting records for all goods and services provided, and shall retain all such records for a period of at least three (3) years from the date of the catering service. Upon reasonable notice and during normal business hours, the Board, or any of its duly authorized representatives, shall have access to and the right to audit any records or other documents pertaining to the Authorized Caterer. The Board's audit rights shall extend for a period of at least three (3) years from the date of the catering service.

(vi) Equal Opportunity: The Authorized Caterer shall not unlawfully discriminate against any employee, applicant for employment, or recipient of services.

(vii) Taxes: The Authorized Caterer shall be responsible for and pay all taxes which may be levied or incurred against the Authorized Caterer, including taxes levied or incurred against Authorized Caterer's income, inventory, property, sales, or other taxes.

(viii) Taxes: Board is Exempt: The Board is exempt from State of Utah sales and excise taxes. Exemption certification information appears on all purchase orders issued by the Board and such taxes will not apply to the Board.

(ix) Suspension/Debarment. The Authorized Caterer must notify the Executive Director within 10 calendar days if debarred or suspended by any governmental entity.

(x) Comply with Facility Use Rules. The Authorized Caterer shall comply with all of the Facility Use Rules enacted by the Board. Upon submission of any evidence to the Budget Development and Board Operations Subcommittee that the Authorized Caterer has not complied with a rule enacted by the Board, the Authorized Caterer shall be removed from eligibility for providing any catering service on the Capitol Hill Complex for a period of time as determined by the Subcommittee and consistent with the Board's rules on suspension and debarment.

(xi) Inspection. The Board or the Executive Director reserves the right to inspect the Authorized Caterer's facilities and operations with respect to use, safety, sanitation and the maintenance of premises which shall be maintained at a level satisfactory to the Board.

(xii) Energy. The Authorized Caterer shall exercise due care to keep utility services at a minimum, conserve the use of energies, and control the resulting costs.

(xiii) Food Handlers Permits. All of the Authorized Caterer's employees must have a current Food Handlers Permit. Documentation shall be promptly provided upon request of the Executive Director that established that all employees and temporary employees have valid Food Handlers Permits.

(xiv) The Authorized Caterer must have a locally grown food quality assurance program similar to that required of the Cafe Operator, which covers the food or products that are not provided by nationally recognized vendors.

(xv) Fees and costs associated with catering services, including the Cafe Operator or the Authorized Caterer, shall be the responsibility of the Applicant and cannot be waived.

(xvi) Security.

(A) An Authorized Caterer shall provide to the Executive Director at least 24 hours in advance of any catered event, a list of all full-time and part-time employees that will be involved with the catering service on the Capitol Hill Complex.

(B) The Applicant shall be assessed a fee to provide for the presence of at least one Board employee to be present and to assist with ingress and egress from the Capitol Hill Complex, set-up, coordination and assurance of appropriate performance under this Rule as well as timely and appropriate clean-up after the event. This fee cannot be waived.

(11) Public Notices, Employee Postings, Required Use of Bulletin Boards.

(a) Notices of Capitol Hill Complex meetings, information or announcements related to state of other governmental business shall be posted at executive director approved locations. If any posting is to be done by a person not officed in the Capitol Hill Complex, the executive director shall be notified prior to the posting for approval of the location(s) and duration of the posting. Such persons are also responsible to remove the notices after the related meeting or activity within 24-48 hours.

(b) Posting of handbills, leaflets, circulars, advertising or other printed materials by state employees officed in the Capitol Hill Complex shall be on executive director approved bulletin boards.

(12) Enforcement of Rules.

(a) If any person or group is found to be in violation of any of the applicable laws and rules, a law enforcement officer or state capitol security officer may issue a warning to cease and desist from any non-complying acts. If the law enforcement or security officer observes a non-compliant act after a warning, the officer may take disciplinary action including citations, fines, cancellations of event or activity, or removal from the Capitol Hill Complex.

(13) Waivers.

The Executive Director may waive the requirements of any provision of R131-2-6 provided that the provision of Rule R131-2-6 does not specifically indicate that it is non-waivable, upon being presented with compelling reasons that the waiver will substantially benefit the public of the state of Utah and that the facilities, grounds and persons will be appropriately protected. Any approved waiver must still require compliance with all other provisions of this Rule. The waiver request must be submitted in writing to the Executive Director and must accompany any required Facility Use Application. Conditions may be placed on any approved waiver by the Executive Director to assure the appropriate protection of facilities, grounds and persons. An appeal of a denial or the conditions of such waiver may be filed and processed similarly to the denial of a Facility Use Application as described in R131-2-5.

R131-2-7. Fees and Charges.

(1) Fees.

(a) Application Fee. There shall be an application fee for a Facility Use Permit to cover the cost of processing the application, as specified on the Board's fee schedule. This fee is separate from rental and other fees.

(b) Rental of Space Fee. Persons using the Capitol Hill Complex pursuant to a Facility Use Permit shall be charged a rental of the space fee as specified on the Board's fee schedule.

(c) Security Fee. A security fee shall also be assessed as provided in this Rule, as specified on the Board's fee schedule.

(d) Rental of Equipment fee. A rental of equipment fee shall be assessed as specified on the Board's fee schedule.

(e) Room Setup Fees. The Board's fee schedule shall provide for room setup fees.

(f) Additional Board Staff fee. If an Applicant requests that additional Board staff be present for an event, then an additional fee shall be assessed.

(g) Authorized Caterer Fee. Any fee or costs of an Authorized Caterer are the responsibility of the Applicant. The State of Utah, the Capitol Preservation Board, State Officials, empployees and anyone for whom the State may be liable, shall have no liable whatsoever for such fee or costs owed to the Authorized Caterer.

(h) A "Schedule of Costs and Fees" is available during regular working hours at the executive director's office. This Schedule of Costs and Fees shall include all the fees referred to in this Rule R131-2-7. Additionally, fees may be assessed for technology assistance, recording, insurance coverage, cleaning and repairs. The Schedule of Costs and Fees may have special fees for community service activities, state employee events, including state employee recognition events, state retirement events, or state employee holiday/social events. There are no fees for free speech activities, except costs for requested use of state equipment or supplies shall be assessed in accordance with the Schedule of Costs and Fees. State Sponsored Activities shall not be required to pay any fees under this Rule.

R131-2-8. Specific Facilities.

(1) The following applies to all events and solicitations, except for free speech activities.

(a) Use of caucus rooms, committee rooms, the House of Representatives or Senate Chambers will be separately administered by the legislative branch. Requests for all other rooms must be submitted in writing to the executive director for scheduling and staffing. If the requested room is under the control of the Governor, the judiciary, or other elected officials, the executive director shall forward the request to the appropriate representative of such branch of government or elected official. The executive director will notify the applicant of the approval or denial of the requested space by the approving organization.

(b) The State Office Building auditorium shall be available to all state entities on a first-come, first-serve basis for governmental functions. All state entities shall reserve this facility in advance with the executive director.

(c) After-hours access to the State Office Building shall be through the first floor south doors.

(d) During legislative sessions, legislative meetings or other legislative activities, use of the legislative space will be subject to the applicable legislative rules.

(e) The Gold Room and all other areas controlled by the Governor in the Capitol building shall be available in accordance with Section 67-1-16.

R131-2-9. Use of White Community Memorial Chapel.

(1) In addition to the provisions above, the following rules for the White Community Memorial Chapel shall be observed:

(a) Fire Marshal occupancy limits shall not be exceeded.

(b) The kitchen is for the exclusive use of the Preferred Caterer. No Private Caterer shall be allowed to use the White Community Memorial Chapel and its grounds. Users may use the full rest room facilities.

(c) The White Community Memorial Chapel will be available from 7:00 a.m. until 12:00 midnight, seven days a week, 365 days a year unless otherwise specified by the Board's Budget Development and Board Operations Subcommittee.

(d) If no wedding or event is scheduled the day before the scheduled wedding or event, the applicant may be allowed to use the Chapel the day before from noon to midnight for rehearsal or decorative purposes for an additional fee as identified on the Board's fee schedule.

(e) All users must complete the Facility Use Permit Application and comply with all the permit requirements listed under rules R131-2 and R131-10.

R131-2-10. Procedure for Receiving and Deciding Complaints Regarding the Access or Use of the Capitol Hill Complex.

(1) Any person that has a complaint regarding the access or use of the Capitol Hill Complex may file such complaint in writing to the executive director.

(2) The executive director will issue a written determination within thirty calendar days of the filing of the complaint or such longer time period as agreed to by the complainant.

(3) If the executive director does not issue a determination within the time period for such determination, then the complainant may file a written appeal no later than ten calendar days after the expiration of such time period. The written appeal shall be delivered to the office of the executive director and shall be considered by the Board's Budget Development and Board Operations Subcommittee chair in a manner determined appropriate by the chair.

(4) The chair will issue a written determination within thirty calendar days of the filing of the appeal or such longer time period as agreed to by the complainant.

(5) If the chair does not issue a determination within the time period for the chair's determination, the complainant may file a written appeal to the Board no later than ten calendar days after the expiration of such time period. The written appeal to the Board shall be delivered to the office of the executive director.

(6) Upon the filing of a timely appeal to the Board, the appeal shall be scheduled at the next regularly scheduled meeting of the Board.

(7) This is considered to be an administrative remedy for complaints regarding the access or use of the Capitol Hill Complex, and to the extent allowed by law, shall be considered an administrative remedy that must be pursued prior to any legal action.

R131-2-11. Fees and Charges During Legislative Session.

During the regular Utah Legislative Session, from the hours of 7:00 a.m. to 5:30 p.m., Monday through Friday, the facility use fees for specific rooms and spaces shall be reduced as follows:

(1) Facilities on Capitol Hill are available on a first come first serve basis as defined in this Rule R131-2, subject to preemption for State Sponsored Activities and any need to reserve or close off spaces for security reasons as advised by the Department of Public Safety.

(a) Subject to all the other provisions of this Rule R131-2-11, the following rooms may be reserved with no room rental being assessed:

(i) Kletting Room located in the Senate Building;

(ii) Olmstead Room located in the Senate Building;

(iii) Spruce Room located in the Senate Building;

(iv) Beehive Room located in the Senate Building;

(v) Seagull Room located in the Senate Building;

(vi) Copper Room located in the Senate Building;

(vii) Rooms B110 and 1112 in the State Office Building;

(viii) Room 130, the Multipurpose/Public Lounge located in the Capitol;

(ix) Room 170 located in the Capitol; and

(x) Room 210 located in the Capitol.

(b) These rooms identified in R131-2-11(2) may be reserved when the Utah Legislature is meeting in regular session in 4 hour blocks/day for a maximum of 8 total hours per week, and not concurrent.

(c) The use of the State Room in the East Senate Building

is to be for public use except for certain hours established by the Executive Director when the public does not ordinarily use the State Room.

(2) The State Office Building Auditorium may be reserved during the time the Utah Legislature is meeting in regular session in two hour blocks one day a week, but is subject to the same rental fees that would apply at other times of the year and priority shall be provided to those events that are related to the regular session of the Utah Legislature.

(3) The Capitol Rotunda or Hall of Governors facilities may be reserved during the hours the Utah Legislature is meeting in regular session with no fee for the space rental itself being assessed subject to the following:

(a) The reservation shall be for a maximum of two hours which must be in one block of hours; and

(b) Priority shall be given to those events that are related to the regular session of the Utah Legislature.

(4) This Rule R131-2-11 does not prohibit the rental of these rooms for the standard fees when rental is beyond the time restrictions set forth in this Rule R131-2-11.

(a) Notwithstanding any other provision of this Rule R131-2-11, Registration (Application), Janitorial and all other associated set up and security fees that would apply if the rental was not during the Utah Legislature's regular session, shall be assessed.

(b) Those persons or entities reserving or using the facilities shall leave the space as they found it in a clean and orderly manner and comply with all other provisions of the Facility Use Rules, R131-2.

(c) The janitorial fee will only be assessed if,in the opinion of the Executive Director, that the work required to prepare the room for the next user is beyond that what is expected and reasonable. Charges for any such required janitorial services shall be assessed in half hour increments of $50/hour per janitorial worker.

(d) The Registration (Application) fee shall be assessed at the rate of one rental even if the Registration (Application) includes more than one reservation. Multiple reservations on one application form for reservations during the Utah Legislature's regular session are encouraged in order to best coordinate all the reservations.

KEY: public buildings, facilities use
February 24, 2015 63C-9-101 et seq.
Notice of Continuation December 29, 2014

R151. Commerce, Administration.
R151-14. New Automobile Franchise Act Rule.
R151-14-1. Title.

This rule shall be known as the "New Automobile Franchise Act Rule".

R151-14-2. Authority - Purpose.

In accordance with the New Automobile Franchise Act, Title 13, Chapter 14, this rule governs adjudicative proceedings before the Utah Motor Vehicle Franchise Advisory Board and the Executive Director of the Department of Commerce, and is adopted under the authority of Subsection 13-14-104(2).

R151-14-3. Adjudicative Proceedings.

(1) Informal Proceeding. Adjudicative proceedings before the Board and the Executive Director are designated as informal adjudicative proceedings.

(2) Applicable Rules. In addition to Title 63G, Chapter 4, Utah Administrative Procedures Act, any adjudicative proceedings under the New Automobile Franchise Act shall be conducted in accordance with this rule and with the Department of Commerce Administrative Procedures Act Rule, R151-4.

(3) Procedure for Substitution of Presiding Officer. In accordance with Section 63G-4-103(1)(h), the Executive Director of the Department may upon his/her own motion substitute an administrative law judge as the presiding officer to conduct certain aspects of the adjudicative proceedings before the Board if he/she determines that fairness to the parties would not be compromised by such substitution. The substitution order shall give any party who feels that such substitution would compromise fairness an opportunity to request the Executive Director to reconsider the substitution by submitting written objections and supporting arguments to the Executive Director. Upon reconsideration, the Executive Director may leave the order intact or make such other orders as he/she deems appropriate.

(4) Submissions. Except as otherwise expressly required or permitted in this Rule or in the New Automobile Franchise Act, all correspondence or other submissions shall be directed to the Chair of the Utah Motor Vehicle Franchise Advisory Board at the Utah Department of Commerce.

(5) Form of Pleadings. A notice of agency action by the agency shall comply with the requirements of the Utah Administrative Procedures Act, Section 63G-4-201(2). A request to commence an adjudicative proceeding pursuant to Section 13-14-107(1), shall be a pleading headed "BEFORE THE DEPARTMENT OF COMMERCE, UTAH MOTOR VEHICLE FRANCHISE ADVISORY BOARD" and captioned "Request for Agency Action." The pleading shall substantially comply with the Utah Administrative Procedures Act, Section 63G-4-201(3), and the Department of Commerce Administrative Procedures Act Rule, R151-4-201 to -205.

(6) Answer. If the presiding officer determines that an answer to any notice of agency action or request for agency action would be helpful to the proceedings, the presiding officer may order a party to the proceedings to file an answer.

(7)(a) An evidentiary hearing before the Board shall be held for a matter brought under:

(i) Section 13-14-202 Sale or transfer of ownership;

(ii) Section 13-14-203 Succession to franchise;

(iii) Section 13-14-301 Termination or noncontinuance of franchise; or

(iv) Section 13-14-302 Issuance of additional franchises -- Relocation of existing franchisees.

(b) An adjudication requested under any section not listed in this Subsection (7)(a) shall be conducted without hearing, as follows:

(i) Parties to the action may submit to the Executive Director or the Executive Director's designee briefs, memoranda, exhibits, expert opinions, and affidavits in support of their positions.

(ii) If it appears to the Executive Director or the Executive Director's designee that the matter raises issues of fact, the Board shall convene to act as the fact-finder.

(iii) A meeting of the Board that is convened pursuant to this Subsection (7)(b)(ii) may be live or electronic, according to the sole discretion of the Executive Director or the Executive Director's designee.

(iv) Parties may appear at a meeting of the Board that is convened pursuant to this Subsection (7)(b)(ii) and may answer questions of the Board. Parties may not engage in oral argument.

(v) Board deliberations shall be conducted according to Utah Administrative Code Section R151-4-703(2).

(8)(a) Pursuant to Utah Code Ann. Section 63G-4-203(1), discovery is prohibited, but the presiding officer may issue subpoenas requiring the appearance of witnesses at an evidentiary hearing before the Board or the production of documents.

(b) Any subpoena issued shall conform with the requirements set forth in Utah Admin Code Section R151-4-513.

(c) The party requesting a subpoena shall comply with the requirements set forth in Section R151-4-712.

(9) Memoranda. If the presiding officer determines that written arguments would be helpful to the proceedings, the presiding officer may order the parties to submit memoranda in accordance with any scheduling order entered by the presiding officer.

(10) GRAMA. Any request for records of the proceedings before the Board and the Executive Director will be governed by GRAMA (Government Records Access and Management Act), Utah Code Ann. Section 63G-2-101 et seq. Any schedule of records classifications maintained by the Department shall be made available to the parties upon request.

R151-14-4. Registration.

(1) Each newly formed or otherwise not previously registered franchisor or franchisee shall request an initial registration form from the Department.

(2) The Department shall provide a renewal form to each registered franchisor and franchisee at least 30 and not more than 60 days prior to the expiration of the current registration.

(3) A registrant may use the form provided by the Department to renew its registration or may submit a renewal request in another format so long as that request contains the following information:

(a) Name of dealership/manufacturer;

(b) Address of dealership/manufacturer;

(c) Owners or stockholders and percentage of holding (5% or above only);

(d) Line-makes manufactured, distributed, or sold;

(e) If applicable, dealer number; and

(f) Name and address of person designated for the purpose of receiving notices or process pursuant to the provisions of the New Automobile Franchise Act.

(4) The processing of an application for registration by the Department may be delayed for a reasonable time to give the registrant an opportunity to cure technical defects in an application for registration.

KEY: adjudicative proceedings, automobiles, motor vehicles, franchises
February 24, 2015 13-14-101 et seq.
Notice of Continuation May 2, 2011

R156. Commerce, Occupational and Professional Licensing.
R156-17b. Pharmacy Practice Act Rule.
R156-17b-101. Title.

This rule is known as the "Pharmacy Practice Act Rule".

R156-17b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this rule:

(1) "Accredited by ASHP" means a program that:

(a) was accredited by the ASHP on the day the applicant for licensure completed the program; or

(b) was in ASHP candidate status on the day the applicant for licensure completed the program.

(2) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.

(3) "Analytical laboratory":

(a) means a facility in possession of prescription drugs for the purpose of analysis; and

(b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.

(4) "ASHP" means the American Society of Health System Pharmacists.

(5) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.

(6) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

(7) "Centralized Prescription Filling" means the filling by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order.

(8) "Centralized Prescription Processing" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, drug utilization review (DUR), claims adjudication, refill authorizations, and therapeutic interventions.

(9) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.

(10) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.

(11) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

(12) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2), including any amendments thereto.

(13) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

(14) "Dispense", as defined in Subsection 58-17b-102(22), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

(15) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component part or accessory, which is required under Federal law to bear the label, "Caution: Federal or State law requires dispensing by or on the order of a physician."

(16) "DMP" means a dispensing medical practitioner licensed under Section 58-17b, Part 8.

(17) "DMP designee" means an individual, acting under the direction of a DMP, who:

(a)(i) holds an active health care professional license under one of the following chapters:

(A) Chapter 67, Utah Medical Practice Act;

(B) Chapter 68, Utah Osteopathic Medical Practice Act;

(C) Chapter 70a, Physician Assistant Act;

(D) Chapter 31b, Nurse Practice Act;

(E) Chapter 16a, Utah Optometry Practice Act;

(F) Chapter 44a, Nurse Midwife Practice Act; or

(G) Chapter 17b, Pharmacy Practice Act; or

(ii) is a medical assistant as defined in Subsection 58-67-102(9);

(b) meets requirements established in Subsection 58-17b-803(4)(c); and

(c) can document successful completion of a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622.

(18) "DMPIC" means a dispensing medical practitioner licensed under Section 58-17b, Part 8 who is designated by a dispensing medical practitioner clinic pharmacy to be responsible for activities of the pharmacy.

(19) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchases the product directly from the manufacturer or from one of these entities.

(20) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(21) "Drugs", as used in this rule, means drugs or devices.

(22) "Durable medical equipment" or "DME" means equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose;

(c) generally is not useful to a person in the absence of an illness or injury;

(d) is suitable for use in a health care facility or in the home; and

(e) may include devices and medical supplies.

(23) "Entities under common administrative control" means an entity holds the power, actual as well as legal to influence the management, direction, or functioning of a business or organization.

(24) "Entities under common ownership" means entity assets are held indivisibly rather than in the names of individual members.

(25) "ExCPT", as used in this rule, means the Exam for the Certification of Pharmacy Technicians.

(26) "FDA" means the United States Food and Drug Administration and any successor agency.

(27) "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

(28) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(29) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

(30) "Legend drug" or "prescription drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(31) "Maintenance medications" means medications the patient takes on an ongoing basis.

(32) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition. Such manufacturer's exclusive distributor shall be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(33) "Medical supplies" means items for medical use that are suitable for use in a health care facility or in the home and that are disposable or semi-disposable and are non-reusable.

(34) "MPJE" means the Multistate Jurisprudence Examination.

(35) "NABP" means the National Association of Boards of Pharmacy.

(36) "NAPLEX" means North American Pharmacy Licensing Examination.

(37) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (19), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

(a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

(38) "Other health care facilities" means any entity as defined in Utah Code Subsection 26-21-2(13)(a) or Utah Administrative Code R432-1-3(55).

(39) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(40) "Patient's agent" means a:

(a) relative, friend or other authorized designee of the patient involved in the patient's care; or

(b) if requested by the patient or the individual under Subsection (40)(a), one of the following facilities:

(i) an office of a licensed prescribing practitioner in Utah;

(ii) a long-term care facility where the patient resides; or

(iii) a hospital, office, clinic or other medical facility that provides health care services.

(41) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(42) "PIC", as used in this rule, means the pharmacist-in-charge.

(43) "Prepackaged" or "Prepackaging" means the act of transferring a drug, manually or by use of an automated pharmacy system, from a manufacturer's or distributor's original container to another container in advance of receiving a prescription drug order or for a patient's immediate need for dispensing by a pharmacy or practitioner authorized to dispense in the establishment where the prepackaging occurred.

(44) "Prescription files" means all hard-copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

(45) "PTCB" means the Pharmacy Technician Certification Board.

(46) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

(47) "Refill" means to fill again.

(48) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist or DMP responsible for dispensing the product to a patient.

(49) "Research facility" means a facility where research takes place that has policies and procedures describing such research.

(50) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy for the purpose of removing those drugs from stock and destroying them.

(51) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

(52) "Supervisor" means a licensed pharmacist or DMP in good standing with the Division.

(53) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale. Such third party logistics provider shall be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(54) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

(55) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and beyond use date for the drug.

(56) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

(57) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 37-NF 32), 2014 edition, which is official from May 1, 2014 through Supplement 2, dated December 1, 2014, which is hereby adopted and incorporated by reference.

(58) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient.

(59) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

(a) intracompany sales or transfers;

(b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;

(c) the sale, purchase, or trade of a drug pursuant to a prescription;

(d) the distribution of drug samples;

(e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;

(f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;

(g) the sale, purchase or exchange of blood or blood components for transfusions;

(h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;

(i) delivery of a prescription drug by a common carrier; or

(j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

R156-17b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 17b.

R156-17b-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.

R156-17b-105. Licensure - Administrative Inspection.

In accordance with Subsection 58-17b-103(3)(f), the procedure for disposing of any drugs or devices seized by the Division during an administrative inspection shall be handled as follows:

(1) Any legal drugs or devices found and temporarily seized by the Division that are found to be in compliance with this chapter shall be returned to the PIC or DMPIC of the pharmacy involved at the conclusion of any investigative or adjudicative proceedings and appeals.

(2) Any drugs or devices that are temporarily seized by the Division that are found to be unlawfully possessed, adulterated, misbranded, outdated, or otherwise in violation of this rule shall be destroyed by Division personnel at the conclusion of any investigative or adjudicative proceedings and appeals. The destruction of any seized controlled substance drugs shall be witnessed by two Division individuals. A controlled substance destruction form shall be completed and retained by the Division.

(3) An investigator may, upon determination that the violations observed are of a nature that pose an imminent peril to the public health, safety and welfare, recommend to the Division Director to issue an emergency licensure action, such as cease and desist.

(4) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a secure email address must be established by the PIC or DMPIC and responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC or DMPIC and responsible party shall cause the Division's Licensing Bureau to be notified on the applicable form prescribed by the Division of the secure email address or any change thereof within seven days of any email address change. Only one email address shall be used for each pharmacy.

R156-17b-302. Pharmacy Licensure Classifications - Pharmacist-in-Charge or Dispensing Medical Practitioner-In-Charge Requirements.

In accordance with Subsection 58-17b-302(4), the classification of pharmacies holding licenses are clarified as:

(1) A Class A pharmacy includes all retail operations located in Utah and requires a PIC.

(2) A Class B pharmacy includes an institutional pharmacy that provides services to a target population unique to the needs of the healthcare services required by the patient. All Class B pharmacies require a PIC or DMPIC except for pharmaceutical administration facilities and methadone clinics. Examples of Class B pharmacies include:

(a) closed door pharmacies;
(b) hospital clinic pharmacies;
(c) methadone clinic pharmacies;
(d) nuclear pharmacies;
(e) branch pharmacies;
(f) hospice facility pharmacies;
(g) veterinarian pharmaceutical facility pharmacies;
(h) pharmaceutical administration facility pharmacies;
(i) sterile product preparation facility pharmacies; and
(j) dispensing medical practitioner clinic pharmacies.

(3) A Class C pharmacy includes a pharmacy that is involved in:

(a) manufacturing;
(b) producing;
(c) wholesaling;
(d) distributing; or
(e) reverse distributing.

(4) A Class D pharmacy requires a PIC licensed in the state where the pharmacy is located and includes an out-of-state mail order pharmacy. Facilities with multiple locations shall have licenses for each facility and each component part of a facility.

(5) A Class E pharmacy does not require a PIC and includes:

(a) analytical laboratory pharmacies;

(b) animal control pharmacies;

(c) durable medical equipment provider pharmacies;

(d) human clinical investigational drug research facility pharmacies;

(e) medical gas provider pharmacies; and

(f) animal narcotic detection training facility pharmacies.

(6) All pharmacy licenses shall be converted to the appropriate classification by the Division as identified in Section 58-17b-302.

(7) Each Class A and each Class B pharmacy required to have a PIC or DMPIC shall have one PIC or DMPIC who is employed on a full-time basis as defined by the employer, who acts as a PIC or DMPIC for one pharmacy. However, the PIC or DMPIC may be the PIC or DMPIC of more than one Class A or Class B pharmacy, if the additional Class A or Class B pharmacies are not open to provide pharmacy services simultaneously.

(8) A PIC or DMPIC shall comply with the provisions of Section R156-17b-603.

R156-17b-303a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(b), the credentialing agency recognized to provide certification and evaluate equivalency of a foreign educated pharmacy graduate is the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy Foundation.

(2) In accordance with Subsection 58-17b-304(7), an applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

(a) current admission in a College of Pharmacy accredited by the ACPE by written verification from the Dean of the College;

(b) a graduate degree from a school or college of pharmacy that is accredited by the ACPE; or

(c) a graduate degree from a foreign pharmacy school as established by a certificate of equivalency from an approved credentialing agency defined in Subsection (1).

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician shall complete a training program that is:

(a) accredited by ASHP; or

(b) conducted by:

(i) the National Pharmacy Technician Association;

(ii) Pharmacy Technicians University; or

(iii) a branch of the Armed Forces of the United States, and

(c) meets the following standards:

(i) completion of at least 180 hours of directly supervised practical training in a licensed pharmacy as determined appropriate by a licensed pharmacist in good standing; and

(ii) written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technician trainees that address:

(A) the specific manner in which supervision will be completed; and

(B) an evaluative procedure to verify the accuracy and completeness of all acts, tasks and functions performed by the pharmacy technician trainee.

(4) An individual shall complete a pharmacy technician training program and successfully pass the required examination as listed in Subsection R156-17b-303c(4) within two years after obtaining a pharmacy technician trainee license, unless otherwise approved by the Division in collaboration with the Board for good cause showing exceptional circumstances.

(a) Unless otherwise approved under Subsection (4), an individual who fails to apply for and obtain a pharmacy technician license within the two-year time frame shall repeat a pharmacy technician training program in its entirety if the individual pursues licensure as a pharmacy technician.

(5)(a) Pharmacy technician training programs that received Division approval on or before April 30, 2014 are exempt from satisfying standards established in Subsection R156-17b-303a(3) for students enrolled on or before December 31, 2018.

(b) A student in a program described in Subsection (5)(a) shall comply with the program completion deadline and testing requirements in Subsection (4), except that the license application shall be submitted to the Division no later than December 31, 2021.

(c) A program in ASHP candidate status shall notify a student prior to enrollment that if the program is denied accreditation status while the student is enrolled in the program, the student will be required to complete education in another program with no assurance of how many credits will transfer to the new program.

(d) A program in ASHP candidate status that is denied accreditation shall immediately notify the Division, enrolled students and student practice sites, of the denial. The notice shall instruct each student and practice site that:

(i) the program no longer satisfies the pharmacy technician license education requirement in Utah; and

(ii) enrollment in a different program meeting requirements established in Subsection R156-17b-303a(3) is necessary for the student to complete training and to satisfy the pharmacy technician license education requirement in Utah.

(6) An applicant from another jurisdiction seeking licensure as a pharmacy technician in Utah is deemed to have met the qualifications for licensure in Subsection 58-17b-305(1)(f) and 58-17b-305(1)(g) if the applicant:

(a) has engaged in the practice of a pharmacy technician for a minimum of 1,000 hours in that jurisdiction within the past two years or has equivalent experience as approved by the Division in collaboration with the Board; and

(b) has passed and maintained current PTCB or ExCPT certification.

R156-17b-303b. Licensure - Pharmacist - Pharmacy Internship Standards.

(1) In accordance with Subsection 58-17b-303(1)(g), the standards are established as one of the following for the pharmacy internship required for licensure as a pharmacist:

(a) For graduates of all U.S. pharmacy schools:

(i) At least 1,740 hours of practice supervised by a pharmacy preceptor shall be obtained in Utah or another state or territory of the United States, or a combination of both according to the Accreditation Council for Pharmacy Education (ACPE), Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree Guidelines Version 2.0 Effective February 14, 2011, which is hereby incorporated by reference.

(ii) Introductory pharmacy practice experiences (IPPE) shall account for not less than 300 hours over the first three professional years.

(iii) A minimum of 150 hours shall be balanced between community pharmacy and institutional health system settings.

(iv) Advanced pharmacy practice experiences (APPE) shall include at least 1,440 hours (i.e., 36 weeks) during the last academic year and after all IPPE requirements are completed.

(v) Required experiences shall:

(A) include primary, acute, chronic, and preventive care

among patients of all ages; and

(B) develop pharmacist-delivered patient care competencies in the community pharmacy, hospital or health-system pharmacy, ambulatory care, inpatient/acute care, and general medicine settings.

(vi) Internship hours completed in another state or territory of the United States shall be accepted based on the approval of the hours by the pharmacy board in the jurisdiction where the hours were obtained.

(vii) Evidence of completed internship hours shall be documented to the Division by the pharmacy intern at the time application is made for a Utah pharmacist license.

(viii) Pharmacy interns participating in internships may be credited no more than 50 hours per week of internship experience.

(ix) No credit will be awarded for didactic experience.

(x) If a pharmacy intern is suspended or dismissed from an approved College of Pharmacy, the intern shall notify the Division within 15 days of the suspension or dismissal.

(xi) If a pharmacy intern ceases to meet all requirements for intern licensure, the pharmacy intern shall surrender the pharmacy intern license to the Division within 60 days unless an extension is requested and granted by the Division in collaboration with the Board.

(b) For graduates of all foreign pharmacy schools, at least 1,440 hours of supervised pharmacy practice in the United States.

R156-17b-303c. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-17b-303(1)(h), the examinations that shall be successfully passed by an applicant for licensure as a pharmacist are:

(a) the NAPLEX with a passing score as established by NABP; and

(b) the Multistate Pharmacy Jurisprudence Examination (MPJE) with a minimum passing score as established by NABP.

(2) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retest.

(3) In accordance with Subsection 58-17b-303(3)(j), an applicant applying by endorsement is required to pass the MPJE.

(4) In accordance with Subsection 58-17b-305(1)(g), an applicant applying for licensure as a pharmacy technician shall pass the PTCB or ExCPT with a passing score as established by the certifying body. The certificate shall exhibit a valid date and that the certification is active.

(5) A graduate of a foreign pharmacy school shall obtain a passing score on the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination.

R156-17b-303d. Qualifications for Licensure - Meet with the Board.

In accordance with Subsections 58-1-202(1)(d) and 58-1-301(3), an applicant for licensure under Title 58, Chapter 17b may be required to meet with the Board of Pharmacy for the purpose of evaluating the applicant's qualifications for licensure.

R156-17b-304. Temporary Licensure.

(1) In accordance with Subsection 58-1-303(1), the Division may issue a temporary pharmacist license to a person who meets all qualifications for licensure as a pharmacist except for the passing of the required examination, if the applicant:

(a) is a graduate of an ACPE accredited pharmacy school within two months immediately preceding application for licensure or enrolled in the second year of a pharmacy graduate residency program;

(b) submit a complete application for licensure as a pharmacist except the passing of the NAPLEX and MJPE examinations;

(c) submits evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct, on-site supervision of a pharmacist with an active, non-temporary license that may or may not include a controlled substance license; and

(d) has registered to take the required licensure examinations.

(2) A temporary pharmacist license issued under Subsection (1) expires the earlier of:

(a) six months from the date of issuance;

(b) the date upon which the Division receives notice from the examination agency that the individual has failed either examination twice; or

(c) the date upon which the Division issues the individual full licensure.

(3) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retest.

(4) A pharmacist temporary license issued in accordance with this section cannot be renewed or extended.

R156-17b-305. Licensure - Pharmacist by Endorsement.

(1) In accordance with Subsections 58-17b-303(3) and 58-1-301(3), an applicant for licensure as a pharmacist by endorsement shall apply through the "Licensure Transfer Program" administered by NABP.

(2) An applicant for licensure as a pharmacist by endorsement does not need to provide evidence of intern hours if that applicant has:

(a) lawfully practiced as a licensed pharmacist a minimum of 2,000 hours in the four years immediately preceding application in Utah;

(b) obtained sufficient continuing education credits required to maintain a license to practice pharmacy in the state of practice; and

(c) not had a pharmacist license suspended, revoked, canceled, surrendered, or otherwise restricted for any reason in any state for ten years prior to application in Utah, unless otherwise approved by the Division in collaboration with the Board.

R156-17b-307. Qualifications for Licensure - Criminal Background Checks.

(1) An applicant for licensure as a pharmacy shall document to the satisfaction of the Division the owners and management of the pharmacy and the facility in which the pharmacy is located.

(2) The following individuals associated with an applicant for licensure as a pharmacy shall be subject to the criminal background check requirements set forth in Section 58-17b-307:

(a) the PIC;

(b) the PIC's immediate supervisor;

(c) the senior person in charge of the facility in which the pharmacy is located;

(d) others associated with management of the pharmacy or the facility in which the pharmacy is located as determined necessary by the Division in order to protect public health, safety and welfare; and

(e) owners of the pharmacy or the facility in which the pharmacy is located as determined necessary by the Division in order to protect public health, safety and welfare.

R156-17b-308. 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 17b is established by rule in Section R156-1-308a.

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

(3) An intern license may be extended upon the request of the licensee and approval by the Division under the following conditions:

(a) the intern applied to the Division for a pharmacist license and to sit for the NAPLEX and MJPE examinations within three calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(b) the intern lacks the required number of internship hours for licensure.

R156-17b-309. Continuing Education.

(1) In accordance with Section 58-17b-310 and Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a requirement for continuing education as a condition for renewal or reinstatement of a pharmacist or pharmacy technician license issued under Title 58, Chapter 17b.

(2) Requirements shall consist of the following number of qualified continuing education hours in each preceding renewal period:

(a) 30 hours for a pharmacist; and

(b) 20 hours for a pharmacy technician.

(3) The required number of hours of qualified continuing professional education for an individual who first becomes licensed during the two year renewal cycle 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 continuing professional education hours shall consist of the following:

(a) for pharmacists:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy;

(iii) programs of certification by qualified individuals, such as certified diabetes educator credentials, board certification in advanced therapeutic disease management or other certification as approved by the Division in consultation with the Board; and

(iv) training or educational presentations offered by the Division.

(b) for pharmacy technicians:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy; and

(iii) educational meetings that meet ACPE continuing education criteria sponsored by the Utah Pharmacist Association, the Utah Society of Health-System Pharmacists or other professional organization or association; and

(iv) training or educational presentations offered by the Division.

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

(a) Pharmacists:

(i) a minimum of 12 hours shall be obtained through attendance at live or technology enabled participation lectures, seminars or workshops;

(ii) a minimum of 15 hours shall be in drug therapy or patient management; and

(iii) a minimum of one hour shall be in pharmacy law or ethics.

(b) Pharmacy Technicians:

(i) a minimum of eight hours shall be obtained through attendance at live or technology enabled participation at lectures, seminars or workshops; and

(ii) a minimum of one hour shall be in pharmacy law or ethics.

(iii) documentation of current PTCB or ExCPT certification will count as meeting the requirement for continuing education.

(6) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after the 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 continuing professional education to demonstrate it meets the requirements under this section.

R156-17b-401. Disciplinary Proceedings.

(1) An individual licensed as a pharmacy intern who is currently under disciplinary action and qualifies for licensure as a pharmacist may be issued a pharmacist license under the same restrictions as the pharmacy intern license.

(2) A pharmacist, pharmacy intern, pharmacy technician, pharmacy technician trainee, or DMP whose license or registration is suspended under Subsection 58-17b-701(6) may petition the Division at any time to demonstrate the ability to resume competent practice.

R156-17b-402. Administrative Penalties.

In accordance with Subsection 58-17b-401(6) and Sections 58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(1) preventing or refusing to permit any authorized agent of the Division to conduct an inspection, in violation of Subsection 58-17b-501(1):

initial offense: $500 - $2,000

subsequent offense(s): $5,000

(2) failing to deliver the license or permit or certificate to the Division upon demand, in violation Subsection 58-17b-501(2):

initial offense: $100 - $1,000

subsequent offense(s): $500 - $2,000

(3) using the title pharmacist, druggist, pharmacy intern, pharmacy technician, pharmacy technician trainee or any other term having a similar meaning or any term having similar meaning when not licensed to do so, in violation of Subsection 58-17b-501(3)(a):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(4) conducting or transacting business under a name that contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so, in violation of Subsection 58-17b-501(3)(b):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(5) buying, selling, causing to be sold, or offering for sale any drug or device that bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words inspection, in violation of Subsection 58-17b-501(4):

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

(6) using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process that is a trade secret, in violation of Subsection 58-17b-501(5):

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(7) illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug, in violation of Subsection 58-17b-501(6):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(8) filling, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so, in violation of Subsection 58-17b-501(7):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(9) requiring any employed pharmacist, pharmacy intern, pharmacy technician, pharmacy technician trainee or authorized supportive personnel to engage in any conduct in violation of this chapter, in violation of Subsection 58-17b-501(8):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(10) being in possession of a drug for an unlawful purpose, in violation of Subsection 58-17b-501(9):

initial offense: $500 - $1,000

subsequent offense(s): $1,500 - $5,000

(11) dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation, in violation of Subsection 58-17b-501(10):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(12) selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure, in violation of Subsection 58-17b-501(11):

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

(13) using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner, in violation of Subsection 58-17b-501(12):

initial offense: $100 - $500

subsequent offense(s): $1,000 - $2,5000

(14) willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter, in violation of Subsection 58-17b-502(1):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(15) paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party, in violation of Subsection 58-17b-502(2):

initial offense:$2,500 - $5,000

subsequent offense(s):$5,500 - $10,000

(16) misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices, in violation of Subsection 58-17b-502(3):

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

(17) engaging in the sale or purchase of drugs that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases, in violation of Subsection 58-17b-502(4):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(18) accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503, in violation of Subsection 58-17b-502(5):

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

(19) engaging in an act in violation of this chapter committed by a person for any form of compensation if the act is incidental to the person's professional activities, including the activities of a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee in violation of Subsection 58-17b-502(6):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(20) violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act, in violation of Subsection 58-17b-502(7):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(21) requiring or permitting pharmacy interns, pharmacy technicians, or pharmacy technician trainees to engage in activities outside the scope of practice for their respective license classifications, or beyond their scopes of training and ability, in violation of Subsection 58-17b-502(8):

initial offense: $100 - $500

subsequent offense(s): $500 - $1,000

(22) administering without appropriate training, guidelines, lawful order, or in conflict with a practitioner's written guidelines or protocol for administering, in violation of Subsection 58-17b-502(9):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(23) disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law, in violation of Subsection 58-17b-502(10):

initial offense: $100 - $500

subsequent offense(s): $500 - $1,000

(24) engaging in the practice of pharmacy without a licensed pharmacist designated as the PIC, in violation of Subsection 58-17b-502(11):

initial offense: $100 - $500

subsequent offense(s): $2,000 - $10,000

(25) failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court, in violation of Subsection 58-17b-502(12):

initial offense: $100 - $500

subsequent offense(s): $500 - $1,000

(26) preparing a prescription drug in a dosage form that is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner, in violation of Subsection 58-17b-502(13):

initial offense: $500 - $1,000

subsequent offense(s): $2,500 - $5,000

(27) violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994, in violation of Subsection R156-17b-502(1):

initial offense: $250 - $500

subsequent offense(s): $2,000 - $10,000

(28) failing to comply with USP-NF Chapter 795 guidelines, in violation of Subsection R156-17b-502(2):
initial offense: $250 - $500
subsequent offense(s): $500 - $750
(29) failing to comply with USP-NF Chapter 797 guidelines, in violation of Subsection R156-17b-502(2):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(30) failing to comply with the continuing education requirements set forth in this rule, in violation of Subsection R156-17b-502(3):
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(31) failing to provide the Division with a current mailing address within 10 days following any change of address, in violation of Subsection R156-17b-502(4):
initial offense: $50 - $100
subsequent offense(s): $200 - $300
(32) defaulting on a student loan, in violation of Subsection R156-17b-502(5):
initial offense: $100 - $200
subsequent offense(s): $200 - $500
(33) failing to abide by all applicable federal and state law regarding the practice of pharmacy, in violation of Subsection R156-17b-502(6):
initial offense: $500 - $1,000
subsequent offense(s): $2,000 - $10,000
(34) failing to comply with administrative inspections, in violation of Subsection R156-17b-502(7):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(35) failing to return a self-inspection report according to the deadline established by the Division, or providing false information on a self-inspection report, in violation of Subsection R156-17b-502(8):
initial offense: $100 - $250
subsequent offense(s): $300 - $500
(36) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division, in violation of Subsection R156-17b-502(9):
initial violation: $50 - $100
failure to comply within determined time: $250 - $500
subsequent violations: $250 - $500
failure to comply within established time: $750 - $1,000
(37) abandoning a pharmacy and/or leaving drugs accessible to the public, in violation of Subsection R156-17b-502(10):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(38) failing to identify license classification when communicating by any means, in violation of Subsection R156-17b-502(11):
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(39) failing to maintain an appropriate ratio of personnel, in violation of Subsection R156-17b-502(12):
Pharmacist initial offense: $100 - $250
Pharmacist subsequent offense(s): $500 - $2,500
Pharmacy initial offense: $250 - $1,000
Pharmacy subsequent offense(s): $500 - $5,000
(40) allowing any unauthorized persons in the pharmacy, in violation of Subsection R156-17b-502(13):
Pharmacist initial offense: $50 - $100
Pharmacist subsequent offense(s): $250 - $500
Pharmacy initial offense: $250 - $500
Pharmacy subsequent offense(s): $1,000 - $2,000
(41) failing to offer to counsel any person receiving a prescription medication, in violation of Subsection R156-17b-502(14):
Pharmacy personnel initial offense: $500 - $2,500
Pharmacy personnel subsequent offense(s): $5,000 - $10,000
Pharmacy: $2,000 per occurrence
(42) failing to pay an administrative fine within the time designated by the Division, in violation of Subsection R156-17b-502(15):
Double the original penalty amount up to $10,000
(43) failing to comply with the PIC or DMPIC standards as established in Section R156-17b-603, in violation of Subsection R156-17b-502(16):
initial offense: $500 - $2,000
subsequent offense(s) $2,000 - $10,000
(44) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3), in violation of Subsection R156-17b-502(17):
initial offense: $500 - $2,500
subsequent offense: $5,000 - $10,000
(45) dispensing a medication that has been discontinued by the FDA, in violation of Subsection R156-17b-502(18):
initial offense: $100 - $500
subsequent offense: $200 - $1,000
(46) failing to keep or report accurate records of training hours, in violation of Subsection R156-17b-502(19):
initial offense: $100 - $500
subsequent offense: $200 - $1,000
(47) failing to provide PIC or DMPIC information to the Division within 30 days of a change in PIC or DMPIC, in violation of Subsection R156-17b-502(20):
initial offense: $100 - $500
subsequent offense: $200 - $1,000
(48) requiring a pharmacy, PIC, or any other pharmacist to operate a pharmacy with unsafe personnel ratio, in violation of Subsection R156-17b-502(21):
initial offense: $500 - $2,000
subsequent offense: $2,000 - $10,000
(49) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts, in violation of Subsection R156-17b-502(22):
Pharmacist initial offense: $100 - $300
Pharmacist subsequent offense(s): $500 - $1,000
Pharmacy initial offense: $250 - $500
Pharmacy subsequent offense(s): $500 - $1,250
(50) practicing or attempting to practice as a pharmacist, pharmacist intern, pharmacy technician, or pharmacy technician trainee or operating a pharmacy without a license, in violation of Subsection 58-1-501(1)(a):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(51) impersonating a licensee or practicing under a false name, in violation of Subsection 58-1-501(1)(b):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(52) knowingly employing an unlicensed person, in violation of Subsection 58-1-501(1)(c):
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000
(53) knowingly permitting the use of a license by another person, in violation of Subsection 58-1-501(1)(d):
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000
(54) obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):
initial offense: $100 - $2,000

subsequent offense(s): $2,000 - $10,000

(55) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure, in violation of Subsection 58-1-501(1)(f)(i)(A)and 58-1-501(2)(m)(i):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(56) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure without obtaining information sufficient to establish a diagnosis, identify underlying conditions and contraindications to treatment in a situation other than an emergency or an on-call cross coverage situation, in violation of Subsection 58-1-501(1)(f)(i)(B)and 58-1-501(2)(m)(ii):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(57) violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy, in violation of Subsection 58-1-501(2)(a):

initial offense: $100 - $2,000

subsequent offense(s): $2,000 - $10,000

(58) violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard, in violation of Subsection 58-1-501(2)(b):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(59) engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime, in violation of Subsection 58-1-501(2)(c):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(60) engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority, that if the conduct had occurred in this state, would constitute grounds for denial of licensure or disciplinary action, in violation of Subsection 58-1-501(2)(d):

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(61) engaging in conduct, including the use of intoxicants, drugs, or similar chemicals, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee, in violation of Subsection 58-1-501(2)(e):

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(62) practicing or attempting to practice as a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee when physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(63) practicing or attempting to practice as a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee through gross incompetence, gross negligence or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(64) practicing or attempting to practice as a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee by any form of action or communication that is false, misleading, deceptive or fraudulent, in violation of Subsection 58-1-501(2)(h):

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(65) practicing or attempting to practice as a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee beyond the individual's scope of competency, abilities or education, in violation of Subsection 58-1-501(2)(i):

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(66) practicing or attempting to practice as a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(67) verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice, in violation of Subsection 58-1-501(2)(k):

initial offense: $100 - $1,000

subsequent offense(s): $500 - $2,000

(68) acting as a supervisor without meeting the qualification requirements for that position as defined by statute or rule, in violation of Subsection 58-1-501(2)(l):

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(69) violating a provision of Section 58-1-501.5, in violation of Subsection 58-1-501(2)(n):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(70) 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, in violation of Subsection R156-1-501(1):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(71) practicing a regulated occupation or profession in, through, or with a limited liability company that 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, in violation of Subsection R156-1-501 (2):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(72) practicing a regulated occupation or profession in, through, or with a limited partnership that has omitted the words, "limited partnership," "limited," or the abbreviation "L.P." or "L.td." in the commercial use of the name of the limited partnership, in violation of Subsection R156-1-501(3):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(73) practicing a regulated occupation or profession in, through, or with a professional corporation that has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation, in violation of Subsection R156-1-501(4):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(74) using a capitalized DBA (doing-business-as name) that has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing, in violation of Subsection R156-1-501(5):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(75) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain," May 2004, established by the Federation of State Medical Boards of the United States, Inc., which is hereby adopted and incorporated by reference, in violation of R156-1-501(6):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(76) engaging in prohibited acts as defined in Section 58-37-8, in violation of Section 58-37-8:
initial offense: $1,000 - $5,000
subsequent offense(s) $5,000 - $10,000
(77) self-prescribing or self-administering by a licensee of any Schedule II or Schedule III controlled substance that is not prescribed by another practitioner having authority to prescribe the drug, in violation of Subsection R156-37-502(1)(a):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(78) prescribing or administering a controlled substance for a condition that the licensee is not licensed or competent to treat, in violation of Subsection R156-37-502(1)(b):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(79) violating any federal or state law relating to controlled substances, in violation of Subsection R156-37-502(2):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(80) failing to deliver to the Division all controlled substance certificates issued by the Division, to the Division, upon an action that revokes, suspends, or limits the license, in violation of R156-37-502(3):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(81) failing to maintain controls over controlled substances that would be considered by a prudent licensee to be effective against diversion, theft, or shortage of controlled substances, in violation of Subsection R156-37-502(4):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(82) being unable to account for shortages of controlled substances in any controlled substances inventory for which the licensee has responsibility, in violation of Subsection R156-37-502(5):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(83) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law, in violation of Subsection R156-37-502(6):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(84) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records, in violation of Subsection R156-37-502(7):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(85) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so, in violation of Subsection R156-37-502(8):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(86) any other conduct that constitutes unprofessional or unlawful conduct:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(87) if licensed as a DMP or DMP clinic pharmacy, delegating the dispensing of a drug to a DMP designee who has not completed a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622, in violation of Subsection R156-17b-502 (25):
initial offense: $500 - $2,000
subsequent offense: $2,500 - $10,000

R156-17b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:
(1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;
(2) failing to comply with the USP-NF Chapters 795 and 797 if such chapters are applicable to activities performed in the pharmacy;
(3) failing to comply with the continuing education requirements set forth in these rules;
(4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;
(5) defaulting on a student loan;
(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;
(7) failing to comply with administrative inspections;
(8) failing to return according to the deadline established by the Division, or providing false information on a self-inspection report;
(9) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division;
(10) abandoning a pharmacy or leaving prescription drugs accessible to the public;
(11) failing to identify licensure classification when communicating by any means;
(12) practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-606(1)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);
(13) allowing any unauthorized persons in the pharmacy;
(14) failing to offer to counsel any person receiving a prescription medication;
(15) failing to pay an administrative fine that has been assessed in the time designated by the Division;
(16) failing to comply with the PIC or DMPIC standards as established in Section R156-17b-603;
(17) failing to adhere to institutional policies and procedures related to technician checking of medications when technician checking is utilized;
(18) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3);
(19) dispensing medication that has been discontinued by the FDA;
(20) failing to keep or report accurate records of training hours;
(21) failing to provide PIC or DMPIC information to the Division within 30 days of a change in PIC or DMPIC;
(22) requiring a pharmacy, pharmacist, or DMP to operate the pharmacy or allow operation of the pharmacy with a ratio of supervising pharmacist or DMP to other pharmacy personnel in circumstances that result in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;
(23) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts; and
(24) failing to ensure, as a DMP or DMP clinic pharmacy, that a DMP designee has completed a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622.

R156-17b-601. Operating Standards - Pharmacy Technician and Pharmacy Technician Trainee.

In accordance with Subsection 58-17b-102(56), practice as a licensed pharmacy technician is defined as follows:
(1) A pharmacy technician may perform any task

associated with the physical preparation and processing of prescription and medication orders including:

(a) receiving written prescriptions;

(b) taking refill orders;

(c) entering and retrieving information into and from a database or patient profile;

(d) preparing labels;

(e) retrieving medications from inventory;

(f) counting and pouring into containers;

(g) placing medications into patient storage containers;

(h) affixing labels;

(i) compounding;

(j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection 58-17b-102(56);

(k) accepting new prescription drug orders left on voicemail for a pharmacist to review;

(l) performing checks of certain medications prepared for distribution filled or prepared by another technician within a Class B hospital pharmacy, such as medications prepared for distribution to an automated dispensing cabinet, cart fill, crash cart medication tray, or unit dosing from a prepared stock bottle, in accordance with the following operating standards:

(i) technicians authorized by a hospital to check medications shall have at least one year of experience working as a pharmacy technician and at least six months experience at the hospital where the technician is authorized to check medications;

(ii) technicians shall only check steps in the medication distribution process that do not require the professional judgment of a pharmacist and that are supported by sufficient automation or technology to ensure accuracy (e.g. barcode scanning, drug identification automation, checklists, visual aids);

(iii) hospitals that authorize technicians to check medications shall have a training program and ongoing competency assessment that is documented and retrievable for the duration of each technician's employment and at least three years beyond employment, and shall maintain a list of technicians on staff that are allowed to check medications;

(iv) hospitals that authorize technicians to check medications shall have a medication error reporting system in place and shall be able to produce documentation of its use;

(v) a supervising pharmacist shall be immediately available during all times that a pharmacy technician is checking medications;

(vi) hospitals that authorize technicians to check medications shall have comprehensive policies and procedures that guide technician checking that include the following:

(A) process for technician training and ongoing competency assessment and documentation;

(B) process for supervising technicians who check medications;

(C) list of medications, or types of medications that may or may not be checked by a technician;

(D) description of the automation or technology to be utilized by the institution to augment the technician check;

(E) process for maintaining a permanent log of the unique initials or identification codes that identify each technician responsible for checked medications by name; and

(F) description of processes used to track and respond to medication errors; and

(m) additional tasks not requiring the judgment of a pharmacist.

(2) A pharmacy technician trainee may perform any task in Subsection (1) with the exception of performing checks of certain medications prepared for distribution filled or prepared by another technician within a Class B hospital pharmacy as described in Subsection (1)(l).

(3) The pharmacy technician shall not receive new prescriptions or medication orders as described in Subsection 58-17b-102(56)(b)(iv), clarify prescriptions or medication orders nor perform drug utilization reviews. A new prescription, as used in Subsection 58-17b-102(56)(b)(iv), does not include authorization of a refill of a legend drug.

(4) Pharmacy technicians shall have general supervision by a pharmacist in accordance with Subsection R156-17b-603(3)(s).

(5) No more than one pharmacy technician trainee per shift shall practice in a pharmacy. A pharmacy technician trainee shall practice only under the direct supervision of a pharmacist.

R156-17b-602. Operating Standards - Pharmacy Intern.

A pharmacy intern may provide services including the practice of pharmacy under the supervision of an approved preceptor, as defined in Subsection 58-17b-102(50), provided the pharmacy intern met the criteria as established in Subsection R156-17b-306.

R156-17b-603. Operating Standards - Pharmacist-In-Charge or Dispensing-Medical-Practitioner-In-Charge.

(1) The PIC or DMPIC shall have the responsibility to oversee the operation of the pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs, durable medical equipment and medical supplies. The PIC or DMPIC shall be personally in full and actual charge of the pharmacy.

(2) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a unique email address shall be established by the PIC, DMPIC, or responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC, DMPIC, or responsible party shall notify the Division of the pharmacy's email address in the initial application for licensure.

(3) The duties of the PIC or DMPIC shall include:

(a) assuring that a pharmacist, pharmacy intern, DMP, or DMP designee dispenses drugs or devices, including:

(i) packaging, preparation, compounding and labeling; and

(ii) ensuring that drugs are dispensed safely and accurately as prescribed;

(b) assuring that pharmacy personnel deliver drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely and accurately as prescribed;

(c) assuring that a pharmacist, pharmacy intern, or DMP communicates to the patient or the patient's agent, at their request, information concerning any prescription drugs dispensed to the patient by the pharmacist, pharmacy intern, or DMP;

(d) assuring that a reasonable effort is made to obtain, record and maintain patient medication records;

(e) education and training of pharmacy personnel;

(f) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;

(g) disposal and distribution of drugs from the pharmacy;

(h) bulk compounding of drugs;

(i) storage of all materials, including drugs, chemicals and biologicals;

(j) maintenance of records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and regulations;

(k) establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;

(l) if records are kept on a data processing system, the maintenance of records stored in that system shall be in

compliance with pharmacy requirements;

(m) legal operation of the pharmacy including meeting all inspection and other requirements of all state and federal laws, rules and regulations governing the practice of pharmacy;

(n) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;

(o) if permitted to use an automated pharmacy system for dispensing purposes:

(i) ensuring that the system is in good working order and accurately dispenses the correct strength, dosage form and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards; and

(ii) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;

(p) assuring that all relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner;

(q) assuring that all pharmacy personnel have the appropriate licensure;

(r) assuring that no pharmacy operates with a ratio of pharmacist or DMP to other pharmacy personnel circumstances that result in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

(s) assuring that the PIC or DMPIC assigned to the pharmacy is recorded with the Division and that the Division is notified of a change in PIC or DMPIC within 30 days of the change; and

(t) assuring, with regard to the unique email address used for self-audits and pharmacy alerts, that:

(i) the pharmacy uses a single email address; and

(ii) the pharmacy notifies the Division, on the form prescribed, of any change in the email address within seven calendar days of the change.

R156-17b-604. Operating Standards - Closing a Pharmacy.

At least 14 days prior to the closing of a pharmacy, the PIC or DMPIC shall comply with the following:

(1) If the pharmacy is registered to possess controlled substances, send a written notification to the appropriate regional office of the Drug Enforcement Administration (DEA) containing the following information:

(a) the name, address and DEA registration number of the pharmacy;

(b) the anticipated date of closing;

(c) the name, address and DEA registration number of the pharmacy acquiring the controlled substances; and

(d) the date the transfer of controlled substances will occur.

(2) If the pharmacy dispenses prescription drug orders, post a closing notice sign in a conspicuous place in the front of the prescription department and at all public entrance doors to the pharmacy. Such closing notice shall contain the following information:

(a) the date of closing; and

(b) the name, address and telephone number of the pharmacy acquiring the prescription drug orders, including refill information and patient medication records of the pharmacy.

(3) On the date of closing, the PIC or DMPIC shall remove all prescription drugs from the pharmacy by one or a combination of the following methods:

(a) return prescription drugs to manufacturer or supplier for credit or disposal; or

(b) transfer, sell or give away prescription drugs to a person who is legally entitled to possess drugs, such as a hospital or another pharmacy.

(4) If the pharmacy dispenses prescription drug orders:

(a) transfer the prescription drug order files, including refill information and patient medication records, to a licensed pharmacy within a reasonable distance of the closing pharmacy; and

(b) move all signs or notify the landlord or owner of the property that it is unlawful to use the word "pharmacy", or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public that a pharmacy is located at this address.

(5) Within 10 days of the closing of the pharmacy, the PIC or DMPIC shall forward to the Division a written notice of the closing that includes the following information:

(a) the actual date of closing;

(b) the license issued to the pharmacy;

(c) a statement attesting:

(i) that an inventory as specified in Subsection R156-17b-605(4) has been conducted; and

(ii) the manner in which the legend drugs and controlled substances possessed by the pharmacy were transferred or disposed;

(d) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription drug orders, including refill information and patient medication records, were transferred.

(6) If the pharmacy is registered to possess controlled substances, a letter shall be sent to the appropriate DEA regional office explaining that the pharmacy has closed. The letter shall include the following items:

(a) DEA registration certificate;

(b) all unused DEA order forms (Form 222) with the word "VOID" written on the face of each order form; and

(c) copy #2 of any DEA order forms (Form 222) used to transfer Schedule II controlled substances from the closed pharmacy.

(7) If the pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy or other emergency circumstances and the PIC or DMPIC cannot provide notification 14 days prior to the closing, the PIC or DMPIC shall comply with the provisions of Subsection (1) as far in advance of the closing as allowed by the circumstances.

(8) If the PIC or DMPIC is not available to comply with the requirements of this section, the owner or legal representative shall be responsible for compliance with the provisions of this section.

(9) Notwithstanding the requirements of this section, a DMP clinic pharmacy that closes but employs licensed practitioners who desire to continue providing services other than dispensing may continue to use prescription drugs in their practice as authorized under their respective licensing act.

R156-17b-605. Operating Standards - Inventory Requirements.

(1) All out of date legend drugs and controlled substances shall be removed from the inventory at regular intervals and in correlation to the beyond use date imprinted on the label.

(2) General requirements for inventory of a pharmacy shall include the following:

(a) the PIC or DMPIC shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person or persons;

(b) the inventory records shall be maintained for a period of five years and be readily available for inspection;

(c) the inventory records shall be filed separately from all other records;

(d) the inventory records shall be in a written, typewritten, or printed form and include all stocks of controlled substances

on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device shall be promptly transcribed;

(e) the inventory may be taken either as the opening of the business or the close of business on the inventory date;

(f) the person taking the inventory and the PIC or DMPIC shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the PIC or DMPIC and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(g) the person taking the inventory shall make an exact count or measure all controlled substances listed in Schedule I or II;

(h) the person taking the inventory shall make an estimated count or measure of all Schedule III, IV or V controlled substances, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents shall be made;

(i) the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances;

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventories, the perpetual inventory shall be reconciled on the date of the inventory.

(3) Requirements for taking the initial controlled substances inventory shall include the following:

(a) all pharmacies having any stock of controlled substances shall take an inventory on the opening day of business. Such inventory shall include all controlled substances including any out-of-date drugs and drugs in automated pharmacy systems;

(b) in the event a pharmacy commences business with no controlled substances on hand, the pharmacy shall record this fact as the initial inventory. An inventory reporting no Schedule I and II controlled substances shall be listed separately from an inventory reporting no Schedule III, IV, and V controlled substances;

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (4) of this section; and

(d) when combining two pharmacies, each pharmacy shall:

(i) conduct a separate closing pharmacy inventory of controlled substances on the date of closure; and

(ii) conduct a combined opening inventory of controlled substances for the new pharmacy prior to opening.

(4) Requirement for annual controlled substances inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs and drugs in automated pharmacy systems.

(5) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order forms (Form 222).

(6) Requirement for taking inventory when closing a pharmacy includes the PIC, DMPIC, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.

(7) All pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances that shall be reconciled according to facility policy.

R156-17b-606. Operating Standards - Approved Preceptor.

In accordance with Subsection 58-17b-601(1), the operating standards for a pharmacist acting as a preceptor include:

(1) meeting the following criteria:

(a) hold a Utah pharmacist license that is active and in good standing;

(b) document engaging in active practice as a licensed pharmacist for not less than one year in any jurisdiction;

(c) not be under any sanction which, when considered by the Division and Board, would be of such a nature that the best interests of the intern and the public would not be served;

(d) provide direct, on-site supervision to:

(i) no more than two pharmacy interns during a working shift except as provided in Subsection (ii);

(ii) up to five pharmacy interns at public-health outreach programs such as informational health fairs, chronic disease state screening and education programs, and immunization clinics, provided:

(A) the totality of the circumstances are safe and appropriate according to generally recognized industry standards of practice; and

(B) the preceptor has obtained written approval from the pharmacy interns' schools of pharmacy for the intern's participation; and

(e) refer to the intern training guidelines as outlined in the Pharmacy Coordinating Council of Utah Internship Competencies, October 12, 2004, as information about a range of best practices for training interns;

(2) maintaining adequate records to document the number of internship hours completed by the intern and evaluating the quality of the intern's performance during the internship;

(3) completing the preceptor section of a Utah Pharmacy Intern Experience Affidavit found in the application packet at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded; and

(4) being responsible for the intern's actions related to the practice of pharmacy while practicing as a pharmacy intern under supervision.

R156-17b-607. Operating Standards - Supportive Personnel.

(1) In accordance with Subsection 58-17b-102(69)(a), supportive personnel may assist in any tasks not related to drug preparation or processing including:

(a) stock ordering and restocking;

(b) cashiering;

(c) billing;

(d) filing;

(e) receiving a written prescription and delivering it to the pharmacist, pharmacy intern, pharmacy technician, pharmacy technician trainee, DMP, or DMP designee;

(f) housekeeping; and

(g) delivering a pre-filled prescription to a patient.

(2) Supportive personnel shall not enter information into a patient prescription profile or accept verbal refill information.

(3) In accordance with Subsection 58-17b-102(69)(b) all supportive personnel shall be under the supervision of a licensed pharmacist or DMP. The licensed pharmacist or DMP shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being

performed except for the delivery of prefilled prescriptions as provided in Subsection (1)(g) above.

(4) In accordance with Subsection 58-17b-601(1), a pharmacist, pharmacy intern, pharmacy technician, pharmacy technician trainee, DMP, or DMP designee whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

R156-17b-608. Common Carrier Delivery.

A pharmacy that employs the United States Postal Service or other common carrier to deliver a filled prescription directly to a patient shall, under the direction of the PIC, DMPIC, or other responsible employee:

(1) use adequate storage or shipping containers and shipping processes to ensure drug stability and potency. The shipping processes shall include the use of appropriate packaging material and devices, according to the recommendations of the manufacturer or the United States Pharmacopeia Chapter 1079, in order to ensure that the drug is kept at appropriate storage temperatures throughout the delivery process to maintain the integrity of the medication;

(2) use shipping containers that are sealed in a manner to detect evidence of opening or tampering;

(3) develop and implement policies and procedures to ensure accountability, safe delivery, and compliance with temperature requirements. The policies and procedures shall address when drugs do not arrive at their destination in a timely manner or when there is evidence that the integrity of a drug was compromised during shipment. In these instances, the pharmacy shall make provisions for the replacement of the drugs;

(4)(i) provide for an electronic, telephonic, or written communication mechanism for a pharmacy to offer counseling to the patient as defined in Section 58-17b-613; and

(ii) provide documentation of such counseling; and

(5) provide information to the patient indicating what the patient should do if the integrity of the packaging or drug was compromised during shipment.

R156-17b-609. Operating Standards - Medication Profile System.

In accordance with Subsections 58-17b-601(1) and 58-17b-604(1), the following operating standards shall apply with respect to medication profile systems:

(1) Patient profiles, once established, shall be maintained by a pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record.

(2) Information to be included in the profile shall be determined by a responsible pharmacist or DMP at the pharmaceutical facility but shall include as a minimum:

(a) full name of the patient, address, telephone number, date of birth or age and gender;

(b) patient history where significant, including known allergies and drug reactions, and a list of prescription drugs obtained by the patient at the pharmacy including:

(i) name of prescription drug;

(ii) strength of prescription drug;

(iii) quantity dispensed;

(iv) date of filling or refilling;

(v) charge for the prescription drug as dispensed to the patient; and

(c) any additional comments relevant to the patient's drug use.

(3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern, pharmacy technician, pharmacy technician trainee, or DMP designee.

R156-17b-610. Operating Standards - Patient Counseling.

In accordance with Subsection 58-17b-601(1), guidelines for providing patient counseling established in Section 58-17b-613 include the following:

(1) Counseling shall be offered orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits oral communication.

(2) A pharmacy facility shall orally offer to counsel but shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such counseling.

(3) Based upon the professional judgment of the pharmacist, pharmacy intern, or DMP, patient counseling may include the following elements:

(a) the name and description of the prescription drug;

(b) the dosage form, dose, route of administration and duration of drug therapy;

(c) intended use of the drug, when known, and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

(i) action to be taken in the event of a missed dose;

(j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and

(k) the date after which the prescription should not be taken or used, or the beyond use date.

(4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records shall be maintained for a period of five years and be available for inspection within 7-10 business days.

(5) Only a pharmacist, pharmacy intern, or DMP may orally provide counseling to a patient or patient's agent and answer questions concerning prescription drugs.

(6) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:

(a) the information specified in Subsection (3) of this section shall be delivered with the dispensed prescription in writing;

(b) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container, the telephone number of the pharmacy and the statement "Written information about this prescription has been provided for you. Please read this information before you take this medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."; and

(c) written information provided in Subsection (6)(b) of this section shall be in the form of patient information leaflets similar to USP-NF patient information monographs or equivalent information.

(7) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the patient's drugs.

R156-17b-611. Operating Standards - Drug Therapy Management.

(1) In accordance with Subsections 58-17b-102(17) and 58-17b-601(1), decisions involving drug therapy management shall be made in the best interest of the patient. Drug therapy management may include:

(a) implementing, modifying and managing drug therapy according to the terms of the Collaborative Pharmacy Practice Agreement;

(b) collecting and reviewing patient histories;

(c) obtaining and checking vital signs, including pulse, temperature, blood pressure and respiration;

(d) ordering and evaluating the results of laboratory tests directly applicable to the drug therapy, when performed in accordance with approved protocols applicable to the practice setting; and

(e) such other patient care services as may be allowed by rule.

(2) For the purpose of promoting therapeutic appropriateness, a pharmacist shall at the time of dispensing a prescription, or a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant conditions, situations or items, such as:

(a) inappropriate drug utilization;

(b) therapeutic duplication;

(c) drug-disease contraindications;

(d) drug-drug interactions;

(e) incorrect drug dosage or duration of drug treatment;

(f) drug-allergy interactions; and

(g) clinical abuse or misuse.

(3) Upon identifying any clinically significant conditions, situations or items listed in Subsection (2) above, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner.

R156-17b-612. Operating Standards - Prescriptions.

In accordance with Subsection 58-17b-601(1), the following shall apply to prescriptions:

(1) Prescription orders for controlled substances (including prescription transfers) shall be handled according to the rules of the Federal Drug Enforcement Administration.

(2) A prescription issued by an authorized licensed practitioner, if verbally communicated by an agent of that practitioner upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern, or DMP.

(3) A prescription issued by a licensed prescribing practitioner, if electronically communicated by an agent of that practitioner, upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern, pharmacy technician, pharmacy technician trainee, DMP, or DMP designee.

(4) In accordance with Sections 58-17b-609 and 58-17b-611, prescription files, including refill information, shall be maintained for a minimum of five years and shall be immediately retrievable in written or electronic format.

(5) Prescriptions for legend drugs having a remaining authorization for refill may be transferred by the pharmacist, pharmacy intern, or DMP at the pharmacy holding the prescription to a pharmacist, pharmacy intern or DMP at another pharmacy upon the authorization of the patient to whom the prescription was issued or electronically as authorized under Subsection R156-17b-613(9). The transferring pharmacist, pharmacy intern, or DMP and receiving pharmacist, pharmacy intern, or DMP shall act diligently to ensure that the total number of authorized refills is not exceeded. The following additional terms apply to such a transfer:

(a) the transfer shall be communicated directly between pharmacists, pharmacy interns, or DMP or as authorized under Subsection R156-17b-613(9);

(b) both the original and the transferred prescription drug orders shall be maintained for a period of five years from the date of the last refill;

(c) the pharmacist, pharmacy intern, or DMP transferring the prescription drug order shall void the prescription electronically or write void/transfer on the face of the invalidated prescription manually;

(d) the pharmacist, pharmacy intern, or DMP receiving the transferred prescription drug order shall:

(i) indicate on the prescription record that the prescription was transferred electronically or manually; and

(ii) record on the transferred prescription drug order the following information:

(A) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(B) original prescription number and the number of refills authorized on the original prescription drug order;

(C) number of valid refills remaining and the date of last refill, if applicable;

(D) the name and address of the pharmacy and the name of the pharmacist, pharmacy intern, or DMP to whom such prescription is transferred; and

(E) the name of the pharmacist, pharmacy intern, or DMP transferring the prescription drug order information;

(e) the data processing system shall have a mechanism to prohibit the transfer or refilling of legend drugs or controlled substance prescription drug orders that have been previously transferred; and

(f) a pharmacist, pharmacy intern, or DMP may not refuse to transfer original prescription information to another pharmacist, pharmacy intern, or DMP who is acting on behalf of a patient and who is making a request for this information as specified in Subsection (12) of this section.

(6) Prescriptions for terminal patients in licensed hospices, home health agencies or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness and may not need the full prescription amount.

(7) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order;

(8) If there are no refill instructions on the original prescription drug order, or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(9) Refills of prescription drug orders for legend drugs may not be refilled after one year from the date of issuance of the original prescription drug order without obtaining authorization from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(10) Refills of prescription drug orders for controlled substances shall be done in accordance with Subsection 58-37-6(7)(f).

(11) A pharmacist or DMP may exercise professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) either:

(i) a natural or manmade disaster has occurred that prohibits the pharmacist or DMP from being able to contact the practitioner; or

(ii) the pharmacist or DMP is unable to contact the practitioner after a reasonable effort, the effort should be documented and said documentation should be available to the Division;

(c) the quantity of prescription drug dispensed does not exceed a 72-hour supply, unless the packaging is in a greater quantity;

(d) the pharmacist or DMP informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(e) the pharmacist or DMP informs the practitioner of the emergency refill at the earliest reasonable time;

(f) the pharmacist or DMP maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection; and

(g) the pharmacist or DMP affixes a label to the dispensing container as specified in Section 58-17b-602.

(12) If the prescription was originally filled at another pharmacy, the pharmacist or DMP may exercise his professional judgment in refilling the prescription provided:

(a) the patient has the prescription container label, receipt or other documentation from the other pharmacy that contains the essential information;

(b) after a reasonable effort, the pharmacist or DMP is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(c) the pharmacist or DMP, in his or her professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of (a) and (b) of this subsection; and

(d) the pharmacist or DMP complies with the requirements of Subsections (11)(c) through (g) of this section.

(13) The address specified in Subsection 58-17b-602(1)(b) shall be a physical address, not a post office box.

(14) In accordance with Subsection 58-37-6(7)(e), a prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(a) the person who writes the prescription is licensed to prescribe Schedule I controlled substances; and

(b) the prescribed controlled substance is to be used in research.

R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.

In accordance with Subsections 58-17b-102(29) through (30), 58-17b-602(1), R156-82, and R156-1, prescription orders may be issued by electronic means of communication according to the following standards:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to Part 1304.04 of Section 21 of the CFR.

(2) Prescription orders for non-controlled substances received by electronic means of communication may be dispensed by a pharmacist, pharmacy intern, or DMP only if all of the following conditions are satisfied:

(a) all electronically transmitted prescription orders shall include the following:

(i) all information that is required to be contained in a prescription order pursuant to Section 58-17b-602;

(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time and fax number of the sender; and

(iii) the name of the pharmacy intended to receive the transmission;

(b) the prescription order shall be transmitted under the direct supervision of the prescribing practitioner or his designated agent;

(c) the pharmacist or DMP shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. Practitioners or their agents transmitting medication orders using electronic equipment are to provide voice verification when requested by the pharmacist receiving the medication order. The pharmacist or DMP is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a prescribing practitioner that has been transmitted to the dispensing pharmacy before filling it, whenever there is a question;

(d) a practitioner may authorize an agent to electronically transmit a prescription provided that the identifying information of the transmitting agent is included on the transmission. The practitioner's electronic signature, or other secure method of validation, shall be provided with the electronic prescription; and

(e) an electronically transmitted prescription order that meets the requirements above shall be deemed to be the original prescription.

(3) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

(4) No agreement between a prescribing practitioner and a pharmacy shall require that prescription orders be transmitted by electronic means from the prescribing practitioner to that pharmacy only.

(5) The pharmacist or DMP shall retain a printed copy of an electronic prescription, or a record of an electronic prescription that is readily retrievable and printable, for a minimum of five years. The printed copy shall be of non-fading legibility.

(6) Wholesalers, distributors, manufacturers, pharmacists and pharmacies shall not supply electronic equipment to any prescriber for transmitting prescription orders.

(7) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice.

(8) Prescription orders electronically transmitted to the pharmacy by the patient shall not be filled or dispensed.

(9) A prescription order for a legend drug or controlled substance in Schedule III through V may be transferred up to the maximum refills permitted by law or by the prescriber by electronic transmission providing the pharmacies share a real-time, on-line database provided that:

(a) the information required to be on the transferred prescription has the same information as described in Subsection R156-17b-612(5)(a) through (f); and

(b) pharmacists, pharmacy interns, pharmacy technicians, or pharmacy technician trainees, DMPs, and DMP designees electronically accessing the same prescription drug order records may electronically transfer prescription information if the data processing system has a mechanism to send a message to the transferring pharmacy containing the following information:

(i) the fact that the prescription drug order was transferred;

(ii) the unique identification number of the prescription drug order transferred;

(iii) the name of the pharmacy to which it was transferred; and

(iv) the date and time of the transfer.

R156-17b-614a. Operating Standards - General Operating Standards, Class A and B Pharmacy.

(1) In accordance with Subsection 58-17b-601(1), the following operating standards apply to all Class A and Class B pharmacies, which may be supplemented by additional standards defined in this rule applicable to specific types of Class A and B pharmacies. The general operating standards include:

(a) shall be well lighted, well ventilated, clean and sanitary;

(b) if transferring a drug from a manufacturer's or distributor's original container to another container, the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;

(c) be equipped to permit the orderly storage of

prescription drugs and durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and

(f) if dispensing controlled substances, be equipped with a security system to:

(i) permit detection of entry at all times when the facility is closed; and

(ii) provide notice of unauthorized entry to an individual; and

(g) be equipped with a lock on any entrances to the facility where drugs are stored.

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. If a refrigerator or freezer is necessary to properly store drugs at the pharmacy, the pharmacy shall keep a daily written or electronic log of the temperature of the refrigerator or freezer on days of operation. The pharmacy shall retain each log entry for at least three years.

(3) Facilities engaged in simple, moderate or complex non-sterile or any level of sterile compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) shall follow USP-NF Chapter 795, compounding of non-sterile preparations, and USP-NF Chapter 797 if compounding sterile preparations;

(b) may compound in anticipation of receiving prescriptions in limited amounts;

(c) bulk active ingredients shall:

(i) be procured from a facility registered with the federal Food and Drug Administration; and

(ii) not be listed on the federal Food and Drug Administration list of drug products withdrawn or removed from the market for reasons of safety or effectiveness;

(d) a master worksheet sheet shall be approved by a pharmacist or DMP for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master worksheet sheet shall be used as the preparation worksheet sheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet sheet may be stored electronically and shall contain at a minimum:

(i) the formula;

(ii) the components;

(iii) the compounding directions;

(iv) a sample label information;

(v) evaluation and testing requirements;

(vi) sterilization methods, if applicable;

(vii) specific equipment used during preparation such as specific compounding device; and

(viii) storage requirements;

(e) a preparation worksheet sheet for each batch of sterile or non-sterile pharmaceuticals shall document the following:

(i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(ii) manufacturer lot number for each component;

(iii) component manufacturer or suitable identifying number;

(iv) container specifications (e.g. syringe, pump cassette);

(v) unique lot or control number assigned to batch;

(vi) beyond use date of batch prepared products;

(vii) date of preparation;

(viii) name, initials or electronic signature of the person or persons involved in the preparation;

(ix) names, initials or electronic signature of the responsible pharmacist or DMP;

(x) end-product evaluation and testing specifications, if applicable; and

(xi) comparison of actual yield to anticipated yield, when appropriate;

(f) the label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:

(i) the unique lot number assigned to the batch;

(ii) all solution and ingredient names, amounts, strengths and concentrations, when applicable;

(iii) quantity;

(iv) beyond use date and time, when applicable;

(v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and

(vi) device-specific instructions, where appropriate;

(g) the beyond use date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;

(i) sources of drug stability information shall include the following:

(A) references can be found in Trissel's "Handbook on Injectable Drugs", 17th Edition, October 31, 2012;

(B) manufacturer recommendations; and

(C) reliable, published research;

(ii) when interpreting published drug stability information, the pharmacist or DMP shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and

(iii) methods for establishing beyond use dates shall be documented; and

(h) there shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.

(4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:

(a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act;

(b) R156-1, General Rule of the Division of Occupational and Professional Licensing;

(c) Title 58, Chapter 17b, Pharmacy Practice Act;

(d) R156-17b, Utah Pharmacy Practice Act Rule;

(e) Title 58, Chapter 37, Utah Controlled Substances Act;

(f) R156-37, Utah Controlled Substances Act Rule;

(g) Title 58, Chapter 37f, Controlled Substance Database Act;

(h) R156-37f, Controlled Substance Database Act Rule;

(i) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;

(j) current FDA Approved Drug Products (orange book); and

(k) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.

(5) The facility shall maintain a current list of licensed employees involved in the practice of pharmacy at the facility. The list shall include individual licensee names, license classifications, license numbers, and license expiration dates. The list shall be readily retrievable for inspection by the Division and may be maintained in paper or electronic form.

(6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.

(7) A pharmacy shall not dispense a prescription drug or device to a patient unless a pharmacist or DMP is physically present and immediately available in the facility.

(8) Only a licensed Utah pharmacist, DMP or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(9) The facility or parent company shall maintain a record for not less than 5 years of the initials or identification codes that identify each dispensing pharmacist or DMP by name. The initials or identification code shall be unique to ensure that each pharmacist or DMP can be identified; therefore identical initials or identification codes shall not be used.

(10) The pharmacy facility shall maintain copy 3 of DEA order form (Form 222) that has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.

(11) If applicable, a hard copy of the power of attorney authorizing a pharmacist, DMP, or DMP designee to sign DEA order forms (Form 222) shall be available to the Division whenever necessary.

(12) A pharmacist, DMP or other responsible individual shall verify that controlled substances are listed on the suppliers' invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

(13) The pharmacy facility shall maintain a record of suppliers' credit memos for controlled substances.

(14) A copy of inventories required under Section R156-17b-605 shall be made available to the Division when requested.

(15) The pharmacy facility shall maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

(16) If the pharmacy does not store drugs in a locked cabinet and has a drop/false ceiling, the pharmacy's perimeter walls shall extend to the hard deck, or other measures shall be taken to prevent unauthorized entry into the pharmacy.

R156-17b-614b. Operating Standards - Class B pharmacy designated as a Branch Pharmacy.

In accordance with Subsections 58-17b-102(8) and 58-1-301(3), the qualifications for designation as a branch pharmacy include the following:

(1) The Division, in collaboration with the Board, shall approve the location of each branch pharmacy. The following shall be considered in granting such designation:

(a) the distance between or from nearby alternative pharmacies and all other factors affecting access of persons in the area to alternative pharmacy resources;

(b) the availability at the location of qualified persons to staff the pharmacy, including the physician, physician assistant or advanced practice registered nurse;

(c) the availability and willingness of a parent pharmacy and supervising pharmacist to assume responsibility for the branch pharmacy;

(d) the availability of satisfactory physical facilities in which the branch pharmacy may operate; and

(e) the totality of conditions and circumstances which surround the request for designation.

(2) A branch pharmacy shall be licensed as a pharmacy branch of an existing Class A or B pharmacy licensed by the Division.

(3) The application for designation of a branch pharmacy shall be submitted by the licensed parent pharmacy seeking such designation. In the event that more than one licensed pharmacy makes application for designation of a branch pharmacy location at a previously undesignated location, the Division in collaboration with the Board shall review all applications for designation of the branch pharmacy and, if the location is approved, shall approve for licensure the applicant determined best able to serve the public interest as identified in Subsection (1).

(4) The application shall include the following:

(a) complete identifying information concerning the applying parent pharmacy;

(b) complete identifying information concerning the designated supervising pharmacist employed at the parent pharmacy;

(c) address and description of the facility in which the branch pharmacy is to be located;

(d) specific formulary to be stocked indicating with respect to each prescription drug, the name, the dosage strength and dosage units in which the drug will be prepackaged;

(e) complete identifying information concerning each person located at the branch pharmacy who will dispense prescription drugs in accordance with the approved protocol; and

(f) protocols under which the branch pharmacy will operate and its relationship with the parent pharmacy to include the following:

(i) the conditions under which prescription drugs will be stored, used and accounted for;

(ii) the method by which the drugs will be transported from parent pharmacy to the branch pharmacy and accounted for by the branch pharmacy; and

(iii) a description of how records will be kept with respect to:

(A) formulary;

(B) changes in formulary;

(C) record of drugs sent by the parent pharmacy;

(D) record of drugs received by the branch pharmacy;

(E) record of drugs dispensed;

(F) periodic inventories; and

(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.

R156-17b-614c. Operating Standards - Class B - Pharmaceutical Administration Facility.

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the following applies with respect to prescription drugs which are held, stored or otherwise under the control of a pharmaceutical administration facility for administration to patients:

(1) The licensed pharmacist shall provide consultation on all aspects of pharmacy services in the facility; establish a system of records of receipt and disposition of all controlled substances in sufficient detail to enable an accurate reconciliation; and determine that drug records are in order and that an account of all controlled substances is maintained and periodically reconciled.

(2) Authorized destruction of all prescription drugs shall be witnessed by the medical or nursing director or a designated physician, registered nurse or other licensed person employed in the facility and the consulting pharmacist or licensed pharmacy technician and must be in compliance with DEA regulations.

(3) Prescriptions for patients in the facility can be verbally requested by a licensed prescribing practitioner and may be entered as the prescribing practitioner's order; but the practitioner must personally sign the order in the facility record within 72 hours if a Schedule II controlled substance and within 30 days if any other prescription drug. The prescribing practitioner's verbal order may be copied and forwarded to a pharmacy for dispensing and may serve as the pharmacy's record of the prescription order.

(4) Prescriptions for controlled substances for patients in

Class B pharmaceutical administration facilities shall be dispensed according to Title 58, Chapter 37, Utah Controlled Substances Act, and R156-37, Utah Controlled Substances Act Rules.

(5) Requirements for emergency drug kits shall include:

(a) an emergency drug kit may be used by pharmaceutical administration facilities. The emergency drug kit shall be considered to be a physical extension of the pharmacy supplying the emergency drug kit and shall at all times remain under the ownership of that pharmacy;

(b) the contents and quantity of drugs and supplies in the emergency drug kit shall be determined by the Medical Director or Director of Nursing of the pharmaceutical administration facility and the consulting pharmacist of the supplying pharmacy;

(c) a copy of the approved list of contents shall be conspicuously posted on or near the kit;

(d) the emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner;

(e) records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the facility and the pharmacy;

(f) the pharmacy shall be responsible for ensuring proper storage, security and accountability of the emergency kit and shall ensure that:

(i) the emergency kit is stored in a locked area and is locked itself; and

(ii) emergency kit drugs are accessible only to licensed physicians, physician assistants and nurses employed by the facility;

(g) the contents of the emergency kit, the approved list of contents and all related records shall be made freely available and open for inspection to appropriate representatives of the Division and the Utah Department of Health.

R156-17b-614d. Operating Standards - Class B - Nuclear Pharmacy.

In accordance with Subsection 58-17b-601(1), the operating standards for a Class B pharmacy designated as a nuclear pharmacy shall have the following:

(1) A nuclear pharmacy shall have the following:

(a) have applied for or possess a current Utah Radioactive Materials License; and

(b) adequate space and equipment commensurate with the scope of services required and provided.

(2) Nuclear pharmacies shall only dispense radiopharmaceuticals that comply with acceptable standards of quality assurance.

(3) Nuclear pharmacies shall maintain a library commensurate with the level of radiopharmaceutical service to be provided.

(4) A licensed Utah pharmacist shall be immediately available on the premises at all times when the facility is open or available to engage in the practice of pharmacy.

(5) In addition to Utah licensure, the pharmacist shall have classroom and laboratory training and experience as required by the Utah Radiation Control Rules.

(6) This rule does not prohibit:

(a) a licensed pharmacy intern or technician from acting under the direct supervision of an approved preceptor who meets the requirements to supervise a nuclear pharmacy; or

(b) a Utah Radioactive Materials license from possessing and using radiopharmaceuticals for medical use.

(7) A hospital nuclear medicine department or an office of a physician/surgeon, osteopathic physician/surgeon, veterinarian, pediatric physician or dentist that has a current Utah Radioactive Materials License does not require licensure as a Class B pharmacy.

(8) A nuclear pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compound for sterile preparations.

(9) A nuclear pharmacy preparing medications for a specific person shall be licensed as a Class B - nuclear pharmacy if located in Utah, and as a Class D pharmacy if located outside of Utah.

R156-17b-614e. Class B - Dispensing Drugs from an Emergency Department and Upon Discharge from a Rural Hospital Pharmacy.

The "Guidelines for Hospital Pharmacies and Emergency Department Treatment" document, adopted May 21, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard to be utilized by rural hospital emergency departments dispensing a short course of necessary medications to patients when a pharmacy is not open to fill their prescriptions.

R156-17b-614f. Operating Standards - Class A, B, D, and E - Central Prescription Processing and Filling.

In accordance with Subsection 58-17b-601(1), the following operating standards apply to Class A, Class B, Class D and Class E pharmacies that engage in central prescription processing or central prescription filling. The operating standards include:

(1) A pharmacy may perform centralized prescription processing or centralized prescription filling services for a dispensing pharmacy if the parties:

(a) have common ownership or common administrative control; or

(b) have a written contract outlining the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of said contract in compliance with federal and state laws and regulations; and

(c) share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to fill or refill a prescription drug order.

(2) The parties performing or contracting for centralized prescription processing or filling services shall maintain a policy and procedures manual, and documentation of implementation, which shall be made available to the Division upon inspection and which includes the following:

(a) a description of how the parties will comply with federal and state laws and regulations;

(b) appropriate records to identify the responsible pharmacists and the dispensing and counseling process;

(c) a mechanism for tracking the prescription drug order during each step in the dispensing process;

(d) a description of adequate security to protect the integrity and prevent the illegal use or disclosure of protected health information; and

(e) a continuous quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer.

In accordance with Subsections 58-17b-102(47) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

(1) Each pharmaceutical wholesaler or manufacturer that distributes or manufactures drugs or medical devices in Utah shall be licensed by the Division. A separate license shall be obtained for each separate location engaged in the distribution

or manufacturing of prescription drugs. Business names cannot be identical to the name used by another unrelated wholesaler licensed to purchase drugs and devices in Utah.

(2) Manufacturers distributing only their own FDA-approved prescription drugs or co-licensed product shall satisfy this requirement by registering their establishment with the Federal Food and Drug Administration pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205, including any amendments thereto, to the Division.

(3) An applicant for licensure as a pharmaceutical wholesale distributor shall provide the following minimum information:

(a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");

(b) Name of the owner and operator of the license as follows:

(i) if a person, the name, business address, social security number and date of birth;

(ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;

(iii) if a corporation, the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any, but if a publicly traded corporation, the social security number and date of birth for each corporate officer shall not be required;

(iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(v) if a limited liability company, the name of each member, social security number of each member, the name of each manager, the name of the limited liability company and federal employer identification number, and the name of the state where the limited liability company was organized; and

(c) any other relevant information required by the Division.

(4) The licensed facility need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a designated representative who meets the following criteria:

(a) is at least 21 years of age;

(b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping related to prescription drugs;

(c) is employed by the applicant full time in a managerial level position;

(d) is actively involved in and aware of the actual daily operation of the pharmaceutical wholesale distribution;

(e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and

(f) is serving in the capacity of a designated representative for only one licensee at a time.

(5) The licensee shall provide the name, business address, and telephone number of a person to serve as the designated representative for each facility of the pharmaceutical wholesaler that engages in the distribution of drugs or devices.

(6) All pharmaceutical wholesalers and manufacturer shall publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

(7) All Class C pharmacies shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed or in any other way unsuitable for use or entry into distribution or manufacturing;

(e) be maintained in a clean and orderly condition; and

(f) be free from infestation by insects, rodents, birds or vermin of any kind.

(8) Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs, prescription drug precursors, or prescription drug devices are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

(9) Each facility shall provide the storage of prescription drugs, prescription drug precursors, and prescription drug devices in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug, prescription drug precursor, or prescription drug devices, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs, prescription drug precursors, and prescription drug devices are held to permit review of the record and ensure that the products have not been subjected to conditions that are outside of established limits.

(10) Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs for human use that leave, or have ever left, the normal distribution channel shall, before each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs. The pedigree shall:

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a

minimum, the necessary chain of distribution information shall include:

(i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;

(ii) name and address of each location from which the product was shipped, if different from the owner's;

(iii) transaction dates;

(iv) name of the prescription drug;

(v) dosage form and strength of the prescription drug;

(vi) size of the container;

(vii) number of containers;

(viii) lot number of the prescription drug;

(ix) name of the manufacturer of the finished dose form; and

(x) National Drug Code (NDC) number.

(b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.

(11) Each facility shall comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

(b) upon receipt, each outside shipping container containing prescription drugs, prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, prescription drug precursors, or prescription drug devices that are contaminated, reveal damage to the containers or are otherwise unfit for distribution:

(i) prescription drugs, prescription drug precursors, or prescription drug devices that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs, prescription drug precursors or prescription drug devices until they are appropriately destroyed or returned to their supplier; and

(ii) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(c) each outgoing shipment shall be carefully inspected for identity of the prescription drug products or devices and to ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions:

(i) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity;

(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the receiving pharmaceutical wholesale distributor only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesale distributor under this chapter;

(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and

(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure and do not permit the entry of adulterated and counterfeit prescription drugs.

(12) A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.

(13) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsections R156-17b-102(19)(c) and R156-17b-615(13), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

(14) Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(15) Each facility shall establish, maintain and adhere to written policies and procedures that shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a

prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within three (3) business days to the Division and/or appropriate federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

(16) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(17) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(18) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(19) A Class C pharmacy shall not be located in the same building as a separately licensed Class A, B, D, or E pharmacy unless the two pharmacies are located in different suites as recognized by the United States Postal Service. Two Class C pharmacies may be located at the same address in the same suite if the pharmacies:

(a) are under the same ownership;

(b) have processes and systems for separating and securing all aspects of the operation; and

(c) have traceability with a clear audit trail that distinguishes a pharmacy's purchases and distributions.

R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-612(1) through (4);

(b) a copy of the pharmacist's license for the PIC; and

(c) a copy of the most recent state inspection or NABP inspection completed as part of the NABP Verified Pharmacy Program (VPP) showing the status of compliance with the laws and regulations for physical facility, records and operations.

(2) An out of state mail order pharmacy that compounds shall follow the USP-NF Chapter 795 Compounding of non-sterile preparations and Chapter 797 Compounding of sterile preparations.

R156-17b-617a. Class E Pharmacy Operating Standards - General Provisions.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), Class E pharmacies shall have a written pharmacy care protocol that includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) the identity of the drugs to be purchased, stored, used and accounted for; and

(d) the identity of any licensed healthcare provider associated with the operation.

(2) A Class E pharmacy preparing sterile compounds shall follow the USP-NF Chapter 797 Compounding for sterile preparations.

R156-17b-617b. Class E Pharmacy Operating Standards - Analytical Laboratory.

In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an analytical laboratory shall:

(1) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(2) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(3) maintain a list of drugs that will be purchased, stored, used and accounted for;

(4) maintain a list of licensed healthcare providers associated with the operation of the business;

(5) possess prescription drugs for the purpose of analysis; and

(6) take measures to prevent the theft or loss of controlled substances.

R156-17b-617c. Class E Pharmacy Operating Standards - Animal Control or Animal Narcotic Detection Training.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an animal control or animal narcotic detection training facility shall:

(a) maintain for immediate retrieval a perpetual inventory of all drugs including controlled substances that are purchased, stored, processed and administered;

(b) maintain for immediate retrieval a current list of authorized employees and their training with regards to the handling and use of legend drugs and/or controlled substances in relation to euthanasia, immobilization, or narcotic detection

training of animals;

(c) maintain, for immediate retrieval documentation of all required materials pertaining to legitimate animal scientific drug research, guidance policy and other relevant documentation from the agency's Institutional Review Board, if applicable;

(d) maintain stocks of legend drugs and controlled substances to the smallest quantity needed for efficient operation to conduct animal euthanasia, immobilization, or narcotic detection training purposes;

(e) maintain all legend drugs and controlled substances in an area within a building having perimeter security that limits access during working hours, provides adequate security after working hours, and has the following security controls:

(i) a permanently secured safe or steel cabinet substantially constructed with self-closing and self-locking doors employing either multiple position combination or key lock type locking mechanisms; and

(ii) requisite key control, combination limitations, and change procedures;

(f) have a responsible party who is the only person authorized to purchase and reconcile legend drugs and controlled substances and is responsible for the inventory of the animal control or animal narcotic detection training facility pharmacy;

(g) ensure that only defined and approved individuals pursuant to the written facility protocol have access to legend drugs and controlled substances; and

(h) develop and maintain written policies and procedures for immediate retrieval that include the following:

(i) the type of activity conducted with regards to legend drugs and/or controlled substances;

(ii) how medications are purchased, inventoried, prepared and used in relation to euthanasia, immobilization, or narcotic detection training of animals;

(iii) the type, form and quantity of legend drugs and/or controlled substances handled;

(iv) the type of safe or equally secure enclosures or other storage system used for the storage and retrieval of legend drugs and/or controlled substances;

(v) security measures in place to protect against theft or loss of legend drugs and controlled substances;

(vi) adequate supervision of employees having access to manufacturing and storage areas;

(vii) maintenance of records documenting the initial and ongoing training of authorized employees with regard to all applicable protocols;

(viii) maintenance of records documenting all approved and trained authorized employees who may have access to the legend drugs and controlled substances; and

(ix) procedures for allowing the presence of business guests, visitors, maintenance personnel, and non-employee service personnel.

R156-17b-617d. Class E Pharmacy Operating Standards-Durable Medical Equipment.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), durable medical equipment facility shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) be equipped to permit the orderly storage of durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) maintain prescription forms and records for a period of five years;

(f) be locked and enclosed in such as way as to bar entry by the public or any non-personnel when the facility is closed; and

(g) post the license of the facility in full view of the public.

(2) A licensed practitioner who administers durable medical equipment to a patient or animal is not engaging in the practice of pharmacy, and does not require a license as a Class E pharmacy.

R156-17b-617e. Class E Pharmacy Operating Standards - Human Clinical Investigational Drug Research Facility.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), a human clinical investigational drug research facility licensed as a Class E Pharmacy shall, in addition to the requirements contained in Subsection R156-17b-617a, conduct operations in accordance with the operating standards set forth in 21 CFR Part 312, April 1, 2012 edition, which are hereby incorporated by reference.

(2) In accordance with Subsections 58-37-6(2)(b) and (3)(a)(i), persons licensed to conduct research with controlled substances in Schedules I-V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license.

(3) In accordance with Subsection 58-37-6(2), the following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II-V:

(a) an agent or employee acting in the usual course of the person's business or employment, and

(b) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(4) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

R156-17b-617f. Class E Pharmacy Operating Standards - Medical Gas Provider.

In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), a medical gas facility shall:

(a) develop standard operating policy and procedures manual;

(b) conduct training and maintain evidence of employee training programs and completion certificates;

(c) maintain documentation and records of all transactions to include:

(i) batch production records

(ii) certificates of analysis

(iii) dates of calibration of gauges;

(d) provide adequate space for orderly placement of equipment and finished product;

(e) maintain gas tanks securely;

(f) designate return and quarantine areas for separation of products;

(g) label all products;

(h) fill cylinders without using adapters; and

(i) comply with all FDA standards and requirements.

R156-17b-618. Change in Ownership or Location.

(1) In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations that are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility shall make application for a new license and receive approval from the Division no later than ten business days prior to any of the following

proposed changes:

(a) location or address, except for a reassignment of a new address by the United States Postal Service that does not involve any change of location;

(b) name, except for a doing-business-as (DBA) name change that is properly registered with the Division of Corporations and filed with the Division of Occupational and Professional Licensing; or

(c) ownership when one of the following occurs:

(i) a change in entity type; or

(ii) the sale or transfer of 51% or more of an entity's ownership or membership interest to another individual or entity.

(2) Upon approval of the change in location, name, or ownership, and the issuance of a new license, the original license shall be surrendered to the Division.

(3) Upon approval of the name change, the original licenses shall be surrendered to the Division.

R156-17b-619. Operating Standards - Third Party Payors.

Reserved.

R156-17b-620. Operating Standards - Automated Pharmacy System.

In accordance with Section 58-17b-621, automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Division and licensed health care facilities where legally permissible and shall comply with the following provisions:

(1) Documentation as to type of equipment, serial numbers, content, policies and procedures and location shall be maintained on site in the pharmacy for review upon request of the Division. Such documentation shall include:

(a) name and address of the pharmacy or licensed health care facility where the automated pharmacy system is being used;

(b) manufacturer's name and model;

(c) description of how the device is used;

(d) quality assurance procedures to determine continued appropriate use of the automated device; and

(e) policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access and malfunction.

(2) Automated pharmacy systems should be used only in settings where there is an established program of pharmaceutical care that ensures that before dispensing, or removal from an automated storage and distribution device, a pharmacist reviews all prescription or medication orders unless a licensed independent practitioner controls the ordering, preparation and administration of the medication; or in urgent situations when the resulting delay would harm the patient including situations in which the patient experiences a sudden change in clinical status.

(3) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(4) Automated pharmacy systems shall have:

(a) adequate security systems and procedures to:

(i) prevent unauthorized access;

(ii) comply with federal and state regulations; and

(iii) prevent the illegal use or disclosure of protected health information;

(b) written policies and procedures in place prior to installation to ensure safety, accuracy, security, training of personnel, and patient confidentiality and to define access and limits to access to equipment and medications.

(5) Records and electronic data kept by automated pharmacy systems shall meet the following requirements:

(a) all events involving the contents of the automated pharmacy system must be recorded electronically;

(b) records must be maintained by the pharmacy for a period of five years and must be readily available to the Division. Such records shall include:

(i) identity of system accessed;

(ii) identify of the individual accessing the system;

(iii) type of transaction;

(iv) name, strength, dosage form and quantity of the drug accessed;

(v) name of the patient for whom the drug was ordered; and

(vi) such additional information as the PIC may deem necessary.

(6) Access to and limits on access to the automated pharmacy system must be defined by policy and procedures and must comply with state and federal regulations.

(7) The PIC or pharmacist designee shall have the sole responsibility to:

(a) assign, discontinue or change access to the system;

(b) ensure that access to the medications comply with state and federal regulations; and

(c) ensure that the automated pharmacy system is filled and stocked accurately and in accordance with established written policies and procedures.

(8) The filling and stocking of all medications in the automated pharmacy system shall be accomplished by qualified licensed healthcare personnel under the supervision of a licensed pharmacist.

(9) A record of medications filled and stocked into an automated pharmacy system shall be maintained for a period of five years and shall include the identification of the persons filling, stocking and checking for accuracy.

(10) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.

(11) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(12) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system remain unused and must be secured and accounted for.

(13) The automated pharmacy system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system are wasted or discarded and must be secured.

R156-17b-621. Operating Standards - Pharmacist Administration - Training.

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

(a) current Basic Life Support (BLS) certification; and

(b) successful completion of a training program which includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and

(iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs; and

(b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other Board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

(4) The "Vaccine Administration Protocol: Standing Order to Administer Immunizations and Emergency Medications", adopted March 27, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard for pharmacist administration of vaccines and emergency medications.

R156-17b-622. Standards - Dispensing Training Program.

(1) In accordance with Subsection R156-17b-102(17), a formal or on-the-job dispensing training program completed by a DMP designee is one that covers the following topics to the extent that the topics are relevant and current to the DMP practice where the DMP designee is employed:

(a) role of the DMP designee;

(b) laws affecting prescription drug dispensing;

(c) pharmacology including the identification of drugs by trade and generic names, and therapeutic classifications;

(d) pharmaceutical terminology, abbreviations and symbols;

(e) pharmaceutical calculations;

(f) drug packaging and labeling;

(g) computer applications in the pharmacy;

(h) sterile and non-sterile compounding;

(i) medication errors and safety;

(j) prescription and order entry and fill process;

(k) pharmacy inventory management; and

(l) pharmacy billing and reimbursement.

(2) Documentation demonstrating successful completion of a formal or on-the-job dispensing training program shall include the following information:

(a) name of individual trained;

(b) name of individual or entity that provided training;

(c) list of topics covered during the training program; and

(d) training completion date.

R156-17b-623. Standards - Approved Cosmetic Drugs and Injectable Weight Loss Drugs for Dispensing Medical Practitioners.

(1) A cosmetic drug that may be dispensed by a DMP in accordance with Section 58-17b-803 is limited to Latisse.

(2) An injectable weight loss drug that may be dispensed by a DMP in accordance with Section 58-17b-803 is limited to human chorionic gonadotropin.

R156-17b-624. Operating Standards. Repackaged or Compounded Prescription Drugs - Sale to a Practitioner for Office Use.

Pursuant to Section 58-17b-624, a pharmacy may repackage or compound a prescription drug for sale to a practitioner for office use provided that it is in compliance with all applicable federal and state laws and regulations regarding the practice of pharmacy, including, but not limited to the Food, Drug, and Cosmetic Act, 21 U.S.C.A 301 et seq.

KEY: pharmacists, licensing, pharmacies

February 24, 2015 **58-17b-101**

Notice of Continuation January 5, 2015 **58-17b-601(1)**

58-37-1

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-37. Utah Controlled Substances Act Rule.
R156-37-101. Title.

This rule is known as the "Utah Controlled Substances Act Rule."

R156-37-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 37, as used in Title 58, Chapters 1 and 37, or this rule:

(1) "DEA" means the Drug Enforcement Administration of the United States Department of Justice.

(2) "NABP" means the National Association of Boards of Pharmacy.

(3) "Principle place of business or professional practice", as used in Subsection 58-37-6(2)(e), means any location where controlled substances are received or stored.

(4) "Schedule II controlled stimulant" means any material, compound, mixture or preparation listed in Subsection 58-37-4(2)(b)(iii).

(5) "Unprofessional conduct", as defined in Title 58 is further defined in accordance with Subsections 58-1-203(1)(e) and 58-37-6(1)(a), in Section R156-37-502.

R156-37-103. Purpose - Authority.

This rule is adopted by the Division under the authority of Subsections 58-1-106(1)(a) and 58-37-6(1)(a) to enable the Division to administer Title 58, Chapter 37.

R156-37-104. Organization - Relationship to Rule R156-1.

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

R156-37-301. License Classifications - Restrictions.

(1) Consistent with the provisions of law, the Division may issue a controlled substance license to manufacture, produce, distribute, dispense, prescribe, obtain, administer, analyze, or conduct research with controlled substances in Schedules I, II, III, IV, or V to qualified persons. Licenses shall be issued to qualified persons in the following categories:

(a) pharmacist;
(b) optometrist;
(c) podiatric physician;
(d) dentist;
(e) osteopathic physician and surgeon;
(f) physician and surgeon;
(g) physician assistant;
(h) veterinarian;
(i) advanced practice registered nurse or advanced practice registered nurse-certified registered nurse anesthetist;
(j) certified nurse midwife;
(k) naturopathic physician;
(l) Class A pharmacy-retail operations located in Utah;
(m) Class B pharmacy located in Utah providing services to a target population unique to the needs of the healthcare services required by the patient, including:
(i) closed door pharmacy;
(ii) hospital clinic pharmacy;
(iii) methadone clinic pharmacy;
(iv) nuclear pharmacy;
(v) branch pharmacy;
(vi) hospice facility pharmacy;
(vii) veterinarian pharmaceutical facility pharmacy;
(viii) pharmaceutical administration facility pharmacy;
(ix) sterile product preparation facility pharmacy; and
(x) dispensing medical practitioner clinic pharmacy.
(n) Class C pharmacy engaged in:
(i) manufacturing;
(ii) producing;
(iii) wholesaling;
(iv) distributing; and
(v) reverse distributing.
(o) Class D Out-of-state mail order pharmacies.
(p) Class E pharmacy including:
(i) medical gases provider;
(ii) analytical laboratory pharmacy;
(iii) animal control pharmacy;
(iv) human clinical investigational drug research facility pharmacy; and
(v) animal narcotic detection training facility pharmacy.
(q) Utah Department of Corrections for the conduct of execution by the administration of lethal injection under its statutory authority and in accordance with its policies and procedures.

(2) A license may be restricted to the extent determined by the Division, in collaboration with appropriate licensing boards, that a restriction is necessary to protect the public health, safety or welfare, or the welfare of the licensee. A person receiving a restricted license shall manufacture, produce, obtain, distribute, dispense, prescribe, administer, analyze, or conduct research with controlled substances only to the extent of the terms and conditions under which the restricted license is issued by the Division.

R156-37-302. Qualifications for Licensure - Application Requirements.

(1) An applicant for a controlled substance license shall:
(a) submit an application in a form as prescribed by the Division; and
(b) shall pay the required fee as established by the Division under the provisions of Section 63J-1-504.

(2) Any person seeking a controlled substance license shall be currently licensed by the state in the appropriate professional license classification as listed in R156-37-301 and shall maintain that license classification as current at all times while holding a controlled substance license.

(3) The Division and the reviewing board may request from the applicant information that is reasonable and necessary to permit an evaluation of the applicant's:
(a) qualifications to engage in practice with controlled substances; and
(b) the public interest in the issuance of a controlled substance license to the applicant.

(4) To determine if an applicant is qualified for licensure, the Division may assign the application to a qualified and appropriate licensing board for review and recommendation to the Division with respect to issuance of a license.

R156-37-303. Qualifications for Licensure - Site Inspections - Investigations.

The Division shall have the right to conduct site inspections, review research protocol, conduct interviews with persons knowledgeable about the applicant, and conduct any other investigation which is reasonable and necessary to determine the applicant is of good moral character and qualified to receive a controlled substance license.

R156-37-305. Exemption from Licensure - Law Enforcement Personnel, University Research, Narcotic Detection Training of Animals, and Animal Control.

In accordance with Subsection 58-37-6(2)(d), the following persons are exempt from licensure under Title 58, Chapter 37:

(1) Law enforcement agencies and their sworn personnel are exempt from the licensing requirements of the Controlled Substance Act to the extent their official duties require them to possess controlled substances; they act within the scope of their enforcement responsibilities; they maintain accurate records of controlled substances that come into their possession; and they

maintain an effective audit trail. Nothing herein shall authorize law enforcement personnel to purchase or possess controlled substances for administration to animals unless the purchase or possession is in accordance with a duly issued controlled substance license.

(2) Individuals and entities engaged in research using pharmaceuticals as defined in Subsection 58-17b-102(65) within a research facility as defined in Subsection R156-17b-102(49).

(3) Individuals employed by a facility engaged in the following activities if the facility employing that individual has a controlled substance license in Utah, a DEA registration number, and uses the controlled substances according to a written protocol:

(a) narcotic detection training of animals for law enforcement use; or

(b) animal control, including:

(i) animal euthanasia; or

(ii) animal immobilization.

R156-37-401. Grounds for Denial of License - Disciplinary Proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

R156-37-402. Continuing Professional Education for Controlled Substance Prescribers.

In accordance with Section 58-37-6.5, qualified continuing professional education requirements for controlled substance prescribers are further established as follows:

(1) All licensed controlled substance prescribers shall complete four hours of qualified continuing professional education during each two year period of licensure.

(2) Qualified continuing professional education hours for licensees who have not been licensed for the entire two year period will be prorated from the date of licensure.

(3) Continuing education under this section shall:

(a) be prepared and presented by individuals who are qualified by education, training and experience to provide the controlled substance prescriber continuing education;

(b) have a method of verification of attendance and a post course knowledge assessment or examination; and

(c) teach content as set forth in Subsection 58-37-6.5(2).

(4) Credit for continuing education shall be recognized in accordance with the following:

(a) continuing education shall be presented by an organization accredited to provide continuing medical education as set forth in Subsection 58-37-6.5(1)(b)(ii) and be approved as set forth in Subsection 58-37-6.5(1)(b)(iii); and

(b) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes.

(5) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain.

R156-37-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee with authority to prescribe or administer controlled substances:

(a) prescribing or administering to himself any Schedule II or III controlled substance that is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug;

(b) prescribing or administering a controlled substance for a condition he is not licensed or competent to treat;

(2) violating any federal or state law relating to controlled substances;

(3) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action that revokes, suspends or limits the license;

(4) failing to maintain controls over controlled substances that would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances;

(5) being unable to account for shortages of any controlled substance inventory for which the licensee has responsibility;

(6) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law;

(7) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records;

(8) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so.

R156-37-601. Access to Records, Facilities, and Inventory.

Applicants for licensure and all licensees shall make available for inspection to any person authorized to conduct an administrative inspection pursuant to Title 58, Chapter 37, this rule or federal law, to the extent they exist, during regular business hours and at other reasonable times in the event of an emergency, their controlled substance stock or inventory, records required under the Utah Controlled Substances Act and this rule or under the federal controlled substance laws, and facilities related to activities involving controlled substances.

R156-37-602. Records.

(1) Records of purchase, distribution, dispensing, prescribing, and administration of controlled substances shall be kept according to state and federal law. Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substance is utilized and information upon which the diagnosis is based. Practitioners shall keep records apart from patient records of each controlled substance purchased, and with respect to each controlled substance, its disposition, whether by administration or any other means, date of disposition, to whom given and the quantity given.

(2) Any licensee who experiences any shortage or theft of controlled substances shall immediately file the appropriate forms with the Drug Enforcement Administration, with a copy to the Division directed to the attention of the Investigation Bureau. He shall also report the incident to the local law enforcement agency.

(3) All records required by federal and state laws or rules must be maintained by the licensee for a period of five years. If a licensee should sell or transfer ownership of his files in any way, those files shall be maintained separately from other records of the new owner.

(4) Prescription records may be maintained electronically so long as:

(a) the original of each prescription, including telephone prescriptions, is maintained in a physical file and contains all of the information required by federal and state law; and

(b) an automated data processing system is used for the storage and immediate retrieval of refill information for prescription orders for controlled substances in Schedule III and IV, in accordance with federal guidelines.

(5) All records relating to Schedule II controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

(6) All records relating to Schedules III, IV and V controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

R156-37-603. Restrictions Upon the Prescription, Dispensing and Administration of Controlled Substances.

(1) A practitioner may prescribe or administer the Schedule II controlled substance cocaine hydrochloride only as a topical anesthetic for mucous membranes in surgical situations in which it is properly indicated and as local anesthetic for the repair of facial and pediatric lacerations when the controlled substance is mixed and dispensed by a registered pharmacist in the proper formulation and dosage.

(2) A practitioner shall not prescribe or administer a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug.

(3) In accordance with Subsection 58-37-6(7)(f)(v)(D), unless the prescriber determines there is a valid medical reason to allow an earlier dispensing date, the dispensing date of a second or third prescription shall be no less than 30 days from the dispensing date of the previous prescription, to allow for receipt of the subsequent prescription before the previous prescription runs out.

(4) If a practitioner fails to document his intentions relative to refills of controlled substances in Schedules III through V on a prescription form, it shall mean no refills are authorized. No refill is permitted on a prescription for a Schedule II controlled substance.

(5) Refills of controlled substance prescriptions shall be permitted for the period from the original date of the prescription as follows:

(a) Schedules III and IV for six months from the original date of the prescription; and

(b) Schedule V for one year from the original date of the prescription.

(6) No refill may be dispensed until such time has passed since the date of the last dispensing that 80% of the medication in the previous dispensing should have been consumed if taken according to the prescriber's instruction.

(7) No prescription for a controlled substance shall be issued or dispensed without specific instructions from the prescriber on how and when the drug is to be used.

(8) Refills after expiration of the original prescription term requires the issuance of a new prescription by the prescribing practitioner.

(9) Each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner.

(10) A practitioner shall not prescribe or administer a Schedule II controlled stimulant for any purpose except:

(a) the treatment of narcolepsy as confirmed by neurological evaluation;

(b) the treatment of abnormal behavioral syndrome, attention deficit disorder, hyperkinetic syndrome, or related disorders;

(c) the treatment of drug-induced brain dysfunction;

(d) the differential diagnostic psychiatric evaluation of depression;

(e) the treatment of depression shown to be refractory to other therapeutic modalities, including pharmacologic approaches, such as tricyclic antidepressants or MAO inhibitors;

(f) in the terminal stages of disease, as adjunctive therapy in the treatment of chronic severe pain or chronic severe pain accompanied by depression;

(g) the clinical investigation of the effects of the drugs, in which case the practitioner shall submit to the Division a written investigative protocol for its review and approval before the investigation has begun. The investigation shall be conducted in strict compliance with the investigative protocol, and the practitioner shall, within 60 days following the conclusion of the investigation, submit to the Division a written report detailing the findings and conclusions of the investigation; or

(h) in treatment of depression associated with medical illness after due consideration of other therapeutic modalities.

(11) A practitioner may prescribe, dispense or administer a Schedule II controlled stimulant when properly indicated for any purpose listed in Subsection (10), provided that all of the following conditions are met:

(a) before initiating treatment utilizing a Schedule II controlled stimulant, the practitioner obtains an appropriate history and physical examination, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized;

(b) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant when he knows or has reason to believe that a recognized contraindication to its use exists;

(c) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant in the treatment of a patient who he knows or should know is pregnant; and

(d) the practitioner shall not initiate or shall discontinue prescribing, dispensing or administering all Schedule II controlled stimulants immediately upon ascertaining or having reason to believe that the patient has consumed or disposed of any controlled stimulant other than in compliance with the treating practitioner's directions.

R156-37-604. Prescribing of Controlled Substances for Weight Reduction or Control.

(1) A practitioner shall not prescribe, dispense or administer a Schedule II or Schedule III controlled substance for purposes of weight reduction or control.

(2) A prescribing practitioner may prescribe or administer a Schedule IV controlled substance in treating excessive weight leading to increased health risks only when all the following conditions are met:

(a) medication is used only as an adjunct to a comprehensive weight loss program based on supplemental weight loss activities including, but not limited to, changing lifestyle counseling, nutritional education, and a regular, individualized exercise regimen;

(b) prior to initiating treatment the prescribing practitioner shall:

(i) determine through thorough review of past medical records that the patient has made a substantial good-faith effort to lose weight in a comprehensive weight loss program without the use of controlled substances, and the previous regimen has not been effective;

(ii) obtain a complete history, perform a complete physical examination of the patient, and rule out the existence of any recognized contraindications to the use of the medication(s);

(iii) determine and document this assessment in the patient's medical record, that the health benefit to the patient greatly outweighs the possible risks of the medications prescribed; and

(iv) discuss with the patient the possible risks associated

with the medication and have on record an informed consent which clearly documents that the long term effects of using controlled substances for weight loss or weight control are not known;

(c) throughout the prescribing period, the prescribing practitioner shall:

(i) supervise, oversee, and regularly monitor the patient, including his participation in supplemental weight loss activities, efficacy of the medication, and advisability of continuing to prescribe the weight loss or weight control medication; and

(ii) maintain a central medical record, containing at least, the goal of treatment or target weight, the ongoing progress toward that goal or maintenance of the weight loss, the patient's supplemental weight loss activities with documentation of compliance with the comprehensive weight loss program; and

(d) the prescribing practitioner shall immediately discontinue the weight loss medication in any of the following situations:

(i) the practitioner knows or should know that the patient is pregnant;

(ii) the patient has consumed or disposed of any controlled substance other than in compliance with the prescribing practitioner's directions;

(iii) the patient is abusing the controlled substance being prescribed for weight loss;

(iv) the patient develops a contraindication during the course of therapy; or

(v) the medication is not effective or that the patient is not abiding with and following through with the agreed upon comprehensive weight loss program.

R156-37-605. Emergency Verbal Prescription of Schedule II Controlled Substances.

(1) Prescribing practitioners may give a verbal prescription for a Schedule II controlled substance if:

(a) the quantity dispensed is only sufficient to cover the patient for the emergency period, not to exceed 72 hours;

(b) the prescribing practitioner has examined the patient within the past 30 days, the patient is under the continuing care of the prescribing practitioner for a chronic disease or ailment, or the prescribing practitioner is covering for another practitioner and has knowledge of the patient's condition; and

(c) a written prescription is delivered to the pharmacist within seven working days of the verbal order.

(2) A pharmacist may fill an emergency verbal or telephonic prescription from a prescribing practitioner for a Schedule II controlled substance if:

(a) the amount does not exceed a 72 hour supply; and

(b) the filling pharmacist reasonably believes that the prescribing practitioner is licensed to prescribe the controlled substances or makes a reasonable effort to determine that he is licensed.

R156-37-606. Disposal of Controlled Substances.

(1) Any disposal of controlled substances by licensees shall be consistent with the provisions of 1307.21 of the Code of Federal Regulations.

(2) Records of disposal of controlled substances shall be maintained and made available on request to the Division or its agents for inspection for a period of five years.

R156-37-607. Surrender of Suspended or Revoked License.

(1) Licenses which have been restricted, suspended or revoked shall be surrendered to the Division within 30 days of the effective date of the order of restriction, suspension or revocation. Compliance with this section will be a consideration in evaluating applications for relicensing.

R156-37-608. Herbal Products.

The Division shall not apply the provisions of the Controlled Substance Act or this rule in restricting citizens or practitioners, regardless of their license status, from the sale or use of food or herbal products that are not scheduled as controlled substances by State or Federal law.

KEY: controlled substances, licensing

February 24, 2015	**58-1-106(1)(a)**
Notice of Continuation February 21, 2012	**58-37-6(1)(a)**
	58-37f-301(1)

R156. Commerce, Occupational and Professional Licensing.
R156-37f. Controlled Substance Database Act Rule.
R156-37f-101. Title.

This rule shall be known as the "Controlled Substance Database Act Rule".

R156-37f-102. Definitions.

In addition to the definitions in Sections 58-17b-102, 58-37-2 and 58-37f-102, as used in this chapter:

(1) "ASAP" means the American Society for Automation in Pharmacy system.

(2) "DEA" means Drug Enforcement Administration.

(3) "NABP" means the National Association of Boards of Pharmacy.

(4) "NCPDP" means National Council for Prescription Drug Programs.

(5) "NDC" means National Drug Code.

(6) "Positive identification" means:

(a) one of the following photo identifications issued by a foreign or domestic government:

(i) driver's license;

(ii) non-driver identification card;

(iii) passport;

(iv) military identification; or

(v) concealed weapons permit; or

(b) if the individual does not have government-issued identification, alternative evidence of the individual's identity as deemed appropriate by the pharmacist, as long as the pharmacist documents in a prescription record a description of how the individual was positively identified.

(7) "Research facility" means a facility in which research takes place that has policies and procedures describing such research.

(8) "Rx" means a prescription.

R156-37f-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 37f.

R156-37f-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.

R156-37f-203. Submission, Collection, and Maintenance of Data.

(1) The format for submission to the Database shall be in accordance with the ASAP Telecommunications Format for Controlled Substances published by the American Society for Automation in Pharmacy, revised May 1995 (ASAP Format), which is hereby incorporated by reference. The Division may approve alternative formats substantially similar to this standard. This standard is further classified by the Database as follows:

(a) Mandatory Data. The following Database data fields are mandatory:

(i) pharmacy NABP or NCPDP number;

(ii) patient birth date;

(iii) patient gender code;

(iv) date filled;

(v) Rx number;

(vi) new-refill code;

(vii) metric quantity;

(viii) days supply;

(ix) NDC number;

(x) prescriber identification number;

(xi) date Rx written;

(xii) number refills authorized;

(xiii) patient last name;

(xiv) patient first name; and

(xv) patient street address, including zip code (extended).

(b) Preferred Data. The following Database data fields are strongly suggested:

(i) customer identification number;

(ii) compound code;

(iii) DEA suffix;

(iv) Rx origin code;

(v) customer location;

(vi) alternate prescriber number; and

(vii) state in which the prescription is filled.

(c) Optional Data. All other data fields in the ASAP Format not included in Subsections (a) and (b) are optional.

(2) Upon request, the Division will consider approving alternative formats, or adjustments to the ASAP Format, as might be necessary due to the capability or functionality of Database collection instruments. A proposed alternative format shall contain all mandatory data elements.

(3) In accordance with Subsection 58-37f-203(1)(c), the data required in Subsection (1) shall be submitted to the Database through one of the following methods:

(a) electronic data sent via telephone modem;

(b) electronic data submitted on floppy disk or compact disc (CD);

(c) if approved by the Database staff prior to submission, electronic data sent via encrypted electronic mail (e-mail);

(d) electronic data sent via a secured internet transfer method, including but not limited to sFTP site transfer and HyperSend; or

(e) any other electronic method approved by the Database manager prior to submission.

(4) The required information may be submitted on paper if:

(a) the pharmacy or pharmacy group submits a written request to the Division and receives prior approval for a paper submission; and

(b)(i) the pharmacy or pharmacy group has no computerized record keeping system upon which the data can be electronically recorded; or

(ii) The pharmacy or pharmacy group is unable to conform its submission(s) to an electronic format without incurring undue financial hardship.

(5)(a) Each pharmacy or pharmacy group shall submit all data collected at least once every seven days on a weekly reporting cycle established by the pharmacy.

(i) If the data is submitted by a single pharmacy entity, the data shall be submitted in chronological order according to the date each prescription was filled.

(ii) If the data is submitted by a pharmacy group, the data is required to be sorted by individual pharmacy within the group, and the data of each individual pharmacy within the group is required to be submitted in chronological order according to the date each prescription was filled.

(b)(i) A Class A, B, or D pharmacy or pharmacy group that has a controlled substance license but has not dispensed a controlled substance during the preceding seven days shall:

(A) submit a null report stating that no controlled substance was dispensed during the preceding seven days; or

(B) comply with this Subsection (5)(c).

(ii) A null report may be submitted on paper without prior approval of the Division. The Division shall facilitate electronic null reporting as resources permit.

(c)(i) A Class A, B, or D pharmacy or pharmacy group that has a controlled substance license but is not dispensing controlled substances and does not anticipate doing so in the immediate future may submit a certification of such, in a form preapproved by the Division, in lieu of weekly null reporting.

(ii) The certification must be resubmitted at the end of each calendar year.

(iii) If a pharmacy or pharmacy group that has submitted

a certification under this Subsection (5)(c) dispenses a controlled substance:

(A) the certification shall immediately and automatically terminate;

(B) the pharmacy or pharmacy group shall provide written notice of the certification termination to the Division within seven days of dispensing the controlled substance; and

(C) the Database reporting requirements shall be applicable to the pharmacy or pharmacy group immediately upon the dispensing of the controlled substance.

(6) The pharmacist-in-charge, or his or her designee, for each reporting pharmacy shall submit its report, regardless of the reporting method, on a data transmission form (DTF) substantially equivalent to the DTF approved by the Division. The DTF may be mailed, faxed, emailed, or electronically uploaded to the Database. A copy of the DTF is required to be kept at the pharmacy unless an alternate location has been designated by the reporting pharmacy and approved by the Division. The DTF shall include the following information:

(a) pharmacy name;

(b) pharmacy facsimile (fax) and voice phone numbers;

(c) pharmacy e-mail address;

(d) pharmacy NABP/NCPDP number;

(e) period of time covered by each submission of data;

(f) number of prescriptions in the submission;

(g) submitting pharmacist's signature attesting to the accuracy of the report; and

(h) date of the report submission.

R156-37f-301. Access to Database Information.

In accordance with Subsections 58-37f-301(1)(a) and (b):

(1) The Division Director shall designate in writing those individuals employed by the Division who shall have access to the information in the Database (Database staff).

(2)(a) A request for information from the Database may be made:

(i) directly to the Database by electronic submission, if the requester is registered to use the Database; or

(ii) by oral or written submission to the Database staff, if the requester is not registered to use the Database.

(b) An oral request may be submitted by telephone or in person.

(c) A written request may be submitted by facsimile, email, regular mail, or in person except as otherwise provided herein.

(d) The Division may in its discretion require a requestor to verify the requestor's identity.

(3) The following Database information may be disseminated to a verified requestor who is permitted to obtain the information:

(a) dispensing/reporting pharmacy ID number/name;

(b) subject's birth date;

(c) date prescription was filled;

(d) prescription (Rx) number;

(e) metric quantity;

(f) days supply;

(g) NDC code/drug name;

(h) prescriber ID/name;

(i) date prescription was written;

(j) subject's last name;

(k) subject's first name; and

(l) subject's street address;

(4) Federal, state and local law enforcement authorities and state and local prosecutors requesting information from the Database under Subsection 58-37f-301(2)(d) must provide a valid case number of the investigation or prosecution.

(5) An individual whose records are contained within the Database may not receive an accounting of persons or entities that have requested or received Database information about the individual.

(6) An individual whose records are contained within the Database may obtain his or her own information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity; or

(b) submitting a signed and notarized request that includes the requester's:

(i) full name;

(ii) complete home address;

(iii) date of birth; and

(iv) driver license or state identification card number.

(7) A requester holding power of attorney for an individual whose records are contained within the Database may obtain the individual's information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity; and

(b) providing:

(i) an original, properly executed power of attorney designation; and

(ii) a signed and notarized request, executed by the individual whose information is contained within the Database, and including the individual's:

(A) full name;

(B) complete home address;

(C) date of birth; and

(D) driver license or state identification card number verifying the individual's identity.

(8) A requestor who is the legal guardian of a minor or incapacitated individual whose records are contained within the Database may obtain the individual information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity;

(b) submitting the minor or incapacitated individual's:

(i) full name;

(ii) complete home address;

(iii) date of birth; and

(iv) if applicable, state identification card number verifying the individual's identity; and

(c) submitting legal proof that the requestor is the guardian of the individual who is the subject of the request for information from the Database.

(9) A requestor who has a release-of-records from an individual whose records are contained within the Database may obtain the individual's information and records by:

(a) submitting a request in writing;

(b) submitting an original, signed and notarized release-of-records in a format acceptable to the Database staff, identifying the purpose of the release; and

(c) submitting the individual's:

(i) full name;

(ii) complete home address;

(iii) telephone number;

(iv) date of birth; and

(v) driver license or state identification card number verifying the identity of the person who is the subject of the request.

(10) An employee of a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(d)if, prior to making the request:

(a) the licensed practitioner has provided to the Division a written designation that includes the designating practitioner's DEA number and the designated employee's:

(i) full name;

(ii) complete home address;

(iii) e-mail address;

(iv) date of birth; and

(v) driver license number or state identification card number;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;

(c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account. (11) An employee of a business that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(d) if, prior to making the request:

(a) the licensed practitioner and employing business have provided to the Division a written designation that includes:

(i) the designating practitioner's DEA number;

(ii) the name of the employing business; and

(iii) the designated employee's:

(A) full name;

(B) complete home address;

(C) e-mail address;

(D) date of birth; and

(E) driver license number or state identification card number;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;

(c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(12) An individual who is employed in the emergency room of a hospital that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(d) if, prior to making the request:

(a) the practitioner and the hospital operating the emergency room have provided to the Division a written designation that includes:

(i) the designating practitioner's DEA number;

(ii) the name of the hospital;

(iii) the names of all emergency room practitioners employed at the hospital; and

(iv) the designated employee's:

(A) full name;

(B) complete home address;

(C) e-mail address;

(C) date of birth; and

(D) driver license number or state identification card number;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;

(c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(13) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator shall:

(a) demonstrate to the satisfaction of the Division that the research is part of an approved project of the Utah Department of Health;

(b) provide a description of the research to be conducted, including:

(i) a research protocol for the project; and

(ii) a description of the data needed from the Database to conduct that research;

(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access being strictly restricted to the requesting scientific investigator;

(d) provide for electronic data to be stored on a secure database computer system with access being strictly restricted to the requesting scientific investigator; and

(e) pay all relevant expenses for data transfer and manipulation.

(14) Database information that may be disseminated under Section 58-37f-301 may be disseminated by the Database staff either:

(a) verbally;

(b) by facsimile;

(c) by email;

(d) by U.S. mail; or

(e) where adequate technology is in place to ensure that a record will not be compromised, intercepted, or misdirected, by electronic access.

R156-37f-801a. Reporting of Information by Pharmacies Participating in the Pilot Program for Real-time Reporting.

(1) In accordance with Subsection 58-37f-801(1)(a), the pilot area is designated as the entire state of Utah. Any pharmacy or pharmacy group that submits information to the Database is eligible and may participate in the Real-time Pilot Program.

(2) In accordance with Subsection 58-37f-801(8), each licensed pharmacy participating in the pilot program for real-time reporting shall, in conjunction with controlled substance point of sale, submit from the pharmacy's database to the Controlled Substance Database, the information required by Section 58-37f-203 as implemented by Section R156-37f-203, through real-time interface and reporting software developed by the Division's contract provider.

R156-37f-801b. Access to Information in the Database Submitted by Pharmacies Participating in the Pilot Program for Real-time Reporting.

In accordance with Subsection 58-37f-801(8), access to information in the Database submitted by pharmacies participating in the pilot program for real-time reporting shall be the same as set forth in Section 58-37f-301 as implemented by Section R156-37f-301.

KEY: controlled substance database, licensing
February 24, 2015 **58-1-106(1)(a)**
58-37f-301(1)

R162. Commerce, Real Estate.
R162-2c. Utah Residential Mortgage Practices and Licensing Rules.
R162-2c-101. Title.

This chapter is known as the "Utah Residential Mortgage Practices and Licensing Rules."

R162-2c-102. Definitions.

(1) The acronym "ALM" stands for associate lending manager.

(2) The acronym "BLM" stands for branch lending manager.

(3) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses for Utah-specific prelicensing education or continuing education; or

(b) function as an instructor for courses approved for Utah-specific prelicensing education or continuing education.

(4) "Credit hour" means 50 minutes of instruction within a 60-minute time period, allowing for a ten-minute break.

(5) "Control person" is defined in Section 61-2c-102(1)(p).

(6) "Expired license" means a license that is not renewed according to applicable deadlines, but is eligible to be reinstated.

(7) "Individual applicant" means any individual who applies to obtain or renew a license to practice as a mortgage loan originator or lending manager.

(8) "Incentive program" means a program through which a licensed entity may, pursuant to Subsection R162-2c-301b, pay a licensed mortgage loan originator who is sponsored by the entity for bringing business into the entity.

(9) "Instruction method" means the forum through which the instructor and student interact and may be:

(a) classroom: traditional instruction where instructors and students are located in the same physical location;

(b) classroom equivalent: an instructor-led course where the instructor and students may be in two or more physical locations; or

(c) online: instructor and student interact through an online classroom.

(10) "Instructor applicant" means any individual who applies to obtain or renew certification as an instructor of Utah-specific pre-licensing or continuing education courses.

(11)(a) "Lending manager" is defined in Section 61-2c-102(1)(aa).

(b) "Lending manager license" includes:

(i) a principal lending manager license;

(ii) an associate lending manager license; and

(iii) a branch lending manager license.

(12) The acronym "LM" stands for lending manger and includes the following licensing designations:

(a) principal lending manager;

(b) associate lending manager; and

(c) branch lending manager.

(13) "Mortgage entity" means any entity that:

(a) engages in the business of residential mortgage lending;

(b) is required to be licensed under Section 61-2c-201; and

(c) operates under a business name or other trade name that is registered with the Division of Corporations and Commercial Code.

(14) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry.

(15) The acronym "NMLS" stands for Nationwide Mortgage Licensing System.

(16) "Other trade name" means any assumed business name under which an entity does business.

(17) "Personal information" means a person's first name or first initial and last name, combined with any one or more of the following data elements relating to that person when either the name or data element is unencrypted or not protected by another method that renders the data unreadable or unusable:

(a) Social Security number;

(b) financial account number, or credit or debit card number; or

(c) driver license number or state identification card number.

(18) The acronym "PLM" stands for principal lending manager.

(19) "Qualifying individual" means the LM, managing principal, or qualified person who is identified on the MU1 form in the nationwide database as the person in charge of an entity.

(20) "Reapplication" or "reapply" refers to a request for licensure that is submitted after the deadline for reinstatement expires and the license has become terminated.

(21) "Reinstatement" or "reinstate" refers to a request for a licensure that is submitted after the applicable December 31 license expiration date passes and by or before February 28 of the following calendar year.

(22) As used in Subsection R162-2c-201, "relevant information" includes:

(a) court dockets;

(b) charging documents;

(c) orders;

(d) consent agreements; and

(e) any other information the division may require.

(23) "Restricted license" means any license that is issued subject to a definite period of suspension or terms of probation.

(24) "Safeguard" means to prevent unauthorized access, use, disclosure, or dissemination.

(25) "School" means

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college;

(c) any vocational-technical school;

(d) any state or federal agency or commission;

(e) any nationally recognized mortgage organization that has been approved by the commission;

(f) any Utah mortgage organization that has been approved by the commission;

(g) any local mortgage organization that has been approved by the commission; or

(h) any proprietary mortgage education school that has been approved by the commission.

(26) "School applicant" means a director or owner of a school who applies to obtain or renew a school's certification.

(27) "Terminated license" means a license that was not renewed or reinstated according to applicable deadlines.

R162-2c-201. Licensing and Registration Procedures.

(1) Mortgage loan originator.

(a) To obtain a Utah license to practice as a mortgage loan originator, an individual who is not currently and validly licensed in any state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) evidence financial responsibility pursuant to R162-2c-202(3);

(iv) obtain a unique identifier through the nationwide database;

(v) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific pre-licensing education as approved by the division;

(vi)(A) successfully complete 20 hours of pre-licensing

education as approved by the nationwide database according to the nationwide database outline for national course curriculum; or

(B) if the individual previously passed the 20-hour national course, obtained a license, and thereafter allowed the license to expire, successfully complete continuing education:

(I) approved by the nationwide database; and

(II) in the number of hours that would have been required to renew the expired license in the year in which the individual allowed the license to expire;

(vii) take and pass the examinations that meet the requirements of Section 61-2c-204.1(4) and that:

(A) are approved and administered through the nationwide database; and

(B) consist of a national component and a Utah-specific state component;

(viii) request licensure as a mortgage loan originator through the nationwide database;

(ix) authorize a criminal background check and submit fingerprints through the nationwide database;

(x) authorize the nationwide database to provide the individual's credit report to the division for review;

(xi) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(xii) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(xiii) complete, sign, and submit to the division a social security verification form as provided by the division; and

(xiv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) To obtain a Utah license to practice as a mortgage loan originator, an individual who is currently and validly licensed in another state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) evidence financial responsibility pursuant to R162-2c-202(3);

(iv)(A) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific mortgage loan originator prelicensing education; and

(B) take and pass the Utah-specific state examination component;

(v) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(vi) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(vii) request licensure as a mortgage loan originator through the nationwide database;

(viii) authorize a criminal background check through the nationwide database;

(ix) authorize the nationwide database to provide the individual's credit report to the division for review;

(x) complete, sign, and submit to the division a social security verification form as provided by the division; and

(xi) pay all fees through the nationwide database as required by the division and by the nationwide database.

(2) Lending manager. To obtain a Utah license to practice as an LM, an individual shall:

(a) evidence good moral character pursuant to R162-2c-202(1);

(b) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(c) evidence financial responsibility pursuant to R162-2c-202(3);

(d) provide to the division:

(i) the individual's unique identifier as assigned through the nationwide database; and

(ii) evidence that the individual has taken and passed:

(A) the 20-hour national mortgage loan originator prelicensing course; and

(B) the mortgage loan originator examinations that:

(I) meet the requirements of Section 61-2c-204.1(4);

(II) are approved and administered through the nationwide database; and

(III) consist of a national component and a Utah-specific state component;

(e) obtain approval from the division to take the Utah-specific LM prelicensing education by evidencing that the applicant has satisfied, during the five-year period preceding the date of application, the experience requirement of Section 61-2c-206(1)(d) through:

(i)(A) three years full-time experience originating first-lien residential mortgages pursuant to Section 61-2c-102(1)(ee)(i)(A):

(I) under a license issued by a state regulatory agency; or

(II) as an employee of a depository institution; and

(B) evidence of having originated a minimum of 45 first-lien residential mortgages;

(ii)(A)(I) two years full-time experience as described in this Subsection (2)(e)(i)(A); and

(II) additional full-time experience per the equivalency calculation in Subsection R162-2c-501a; and

(B)(I) evidence of having originated a minimum of 30 first-lien residential mortgages; and

(II) up to 15 additional points according to the experience points schedule in Subsection R162-2c-501b; or

(iii)(A) ten years of full-time experience providing direct supervision as a loan manager in the residential mortgage industry within the past 12 years;

(B) evidence of having directly supervised during the ten years described in this Subsection (2)(e)(iii)(A) no less than five licensed or registered loan originators;

(C) Although the five individuals licensed or registered as described in this Subsection (2)(e)(iii)(B) may have changed over time, the number of individuals being managed or supervised must have remained at a minimum of five individuals at all times during the ten years described in this Subsection (2)(e)(iii)(A); and

(D) evidence of having personally originated a minimum of 15 first-lien residential mortgages within the past five years.

(f) within the 12-month period preceding the date of application, successfully complete 40 hours of Utah-specific LM prelicensing education as certified by the division;

(g) take and pass a lending manager examination as approved by the commission;

(h) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(i) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(j)(i) register in the nationwide database by selecting the "lending manager" license type and completing the associated MU4 form; and

(ii) designate in the nationwide database whether the individual will be acting for the sponsoring entity as:

(A) the principal lending manager;

(B) an associate lending manager; or

(C) a branch lending manager;

(k) authorize a criminal background check and submit fingerprints through the nationwide database;

(l) authorize the nationwide database to provide the individual's credit report to the division for review;

(m) complete, sign, and submit to the division a social security verification form as provided by the division; and

(n) pay all fees through the nationwide database as required by the division and by the nationwide database.

(o) Notwithstanding the requirement in this Subsection 201(2)(e) that an applicant for licensure as a lending manager provide evidence of the required experience prior to obtaining approval from the division to take the Utah-specific lending manager prelicensing education, an applicant may request approval from the division for approval to take the prelicensing education upon applicant's written affirmation that:

(i) applicant's current employment status could be affected by documenting applicant's experience;

(ii) applicant requests approval to proceed with the Utah-specific prelicensing education despite not having documented the necessary experience; and

(iii) applicant understands that if division approval is granted, applicant assumes the risk of the time and expense of the prelicensing education, testing, and application fee with no assurance that applicant's experience will qualify applicant for licensure as a lending manager.

(3) Mortgage entity.

(a) To obtain a Utah license to operate as a mortgage entity, a person shall:

(i) establish that all control persons meet the requirements for moral character pursuant to R162-2c-202(1);

(ii) establish that all control persons meet the requirements for competency pursuant to R162-2c-202(2);

(iii) register any other trade name with the Division of Corporations and Commercial Code;

(iv) register the entity in the nationwide database by:

(A) submitting an MU1 form that includes:

(I) all required identifying information;

(II) the name of the PLM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as the entity's qualifying individual;

(III) the name of any LM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as a branch lending manager;

(IV) the name of any individuals who may serve as control persons;

(V) the entity's registered agent; and

(VI) any other trade name under which the entity will operate; and

(B) creating a sponsorship through the nationwide database that identifies the mortgage loan originator(s) sponsored by the entity;

(v) register any branch office operating from a different location than the entity;

(vi) pay all fees through the nationwide database as required by the division and by the nationwide database;

(vii) provide to the division proof that any assumed business name or other trade name is registered with the Division of Corporations and Commercial Code;

(viii) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal and involving any control person;

(ix) provide to the division complete documentation of any action taken by a regulatory agency against:

(A) the entity itself; or

(B) any control person; and

(C) not disclosed through a previous application or renewal; and

(x) provide to the division a notarized letter on company letterhead, signed by the owner or president of the entity, authorizing the PLM to use the entity's name.

(b) Restrictions on entity name. No license may be issued by the division to an entity that proposes to operate under a name that closely resembles the name of another entity licensee, or that the division determines might otherwise be confusing or misleading to the public.

(4) Branch office.

(a) To register a branch office with the division, a person shall:

(i) obtain a Utah entity license for the entity under which the branch office will be registered;

(ii) submit to the nationwide database an MU3 form that includes:

(A) all required identifying information; and

(B) the name of the LM who will serve as the branch lending manager;

(iii) create a sponsorship through the nationwide database that identifies the mortgage loan originator(s) who will work from the branch office; and

(iv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) A person who registers another trade name and operates under that trade name from an address that is different from the address of the entity shall register the other trade name as a branch office pursuant to this Subsection (4).

(c)(i) A PLM may not simultaneously serve as a BLM if Subsection R162-2c-301a(3)(a)(iv)(B) applies.

(ii) An individual may not serve as the BLM for more than one branch at any given time.

(5) Licenses not transferable.

(a) A licensee shall not transfer the licensee's license to any other person.

(b) A licensee shall not allow any other person to work under the licensee's license.

(c) If a change in corporate structure of a licensed entity creates a separate and unique legal entity, that entity shall obtain a unique license, and shall not operate under any existing license.

(6) Expiration of test results.

(a) Scores for the mortgage loan originator licensing examination shall be valid for five years.

(b) Scores for the LM exam shall be valid for 90 days.

(7) Incomplete LM application.

(a) The division may grant a 30-day extension of the 90-day application window upon a finding that:

(i) an applicant has made a good faith attempt to submit a completed application; but

(ii) requires more time to provide missing documents or to obtain additional information.

(b) If the applicant does not supply the required documents or information within the 30-day extension, the division may deny the application as incomplete.

(8) Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.

(9) Other trade names.

(a) The division shall not approve a license for any person operating under an assumed business name that poses a reasonable likelihood of misleading the public into thinking that the person is:

(i) endorsed by the division, the state government, or the federal government;

(ii) an agency of the state or federal government; or

(iii) not engaged in the business of residential mortgage loans.

(b) A mortgage entity that operates under another trade name shall register the other trade name by including it on the MU1 form and obtaining the required registration.

R162-2c-202. Qualifications for Licensure.

(1) Character. Individual applicants and control persons

shall evidence good moral character, honesty, integrity, and truthfulness.

(a) An applicant may not have:

(i) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent:

(A) a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering;

(B) any felony in the seven years preceding the day on which an application is submitted to the division;

(C) in the five years preceding the day on which an application is submitted to the division:

(I) a misdemeanor involving moral turpitude; or

(II) a crime in another jurisdiction that is the equivalent of a misdemeanor involving moral turpitude;

(D) in the three years preceding the day on which an application is submitted to the division, any misdemeanor involving a finding of:

(I) fraud;

(II) misrepresentation;

(III) theft; or

(IV) dishonesty;

(ii) had a license as a mortgage loan originator revoked by a government regulatory body at any time, unless the revocation is subsequently vacated or converted;

(iii) had a professional license or registration, whether issued by a Utah regulatory body or by another jurisdiction, suspended, surrendered, canceled, or denied in the five years preceding the date the individual applies for licensure if the suspension, surrender, cancellation, or denial is based on misconduct in a professional capacity that relates to:

(A) moral character;

(B) honesty;

(C) integrity;

(D) truthfulness; or

(E) the competency to transact the business of residential mortgage loans;

(iv) in the five years preceding the day on which an application is submitted to the division, been the subject of a bar by the:

(A) Securities and Exchange Commission;

(B) New York Stock Exchange; or

(C) Financial Industry Regulatory Authority;

(v) had a permanent injunction entered against the individual:

(A) by a court or administrative agency; and

(B) on the basis of:

(I) conduct or a practice involving the business of residential mortgage loans; or

(II) conduct involving fraud, misrepresentation, or deceit.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past other than those specified in this Subsection (1)(a) that reflect negatively on the applicant's moral character, honesty, integrity, and truthfulness. In evaluating an applicant for these qualities, the division and commission may consider any evidence, including the following:

(i) criminal convictions or plea agreements, with particular consideration given to convictions or plea agreements relative to charges that involve moral turpitude;

(ii) the circumstances that led to any criminal conviction or plea agreement under consideration;

(iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the business of residential mortgage loans;

(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;

(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(vi) court findings of fraudulent or deceitful activity;

(vii) evidence of non-compliance with court orders or conditions of sentencing;

(viii) evidence of non-compliance with:

(A) terms of a diversion agreement still subject to prosecution;

(B) a probation agreement; or

(C) a plea in abeyance; or

(ix) failure to pay taxes or child support obligations.

(2) Competency. Individual applicants and control persons shall evidence competency to transact the business of residential mortgage loans. In evaluating an applicant for competency, the division and commission may consider any evidence that reflects negatively on an applicant's competency, including:

(a) civil judgments, with particular consideration given to any such judgments involving the business of residential mortgage loans;

(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

(c) failure of any previous mortgage loan business in which the individual was engaged, as well as the circumstances surrounding that failure;

(d) evidence as to the applicant's business management and employment practices, including the payment of employees, independent contractors, and third parties;

(e) the extent and quality of the applicant's training and education in mortgage lending;

(f) the extent and quality of the applicant's training and education in business management;

(g) the extent of the applicant's knowledge of the Utah Residential Mortgage Practices Act;

(h) evidence of disregard for licensing laws;

(i) evidence of drug or alcohol dependency;

(j) sanctions placed on professional licenses; and

(k) investigations conducted by regulatory agencies relative to professional licenses.

(3) Financial responsibility. Individual applicants shall evidence financial responsibility. To evaluate an applicant for financial responsibility, the division shall:

(a) access the credit information available through the NMLS of:

(i) an applicant for initial licensure, beginning October 18, 2010; and

(ii) a licensee who requests renewal during the 2010 renewal period, unless the licensee's credit report was reviewed in issuing the initial license; and

(b) give particular consideration to:

(i) outstanding civil judgments;

(ii) outstanding tax liens;

(iii) foreclosures;

(iv) multiple social security numbers attached to the individual's name;

(v) child support arrearages; and

(vi) bankruptcies.

(4) Age. An applicant shall be at least 18 years of age.

(5) Minimum education. An applicant shall have a high school diploma, GED, or equivalent education as approved by the commission.

R162-2c-203. Utah-Specific Education Certification.

(1) School certification.

(a) A school offering Utah-specific education shall certify with the division before providing any instruction.

(b) To certify, a school applicant shall prepare and supply the following information to the division:

(i) contact information, including:

(A) name, phone number, email address, and address of the physical facility;

(B) name, phone number, email address, and address of

any school director;

(C) name, phone number, email address, and address of any school owner; and

(D) an e-mail address where correspondence will be received by the school;

(ii) evidence that all school directors and owners meet the moral character requirements outlined in R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);

(iii) school description, including:

(A) type of school;

(B) description of the school's physical facilities; and

(C) type of instruction method;

(iv) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(v) proof that each instructor:

(A) has been certified by the division; or

(B) is exempt from certification under Subsection 203(5)(f);

(vi) statement of attendance requirements as provided to students;

(vii) refund policy as provided to students;

(viii) disclaimer as provided to students; and

(ix) criminal history disclosure statement as provided to students.

(c) Minimum standards.

(i) The course schedule may not provide or allow for more than eight credit hours per student per day.

(ii) The attendance statement shall require that each student attend at least 90% of the scheduled class time.

(iii) The disclaimer shall adhere to the following requirements:

(A) be typed in all capital letters at least 1/4 inch high; and

(B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."

(iv) The criminal history disclosure statement shall:

(A) be provided to students while they are still eligible for a full refund; and

(B) clearly inform the student that upon application with the nationwide database, the student will be required to:

(I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and

(II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(C) clearly inform the student that the division will consider the applicant's criminal history pursuant to R162-2c-202(1) in making a decision on the application; and

(D) include a section for the student's attestation that the student has read and understood the disclosure.

(d) Within ten days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.

(2) School certification expiration and renewal. A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:

(a) complete a renewal application as provided by the division;

(b) pay a nonrefundable renewal fee;

(c) provide a list of all proposed courses with a projected schedule of days, times, and locations of classes; and

(d) provide the information specified in Subsection 3(c) for Utah-specific course certification for the division's evaluation of each proposed course.

(3) Utah-specific course certification.

(a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.

(b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.

(c) To certify a course, a school applicant shall prepare and supply the following information:

(i) instruction method;

(ii) outline of the course, including:

(A) a list of subjects covered in the course;

(B) reference to the approved course outline for each subject covered;

(C) length of the course in terms of hours spent in classroom instruction;

(D) number of course hours allocated for each subject;

(E) at least three learning objectives for every hour of classroom time;

(F) instruction format for each subject; i.e, lecture or media presentation;

(G) name and credentials of any guest lecturer; and

(H) list of topic(s) and session(s) taught by any guest lecturer;

(iii) a list of the titles, authors, and publishers of all required textbooks;

(iv) copies of any workbook used in conjunction with a non-lecture method of instruction;

(v) a copy of each quiz and examination, with an answer key; and

(vi) the grading system, including methods of testing and standards of grading.

(d) Minimum standards.

(i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable to the required course outline.

(ii) The course shall cover all of the topics set forth in the associated outline.

(iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.

(iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:

(A) an accompanying workbook as approved by the division for the student to complete during the instruction; and

(B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.

(v) The division shall not approve an online education course unless:

(A) there is a method to ensure that the enrolled student is the person who actually completes the course;

(B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and

(C) there is a method to ensure that the student comprehends the material.

(4) Course expiration and renewal.

(a) A prelicensing course expires at the same time the school certification expires.

(b) A prelicensing course certification is renewed automatically when the school certification is renewed.

(5) Education committee.

(a) The commission may appoint an education committee to:

(i) assist the division and the commission in approving course topics; and

(ii) make recommendations to the division and the commission about:

(A) whether a particular course topic is relevant to residential mortgage principles and practices; and

(B) whether a particular course topic would tend to

enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(6) Instructor certification.

(a) Except as provided in this Subsection (6)(f), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator prelicensing courses, an individual shall provide evidence of:

(i) a high school diploma or its equivalent;

(ii)(A) at least five years of experience in the residential mortgage industry within the past ten years; or

(B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii)(A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application, the lending manager licensing examination.

(d) To certify as an instructor of LM prelicensing courses, an individual shall:

(i) meet the general requirements of this Subsection 6(c); and

(ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

(I) current active membership in the Utah Bar Association; or

(II) degree from an American Bar Association accredited law school.

(C) Advanced Appraisal:

(I) at least two years practical experience in appraising; and

(II) current state-certified appraiser license.

(D) Advanced Finance:

(I) at least two years practical experience in real estate finance; and

(II) association with a lending institution as a loan originator.

(e) To act as an instructor of continuing education courses, an individual shall certify through the nationwide database.

(f) The following instructors are not required to be certified by the division:

(i) a guest lecturer who:

(A) is an expert in the field on which instruction is given;

(B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and

(C) teaches no more than 20% of the course hours;

(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;

(iii) an individual who:

(A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and

(B) receives approval from the commission; and

(iv) a division employee.

(g) Renewal.

(i) An instructor certification for Utah-specific prelicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date.

(ii) To renew an instructor certification for Utah-specific prelicensing education, an applicant shall submit to the division:

(A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;

(B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years; and

(C) a renewal fee as required by the division.

(iii) To renew an instructor certification for continuing education, an individual shall certify through the nationwide database.

(h) Reinstatement.

(i) An instructor who is certified by the division may reinstate an expired certification within 30 days of expiration by:

(A) complying with this Subsection (6)(g); and

(B) paying an additional non-refundable late fee.

(ii) Until six months following the date of expiration, an instructor who is certified by the division may reinstate a certification that has been expired more than 30 days by:

(A) complying with this Subsection (6)(g);

(B) paying an additional non-refundable late fee; and

(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(7)(a) The division may monitor schools and instructors for:

(i) adherence to course content;

(ii) quality of instruction and instructional materials; and

(iii) fulfillment of affirmative duties as outlined in R162-2c-301a(5)(a) and R162-2c-301a(6)(a).

(b) To monitor schools and instructors, the division may:

(i) collect and review evaluation forms; or

(ii) assign an evaluator to attend a course and make a report to the division.

R162-2c-204. License Renewal, Reinstatement, and Reapplication.

(1) Deadlines.

(a) License renewal.

(i) To renew on time, a person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.

(ii)(A) A person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.

(B) A person who is not required to renew in the first year of licensure pursuant to this Subsection (1)(a)(ii)(A) shall nevertheless complete, prior to December 31 of the first year of licensure, continuing education as required for renewal pursuant to Subsection R162-2c-204(3)(a) if the individual did not complete the mortgage loan originator national pre-licensing education during the calendar year.

(b) Reinstatement. The deadline to reinstate a license that expires on December 31 is February 28 of the year following the date of expiration.

(c) After the reinstatement deadline passes, a person shall reapply for licensure pursuant to Subsection R162-2c-204(3)(c).

(2) Qualification for renewal.

(a) Character.

(i) Individuals applying to renew or reinstate a license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.

(ii)(A) An individual applying for a renewed license may not have:

(I) a felony that resulted in a conviction or plea agreement during the renewal period; or

(II) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.

(B) A licensee shall submit a fingerprint background report in order to renew a license:

(A) in the renewal period beginning November 1, 2015; and

(B) every fifth year following the renewal period beginning November 1, 2015.

(iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.

(c) Financial responsibility. A licensee shall submit a credit report in order to renew a license:

(i) in the renewal period beginning November 1, 2015; and

(ii) every fifth year following the renewal period beginning November 1, 2015.

(b) Competency.

(i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.

(ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standard for competency required of individual applicants.

(3) Education requirements for renewal, reinstatement, and reapplication.

(a) License renewal.

(i) Except as provided in this Subsection (3)(a)(ii), an individual who holds an active license as of January 1 of the calendar year shall complete, within the calendar year in which the individual's license is scheduled to expire, the following courses, none of which may be duplicative of courses taken in the same or preceding renewal period:

(A) beginning with the 2014 renewal, a division-approved course on Utah law, completed annually; and

(B) eight hours of continuing education approved through the nationwide database, as follows:

(I) three hours federal laws and regulations;

(II) two hours ethics (fraud, consumer protection, fair lending issues);

(III) two hours training related to lending standards for non-traditional mortgage products; and

(IV) one hour undefined instruction on mortgage origination.

(ii) An individual who completes the mortgage loan originator national pre-licensing education between January 1 and December 31 of the calendar year is exempt from continuing education, including the division-approved course on Utah law specified in Subsection (3)(a)(i)(A), for the renewal period ending December 31 of the same calendar year.

(b) Reinstatement. To reinstate an expired mortgage loan originator or lending manager license, an individual shall, by February 28 of the calendar year following the date on which the license expired, complete:

(i) the division-approved course on Utah law specified in Subsection (3)(a)(i)(A); and

(ii) eight hours of continuing education:

(A) in topics listed in this Subsection (3)(a)(i)(B); and

(B)(I) approved by the nationwide database as "continuing education" if completed prior to the date of expiration; or

(II) approved by the nationwide database as "late continuing education" if completed between the date of expiration and the deadline for reinstatement.

(c) Reapplication.

(i) To reapply for licensure after the reinstatement deadline passes and by or before December 31 of the calendar year following the date on which the license expired, an individual shall complete the division-approved course on Utah law and continuing education requirement outlined in this Subsection (3)(b).

(ii) To reapply for licensure after the deadline described in this Subsection (3)(c)(i) passes, an individual shall:

(A) complete eight hours of continuing education:

(I) in topics listed in this Subsection (3)(a)(i); and

(II) approved by the nationwide database as "late continuing education"; and

(B) within the 12-month period preceding the date of reapplication, take and pass:

(I) the 15-hour Utah-specific mortgage loan originator pre-licensing education, if the terminated license was a mortgage loan originator license; or

(II) the 40-hour Utah-specific lending manager pre-licensing education and associated examination, if the terminated license was a lending manager license; and

(C) complete the division-approved course on Utah law specified in Subsection (3)(a)(i)(A).

(4) Renewal, reinstatement, and reapplication procedures.

(a) An individual licensee shall:

(i) evidence having completed education as required by Subsection R162-2c-204(3);

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and

(iii) submit through the nationwide database:

(A) a request for renewal, if renewing or reinstating a license; or

(B) a request for a new license, if reapplying; and

(iv) pay all fees as required by the division and by the nationwide database, including all applicable late fees.

(b) An entity licensee shall:

(i) submit through the nationwide database a request for renewal;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;

(iii) renew the registration of any branch office or other trade name registered under the entity license; and

(iv) pay through the nationwide database all fees, including all applicable late fees, required by the division and by the nationwide database.

R162-2c-205. Notification of Changes.

(1) An individual licensee who is registered with the nationwide database shall:

(a) enter into the national database any change in the following:

(i) name of licensee;

(ii) contact information for licensee, including:

(A) mailing address;

(B) telephone number(s); and

(C) e-mail address(es);

(iii) sponsoring entity; and

(iv) license status (sponsored or non-sponsored); and

(b) pay all change fees charged by the national database

and the division.

(2) An entity licensee shall:

(a) enter into the national database any change in the following:

(i) name of licensee;

(ii) contact information for licensee, including:

(A) mailing address;

(B) telephone number(s);

(C) fax number(s); and

(D) e-mail address(es);

(iii) sponsorship information;

(iv) control person(s);

(v) qualifying individual;

(vi) license status (sponsored or non-sponsored); and

(vii) branch offices or other trade names registered under the entity license; and

(b) pay any change fees charged by the national database and the division.

R162-2c-209. Sponsorship.

(1) A mortgage loan originator who is sponsored by an entity may operate and advertise under the name of:

(a) the entity;

(b) a branch office registered under the license of the entity; or

(c) another trade name registered under the license of the entity.

(2) A mortgage loan originator who operates or advertises under a name other than that of the entity by which the mortgage loan originator is sponsored:

(a) shall exercise due diligence to verify that the name being used is properly registered under the entity license; and

(b) shall not be immune from discipline if the individual conducts the business of residential mortgage loans on behalf of more than one entity, in violation of Section 61-2c-209(4)(b)(iii).

(3) An individual who holds a license as a mortgage loan originator may perform loan processing activities regardless of whether:

(a) the individual's license is sponsored by a licensed entity at the time the loan processing activities are performed; or

(b) the individual is employed by a licensed entity.

R162-2c-301a. Unprofessional Conduct.

(1) Mortgage loan originator.

(a) Affirmative duties. A mortgage loan originator who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator shall:

(i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;

(ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;

(iii) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(iv) turn all records over to the sponsoring entity for proper retention and disposal; and

(v) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator may not:

(i) charge for services not actually performed;

(ii) require a borrower to pay more for third party services than the actual cost of those services;

(iii) withhold, without reasonable justification, payment owed to a third party service provider in connection with the business of residential mortgage loans;

(iv) alter an appraisal of real property; or

(v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2f, including:

(A) providing a buyer or seller of real estate with a comparative market analysis;

(B) assisting a buyer or seller to determine the offering price or sales price of real estate;

(C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;

(D) advertising the sale of real estate by use of any advertising medium;

(E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or

(F) altering, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property.

(c) A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:

(i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;

(ii) owns real property that the mortgage loan originator offers "for sale by owner"; or

(iii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:

(A) the owner's contact information;

(B) the owner's role;

(C) the mortgage loan originator's contact information; and

(D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or

(iv) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:

(A) contact information for the brokerage;

(B) role of the brokerage;

(C) mortgage loan originator's contact information; and

(D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

(2) Lending manager.

(a) Affirmative duties. A lending manager who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405.

(b) An LM who is designated in the nationwide database as the principal lending manager of an entity shall:

(i) be accountable for the affirmative duties outlined in Subsection (1)(a);

(ii) provide to all sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:

(A) federal law governing residential mortgage lending;

(B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and

(C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;

(iii) exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff by:

(A) directing the details and means of their work activities;

(B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;

(C) requiring that they conduct all residential mortgage loan business in the name of the sponsoring entity; and

(D) prohibiting unlicensed staff from engaging in any activity that requires licensure;

(iv) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the PLM's sponsoring entity;

(v) establish and follow procedures for responding to all consumer complaints;

(vi) personally review any complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member that might constitute a violation of federal law, state law, or division administrative rules;

(vii) establish and maintain a quality control plan that:

(A) complies with HUD/FHA requirements;

(B) complies with Freddie Mac and Fannie Mae requirements; or

(C) includes, at a minimum, procedures for:

(I) performing pre-closing and post-closing audits of at least ten percent of all loan files; and

(II) taking corrective action for problems identified through the audit process; and

(viii) review for compliance with applicable federal and state laws all advertising and marketing materials and methods used by:

(A) the PLM's sponsoring entity; and

(B) the entity's sponsored mortgage loan originators; and

(ix)(A) actively supervise:

(I) any ALM sponsored by the entity; and

(II) any BLM who is assigned to oversee the mortgage loan origination activities of a branch office; and

(B) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators, unlicensed staff, and entity operations throughout all locations.

(c) An LM who is designated as a branch lending manager in the nationwide database shall:

(i) work from the branch office the LM is assigned to manage;

(ii) personally oversee all mortgage loan origination activities conducted through the branch office; and

(iii) personally supervise all mortgage loan originators and unlicensed staff affiliated with the branch office.

(d) Prohibited conduct. An LM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An LM may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(3) Mortgage entity.

(a) Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage entity shall:

(i) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(ii) retain and dispose of records according to R162-2c-302; and

(iii) comply with a division request for information within 10 business days of the date of the request;

(iv)(A) notify the division of the location from which the entity's PLM will work; and

(B) if the entity originates Utah loans from a location where the PLM is not present to oversee and supervise activities related to the business of residential mortgage loans, assign a separate LM to serve as the BLM per Section 61-2c-102(1)(e); and

(v) if using an incentive program, strictly comply with Subsection R162-2c-301b.

(b) Prohibited conduct. A mortgage entity shall be subject to discipline under Sections 61-2c-401 through 405 if:

(i) any sponsored mortgage loan originator or LM engages in any prohibited conduct; or

(ii) any unlicensed employee performs an activity for which licensure is required.

(4) Reporting unprofessional conduct.

(a) The division shall report in the nationwide database any final disciplinary action taken against a licensee for unprofessional conduct.

(b) A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.

(5) School.

(a) Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A school shall:

(i) within 15 calendar days of any material change in the information outlined in R162-2c-203(1)(b), provide to the division written notice of the change;

(ii) with regard to the criminal history disclosure required under R162-2c-203(1)(b)(ix),

(A) obtain each student's signature before allowing the student to participate in course instruction;

(B) retain each signed criminal history disclosure for a minimum of two years; and

(C) make any signed criminal history disclosure available to the division upon request;

(iii) maintain a record of each student's attendance for a minimum of five years after enrollment;

(iv) upon request of the division, substantiate any claim made in advertising materials;

(v) maintain a high quality of instruction;

(vi) adhere to all state laws and regulations regarding school and instructor certification;

(vii) provide the instructor(s) for each course with the required course content outline;

(viii) require instructors to adhere to the approved course content;

(ix) comply with a division request for information within 10 business days of the date of the request;

(x) upon completion of the course requirements, provide a certificate of completion to each student; and

(xi) ensure that the material is current in courses taught on:

(A) Utah statutes;

(B) Utah administrative rules;

(C) federal laws; and

(D) federal regulations.

(b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A school may not:

(i) accept payment from a student without first providing to that student the information outlined in R162-2c-203(1)(b)(vi) through (ix);

(ii) continue to operate after the expiration date of the school certification and without renewing;

(iii) continue to offer a course after its expiration date and without renewing;

(iv) allow an instructor whose instructor certification has expired to continue teaching;

(v) allow an individual student to earn more than eight credit hours of education in a single day;

(vi) award credit to a student who has not complied with the minimum attendance requirements;

(vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(viii) give valuable consideration to a person licensed with

the division under Section 61-2c for referring students to the school;

(ix) accept valuable consideration from a person licensed with the division under Section 61-2c for referring students to a licensed mortgage entity;

(x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;

(xi) require a student to attend any program organized for the purpose of solicitation;

(xii) make a misrepresentation in its advertising;

(xiii) advertise in any manner that denigrates the mortgage profession;

(xiv) advertise in any manner that disparages a competitor's services or methods of operation;

(xv) advertise or teach any course that has not been certified by the division;

(xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or

(xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

(6) Instructor.

(a) Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. An instructor shall:

(i) adhere to the approved outline for any course taught; and

(ii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. An instructor who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An instructor may not:

(i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(ii) continue to teach any course after the course has expired and without renewing the course certification.

R162-2c-301b. Employee Incentive Program.

(1)(a) Under this Subsection R162-2c-301b, a licensed entity may pay an incentive to a mortgage loan originator who is sponsored by the entity and licensed in:

(i) Utah; or

(ii) another state.

(b) A licensed entity may not pay an incentive to an unlicensed employee.

(2) A PLM or entity that uses an incentive program shall:

(a) prior to paying any incentive to an individual, specifically describe in the individual's contract for employment:

(i) the methodology by which any incentive will be calculated, including the limitation specified in Subsection (2)(b); and

(ii) the circumstances under which an incentive will be paid, including the limitation specified in this Subsection (2)(c); and

(b) limit the dollar amount or value of any single incentive to $300 or less;

(c) limit the sponsored mortgage loan originator to receiving no more than three incentive payments in a calendar year; and

(d)(i) keep complete records of all incentive payments made, including:

(A) borrower name;

(B) property address;

(C) transaction closing date;

(D) date of incentive payment;

(E) name of employee receiving incentive payment; and

(F) amount paid; and

(ii) make such records available to the division for audit or inspection upon request.

(3) Before paying an incentive to a mortgage loan originator who is not licensed in Utah, the PLM or entity shall ensure that the individual did not:

(a) solicit or advertise to the client regarding financing for a Utah property; or

(b) perform any other activity that constitutes the business of residential mortgage loans pursuant to Section 61-2c-102(1)(h).

R162-2c-302. Requirements for Record Retention and Disposal.

(1) Record Retention.

(a) An entity licensed under the Utah Residential Mortgage Practices Act shall maintain and safeguard for the period set forth in Section 61-2c-302 the following records:

(i) application forms;

(ii) disclosure forms;

(iii) truth-in-lending forms;

(iv) credit reports and the explanations therefor;

(v) conversation logs;

(vi) verifications of employment, paycheck stubs, and tax returns;

(vii) proof of legal residency, if applicable;

(viii) appraisals, appraisal addenda, and records of communications between the appraiser and the registrant, licensee, and lender;

(ix) underwriter denials;

(x) notices of adverse action;

(xi) loan approval;

(xii) name and contact information for the borrower in the transaction; and

(xiii) all other records required by underwriters involved with the transaction or provided to a lender.

(b) Records may be maintained electronically if the storage system complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act.

(c) A licensed entity shall make all records available to the division pursuant to Section 61-2c-302(3).

(d) An individual who terminates sponsorship with an entity shall turn over to the entity any records in the individual's possession at the time of termination.

(2) Record Disposal. A person who disposes of records at the end of the retention period shall destroy personal information by shredding, erasing, or otherwise making the information indecipherable.

(3) Responsible Party.

(a) If a licensed entity is actively engaged in the business of residential mortgage loans, the PLM is responsible for proper retention, maintenance, safeguarding, and disposal of records.

(b) If a licensed entity ceases doing business in Utah, the control person(s) as of its last day of operation are responsible for proper retention, maintenance, safeguarding, and disposal of records.

R162-2c-401. Administrative Proceedings.

(1) Request for agency action.

(a) If completed in full and submitted in compliance with the rules promulgated by the division, the following shall be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq.:

(i) an original or renewal application for a license;

(ii) an original or renewal application for a school certification;

(iii) an original or renewal application for a course certification; and

(iv) an original or renewal application for an instructor certification.

(b) Any other request for agency action shall:

(i) be in writing;

(ii) be signed by the requestor; and

(iii) comply with Utah Administrative Procedures Act, Section 63G-4-201(3).

(c) The following shall not be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq., even if submitted in compliance with this Subsection (1)(b):

(i) a complaint against a licensee; and

(ii) a request that the division commence an investigation or a disciplinary action against a licensee.

(2) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(3) Informal adjudicative proceedings.

(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as informal adjudicative proceedings. These informal proceedings shall include:

(i) a proceeding on an original or renewal application for a license;

(ii) a proceeding on an original or renewal application for a school, instructor, or course certification; and

(iii) except as provided in Section 63G-4-502, a proceeding for disciplinary action commenced by the division pursuant to Section 63G-4-201(2) following investigation of a complaint.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices and Licensing Act or by these rules.

(4) Hearings not allowed. A hearing may not be held in the following informal adjudicative proceedings:

(a) the issuance of an original or renewed license when the application has been approved by the division;

(b) the issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the division;

(c) the issuance of any interpretation of statute, rule, or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division;

(d) the denial of an application for an original or renewed license on the ground that it is incomplete;

(e) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules; or

(f) a proceeding on an application for an exemption from a continuing education requirement.

(5) Hearings required. A hearing before the commission shall be held in the following circumstances:

(a) a proceeding commenced by the division for disciplinary action pursuant to Section 61-2c-402 and Section 63G-4-201(2);

(b) an appeal of a division order denying or restricting a license; and

(c) an application that presents unusual circumstances such that the division determines that the application should be heard by the commission.

(6) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to the chairperson of the commission or an administrative law judge.

(b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Section R151-4 et seq.; and

(iii) the rules promulgated by the division.

(c) Except as provided in Subsection 7(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this Subsection, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage pre-paid delivery, mail to the address last provided to the division pursuant to Section 61-2c-106 or Subsection R162-2c-201, as applicable, written notice of the date, time, and place scheduled for the hearing.

(f) Formal discovery is prohibited.

(g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

(i) on its own behalf; or

(ii) on behalf of a party where:

(A) the party makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to the witness.

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

(l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(m) Upon filing a proper entry of appearance with the division pursuant to R151-4-110(1)(a), an attorney may represent a respondent.

(7) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) The division shall provide its witness and exhibit list to

the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit list to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from each witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2c-402. Disciplinary Action.

In reviewing a request to convert a revocation to a suspension pursuant to Section 61-2c-402(4)(a):

(1) The commission may not convert a revocation that was based on a felony conviction involving fraud, misrepresentation, deceit or dishonesty, breach of trust, or money laundering.

(2) The commission may consider converting a revocation that was based on other criminal history, including:

(a) a plea in abeyance, diversion agreement, or similar disposition of a felony charge; and

(b) a misdemeanor offense, regardless of the nature of the charge or the disposition of the case.

R162-2c-501a. Optional Experience Equivalency Calculation.

(1) Thirty months of full-time experience in the following activities shall be considered equivalent to one year of experience as a first-lien residential mortgage loan originator:

(a) loan underwriter;

(b) mortgage loan manager;

(c) loan processor;

(d) certified mortgage prelicensing instructor; and

(e) second-lien residential loan originator.

(2) An applicant who wishes to receive experience credit under this Subsection R162-2c-501a, but who cannot demonstrate experience equivalent to a full year of first-lien residential mortgage loan origination shall:

(a) be awarded experience credit as deemed appropriate by the division; and

(b) complete the experience requirement through additional experience as a first-lien residential mortgage loan originator, as determined by the division.

R162-2c-501b. Optional Experience Points Table.

TABLE
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Professional activity	possible points
(1) Loan underwriter	0.5 pt/month
(2) Mortgage loan manager	0.5 pt/month
(3) Loan processor	0.5 pt/month
(4) Certified mortgage prelicensing instructor	0.5 pt/month
(5) Second-lien residential loan originator	0.5 pt/month

KEY: residential mortgage, loan origination, licensing, enforcement
February 10, 2015 **61-2c-103(3)**
61-2c-402(4)(a)

R164. Commerce, Securities.
R164-2. Investment Adviser - Unlawful Acts.
R164-2-1. Investment Adviser Performance-Based Compensation Contracts.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-2 and 61-1-24.

(2) This rule sets the requirements whereby an investment adviser may receive performance-based compensation for investment advisory services rendered.

(B) Definitions

(1) "Affiliate" has the same definition as in Section 2(a)(3) of the Investment Company Act of 1940, which is adopted and incorporated by reference and available from the Division.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in his capacity as such. "Company" shall not include:

(3)(a) a company required to be registered under the Investment Company Act of 1940, but which is not so registered;

(3)(b) a private investment company, for purposes of this subparagraph a private investment company is a company which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act;

(3)(c) an investment company registered under the Investment Company Act of 1940; or

(3)(d) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, which is adopted and incorporated by reference and available from the Division, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or company within the meaning of subparagraph (B)(4) of this rule.

(4) "Interested person" means:

(4)(a) any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(4)(b) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:

(4)(b)(i) 1/10 of 1% of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser, or

(4)(b)(ii) 5% of the total assets of the person seeking to act as the client's independent agent; or,

(4)(c) any person or partner or employee of any person who, at any time since the beginning of the last two years, has acted as legal counsel for the investment adviser.

(5) "SEC" means the United States Securities and Exchange Commission.

(C) Performance-based contract exemption

(1) Notwithstanding Subsection 61-1-2(2), an investment adviser may enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the conditions in paragraphs (D) through (H) of this rule are met.

(D) Client requirements

(1) The client entering into the contract must be:

(1)(a) a natural person or a company who, immediately after entering into the contract, has at least $750,000 under the management of the investment adviser;

(1)(b) a person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds $1,500,000. The net worth of a natural person may include assets held jointly with that person's spouse;

(1)(c) a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 at the time the contract is entered into; or

(1)(d) a natural person who immediately prior to entering into the contract is:

(1)(d)(i) An executive officer, director, trustee, general partner, or person serving in a similar capacity of the investment adviser; or

(1)(d)(ii) An employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participated in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(E) Compensation formula

(1) The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(1)(a) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4(a)(1) (1999) which is adopted and incorporated by reference and available from the Division, the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(1)(b) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 the formula must include:

(1)(b)(i) the realized capital losses of securities over the period, and

(1)(b)(ii) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and,

(1)(c) the formula must provide that any compensation paid to the investment adviser under this rule is based on the gains less the losses, computed in accordance with subparagraphs (a) and (b) of this subparagraph (E), in the client's account for a period of not less than one year.

(F) Additional disclosure requirements

(1) Before entering into the advisory contract and in addition to the requirements of SEC Form ADV - Uniform Application for Investment Adviser Registration, the investment adviser must disclose in writing to the client all material information concerning the proposed advisory arrangement, including the following:

(1)(a) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(1)(b) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(1)(c) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(1)(d) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser

believes that the index is appropriate; and,

(1)(e) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 how the securities will be valued and the extent to which the valuation will be independently determined.

(G) Arms length agreement

(1) The investment adviser, and any investment adviser representative, who enters into the contract must reasonably believe, immediately before entering into the contract that the contract represents an arm's length arrangement between the parties and that the client, or in the case of a client which is a company as defined in subparagraph (B)(3) of this rule, the person representing the company, understands the proposed method of compensation and its risks.

(2) The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee.

(H) Unlawful acts

(1) Any person entering into or performing an investment advisory contract under this rule is not relieved of any obligations under Subsection 61-1-2(1) or any other applicable provision of the Utah Uniform Securities Act or any rule or order thereunder.

R164-2-2. Custody Requirements for Investment Advisers.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-2 and 61-1-24.

(2) This rule sets forth the requirements for investment advisers with custody of client funds or securities.

(B) It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice or course of business for an investment adviser licensed or required to be licensed under Section 61-1-3 to have custody of client funds or securities unless the investment adviser complies with the requirements of Rule 206(4)-2 of the Investment Advisers Act of 1940 (amended 2010), which is adopted and incorporated by reference.

(C) For purposes of this rule and any determination of whether an investment adviser has custody of client funds or securities, "custody" is defined as in Rule 206(4)-2(d)(2) of the Investment Advisers Act of 1940.

KEY: securities, securities regulation, investment advisers, custody requirements

November 22, 2010	**61-1-2**
Notice of Continuation February 2, 2015	**61-1-24**

R277. Education, Administration.
R277-497. School Grading System.
R277-497-1. Definitions.

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

B. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

C. "Sufficient student growth" as determined by the Board, means a student growth percentile of 40 or above.

R277-497-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-1113 which directs the Board to adopt rules to implement a school grading system, 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 consistent definitions, standards and procedures for LEAs to report school data through a school grading system.

R277-497-3. Board Responsibilities.

A. Beginning in the 2012-2013 school year, the Board shall implement a school grading system (A,B,C,D,F). The school grading system report provided by the Board shall include the following indicators:

(1) student proficiency on the Board-approved grade/subject level assessments in language arts, math and science;

(2) student growth as measured by student growth percentiles;

(3) sufficient student growth; and

(4) for high schools:

(a) graduation rates; and

(b) beginning in the 2013-14 school year, ACT scores.

B. School letter grades shall be determined as follows:

(1) 80 - 100 percent A;

(2) 70 - 79 percent B;

(3) 60 - 69 percent C;

(4) 50 - 59 percent D; and

(5) below 50 percent F.

C. Beginning with the 2012-2013 school year data, the Board shall:

(1) implement a school grading system that makes data and reports available to parents, educators and the public. The report shall include the elements described in R277-497-3A.

(2) School data and reports shall be available to parents, educators and the public through a public website that facilitates the comparison of public schools based on the school grading system and demographics.

D. The Board-implemented school grading system shall include test scores for students with disabilities consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3).

E. For the 2013-2014 school year only, the Board shall adjust school grades to compensate for the new computer adaptive assessment results by adjusting the percentage of total points required for each letter grade so that the distribution of percentage of schools receiving each letter grade will be similar to the distribution of grades for the 2012-2013 school year. The percentages are as follows:

(1) Elementary/middle schools:

(a) 64 - 100 percent A;

(b) 51 - 63 percent B;

(c) 39 - 50 percent C;

(d) 30 - 38 percent D; and

(e) 29 percent and below F.

(2) High schools:

(a) 64 - 100 percent A;

(b) 51 - 63 percent B;

(c) 43 - 50 percent C;

(d) 40 - 42 percent D; and

(e) 39 percent and below F.

F. Beginning with the 2013-2014 school year, students who do not participate in required testing under Section 53A-1-603 due to parent opt out provisions of Section 53A-15-1403(9), shall not be counted in determining the participation rate for purposes of school grades.

G. The Board and LEAs shall take necessary actions within their authority to satisfy Section 53A-15-1403(9)(b).

R277-497-4. LEA Responsibilities.

A. LEAs shall provide accurate and timely data as required under R277-484 to allow for the development of the school reports.

B. LEAs shall use the school reports as a communication tool to inform parents and the community about school performance.

C. LEAs shall ensure that the school reports are available for all parents.

R277-497-5. School Responsibilities.

A. Schools shall provide data for the school reports as provided in R277-484.

B. Schools shall cooperate with the Board and LEAs to ensure that the school reports are available for all parents.

KEY: school reports, grading system

February 9, 2015	**Art X, Sec 3**
Notice of Continuation November 8, 2013	**53A-1-1113**
	53A-1-401(3)

R277. Education, Administration.
R277-504. Early Childhood, Elementary, Secondary, Special Education (K-12), and Preschool Special Education (Birth-Age 5) Licensure.
R277-504-1. Definitions.

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

B. "Council for Exceptional Children" is an international professional organization dedicated to improving the educational success of both individuals with disabilities and individuals with gifts and talents. CEC advocates for appropriate governmental policies, sets professional standards, provides professional development, advocates for individuals with exceptionalities, and helps professionals obtain conditions and resources necessary for effective professional practice.

C. "Early Childhood license area of concentration" means an Early Childhood Education teaching license required for teaching kindergarten and permitting assignment in kindergarten through grade three. It is recommended for those teaching in formal public school programs below kindergarten level.

D. "Early intervention credential" is the highest qualified personnel standard established by the Department of Health that persons shall meet in able to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings. In order to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings, an individual shall have an Early Intervention Credential or a Preschool Special Education (Birth- Age 5) license.

E. "(1-8) license area of concentration" means an Elementary teaching license required for teaching grades one through eight.

F. "Elementary (K-6) license area of concentration" means an Elementary teaching license required for teaching grades kindergarten through six.

G. "Endorsement" means a specialty field or area listed on the teaching license which indicates the specific qualification of the holder.

H. "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State-approved or State-recognized certification, license, registration, or other comparable requirement that applies to that profession or discipline.

I. "IEP" means a written statement of an individualized education program by an IEP team and developed, reviewed, and revised in accordance with Utah State Board of Education Special Education Rules and the Part B of the IDEA.

J. "Internship" means the placement of a teacher education student in an advanced stage of preparation, as a culminating experience, in employment in a school setting for a period of up to one school year during which the intern shall receive salary proportionate to the service rendered as determined by the LEA. An intern is supervised primarily by the school system but with a continuing relationship with college personnel and following a planned program designed to produce a demonstrably competent professional.

K. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to applicants who have also met all ancillary requirements established by law or rule.

L. "Level 2 license" means a Utah professional educator license issued by the Board after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

M. "Preschool Special Education (Birth-Age 5) license area of concentration" means a teaching license required for teaching preschool students with disabilities.

N. "Secondary license area of concentration" means a Secondary teaching license required for teaching grades six through twelve. Secondary license areas carry endorsements for the areas in which the holder is qualified to provide instruction.

O. "Special Education license area of concentration (K-12)" means Special Education teaching license required for teaching students with disabilities in kindergarten through grade twelve. Special Education areas of concentration carry endorsements in at least one of the following areas:

(1) Mild/Moderate Endorsement which indicates that the holder's preparation focused on teaching students with mild/moderate learning and behavior problems;

(2) Severe Endorsement which indicates that the holder's preparation focused on teaching students with severe learning and behavior problems;

(3) Deaf and Hard of Hearing Endorsement which indicates that the holder's preparation focused on teaching students who are deaf or other hearing impaired; and

(4) Blind and Visually Impaired Endorsement which indicates that the holder's preparation focused on teaching students who are blind or other visually impaired.

P. "Student teaching" means the placement of a teacher education student in an advanced stage of preparation for a period of guided teaching in a school setting during which the student assumes increasing responsibility for directing the learning of a group or groups of students over a period of time.

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

R277-504-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the State Board of Education and by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the licensing of educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) specify the requirements for Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Special Education (K-12), and Preschool Special Education (Birth-Age 5) licensing; and

(2) specify the standards which the Board expects a teacher preparation institution to meet in specific areas for the institution to receive Board approval of the program.

R277-504-3. General Standards for Approval of Programs for the Preparation of Teachers.

A. The Board may approve the educator preparation program of an institution if the institution:

(1) prepares candidates to meet the Utah Effective Teaching Standards in R277-530;

(2) prepares candidates to teach the Utah Core Standards as established by the Board;

(3) requires candidates to maintain a cumulative university GPA of 3.0 and receive a C or better in all education related courses and major required content courses:

(a) This requirement applies to candidates admitted to the program after January 1, 2015.

(b) A candidate admitted to the program with a GPA below 3.0 under the 10 percent waiver provided in R277-502-

3D shall maintain an overall GPA of 3.0 for all coursework completed after the candidate's admission to the program;

(4) requires the study of:

(a) content and content-specific pedagogy appropriate for the area of licensure;

(b) knowledge and skills designed to meet the needs of students with disabilities in the regular classroom. Knowledge and skills shall include the following domains:

(i) knowledge of disabilities under IDEA;

(ii) knowledge of the role of non-special-education teachers in the education of students with disabilities;

(iii) skills in implementing and assessing the results of interventions intended to assist in the identification of students with disabilities.

(iv) skills in assessing the educational needs and progress of students with disabilities in the regular education classroom; and

(v) skills in the implementation of an educational program with accommodations and modifications established by an IEP for students with disabilities in the regular classroom; and

(c) knowledge and skills designed to meet the needs of diverse student populations in the regular classroom. These skills for diverse student populations shall include the skills to:

(i) allow teachers to create an environment using a teaching model that is sensitive to multiple experiences and diversity;

(ii) design, adapt, and deliver instruction to address each student's diverse learning strengths and needs; and

(iii) incorporate tools of language development into planning and instruction for English language learners and support development of English proficiency; and

(5) requires a student teaching culminating experience that:

(a) requires a minimum of 400 clock hours with at least 200 clock hours in a single placement;

(b) requires that student teachers meet the same contract hours as licensed teachers in the same LEA;

(c) requires that the student teacher not be employed in any capacity by the LEA where he is placed except as provided in R277-504-7B;

(d) includes placement in all content or licensure areas in which the candidate shall be licensed unless:

(i) no viable student teaching placement in one or more of the candidate's endorsement areas is available; or

(ii) the candidate is seeking a license in Elementary (1-8) and is completing an elementary student teaching placement, but has also completed the USOE course requirements for an endorsement;

(e) includes intermittent supervision and evaluation by institution personnel;

(f) includes direct supervision of the candidate by a classroom teacher that:

(i) has been jointly selected by the institution student teaching placement officer and the LEA-designated authority over student teaching placement;

(ii) has been deemed effective by an evaluation system meeting the standards of R277-531 or the LEA's equivalent; and

(iii) has received training from the institution on the role and responsibilities of a classroom mentor teacher for student teachers, including the standards of R277-515;

(g) include meaningful self-reflection with review and feedback from both the classroom mentor teacher and institution personnel; or

(6) Requires an internship culminating experience that:

(a) consists of full-time employment as an educator for one school year with a minimum of 1260 clock hours at a single school site;

(b) requires that interns meet the same contract teaching hours as licensed teachers in the same LEA;

(c) includes placement in the major content or licensure area in which the candidate shall be licensed;

(d) where possible, includes placement in all content or licensure areas in which the candidate shall be licensed unless:

(i) no viable internship in one or more of the candidate's non-major endorsement areas could be found; or

(ii) the candidate is seeking licensure in Elementary (1-8) and is completing an elementary internship, but has also completed the USOE course requirements for an endorsement;

(e) includes intermittent supervision and evaluation by institution personnel;

(f) includes an LEA assigned mentor that:

(i) has been jointly selected by the institution internship placement officer and the LEA-designated authority over internship placement;

(ii) has been deemed effective by an evaluation system meeting the standards of R277-531 or the LEA's equivalent; and

(iii) provides direct support and supervision to the intern during the regular school day in addition to the standard LEA supports of new teachers.

(g) includes meaningful self-reflection with review and feedback from both the assigned mentor and institution personnel;

B. The Board may accept the following for an individual candidate as completely or partially satisfying the student teaching/internship requirement:

(1) one year of full-time contract teaching experience in a teaching position as defined in R277-503-4(C)(4) in a public or accredited private school in the candidate's proposed licensure content areas may completely satisfy the requirement;

(2) teaching in a preschool or headstart program may be accepted for up to one-half of the student teaching requirement;

(3) teaching experience in business or industry may be accepted for up to one-half of the student teaching requirement; and

(4) other experience accepted by the Board and designated as totally or partially fulfilling the requirement.

R277-504-4. Early Childhood Education (K-3) and Elementary (K-6) License Areas.

A. The Board may approve the Early Childhood Education (K-3), Elementary (K-6), Elementary (1-8) teacher preparation program of an institution if the program:

(1) is aligned with the 2010 National Association for the Education of Young Children Standards for Initial and Advanced Early Childhood Professional Preparation Programs or the 2007 Association for Childhood Education International Standards for Elementary Level Teacher Preparation, as appropriate; and

(2) requires study and experiences which provide appropriate content knowledge needed to teach:

(a) literacy including listening, speaking, writing, and reading;

(b) mathematics;

(c) physical and life science;

(d) health and physical education;

(e) social studies; and

(f) fine arts; and

(3) includes coursework specifically designed to prepare teachers:

(a) in the science of reading instruction including phonemic awareness, phonics, fluency, vocabulary and comprehension;

(b) in the science of mathematics instruction including quantitative reasoning, problem solving, representation, and numeracy;

(c) with the technical skills to utilize common education technology;

(d) to integrate technology to support and meaningfully

supplement the learning of students;

(e) to teach effectively in traditional, online-only, and blended classrooms;

(f) to design, administer, and review educational assessments in a meaningful and ethical manner;

(g) in early childhood development and learning, if it is an Early Childhood Education (K-3), or Elementary (K-6); and

(h) in a specific content area resulting in an endorsement added to the license area, if it is an Elementary (1-8) program.

B. The standards shall be applied to the specific age group or grade level for which the program of preparation is designed.

(1) An Early Childhood Education (K-3) program shall focus primarily on early childhood development and learning.

(2) An Elementary (K-6) shall include both early childhood development and learning and elementary content and pedagogy.

(3) An Elementary (1-8) shall focus primarily on elementary content and pedagogy.

C. A teacher holding an Elementary (1-8) license area may earn an Early Childhood (K-3) license area by completing specific coursework requirements established by USOE.

D. An Elementary (1-8) license permits the teacher to teach in any academic area in self-contained classes in grades 1-8.

E. An Elementary (1-8) license permits the teacher to teach specific content courses at the 7th or 8th grade level only if the teacher's license includes the appropriate endorsement.

R277-504-5. Secondary (6-12) License Area.

A. A Secondary (6-12) license area with endorsement(s) is valid in grades six through twelve.

B. A Secondary (6-12) license area requires a major or major equivalent in a content area, but the teacher cannot teach in an elementary self-contained class.

C. The Board may approve the secondary educator preparation program of an institution if the program:

(1) is an undergraduate level program and requires candidates to have completed:

(a) an approved content area or teaching major consistent with subjects taught in Utah secondary schools; and

(b) content coursework reasonably equivalent to that required for individuals completing a non-teaching degree in the subject; or

(2) Is a graduate level program and requires candidates to have completed:

(a) a bachelor's degree or higher from an accredited university; and

(b) coursework equivalent to the minimum requirements for an endorsement as established by USOE, including the appropriate content knowledge assessment; and

(3) includes coursework specifically designed to prepare candidates:

(a) with the technical skills necessary to utilize common education technology;

(b) to integrate technology to support and meaningfully supplement the learning of students;

(c) to teach effectively in traditional, online-only, and blended classrooms;

(d) to design, administer, and review educational assessments in a meaningful and ethical manner; and

(e) to include literacy and quantitative learning objectives in content specific classes in alignment with the Utah Core Standards.

D. After completing a Board-approved Secondary (6-12) educator preparation program, the license area shall be endorsed for all subjects in which the candidate has met the course requirements for the endorsement as established by USOE.

(1) A content area or teaching major requires not fewer than 30 semester hours of credit in one content area.

(2) An endorsement requires not fewer than 16 semester hours of credit in one content area.

R277-504-6. Special Education (K-12+) and Preschool Special Education (Birth-Age 5).

A. The Board may approve an institution's special education teacher preparation program if the program is aligned with the 2011 Council for Exceptional Children Special Education Standards for Professional Practice and is focused in one or more of the following special education areas:

(1) Mild/Moderate Disabilities

(2) Severe Disabilities

(3) Deaf and Hard of Hearing;

(4) Blind and Visually Impaired; or

(5) Preschool Special Education (Birth-Age 5).

B. The Board may issue teachers who hold Special Education (K-12+) license areas additional endorsements if all endorsement requirements are met. Teachers who hold only a Special Education (K-12+) license area may only be assigned as a teacher of record of students with disabilities.

C. The Board may approve a special education preparation program of an institution if the program includes coursework specifically designed to train candidates to:

(1) understand the legal and ethical issues surrounding special education;

(2) work with other school personnel to implement and evaluate academic and behavior interventions for the purpose of identification of students with disabilities;

(3) provide the necessary specialized instruction, as per IEPs, to students with disabilities, including

(a) core content and content specific pedagogy;

(b) knowledge of the role of regular education teachers, related service providers, and paraeducators in the education of students with disabilities;

(c) skills in implementing and assessing the results of research and evidence-based interventions for students with disabilities;

(d) skills in assessing and addressing the educational needs and progress of students with disabilities; and

(e) skills in the implementation of an specialized educational program with accommodations and modifications, as needed, that supplements the Utah Core Standards, as per an IEP, for students with disabilities.

D. The Board shall issue Blind and Visually Impaired/Deaf and Hard of Hearing Endorsements required under this rule to meet the highest requirements in the State applicable to a specific profession or discipline required by the Individuals with Disabilities Education Act of 2004 (IDEA), Pub. L. No. 108-446, hereby incorporated by reference.

E. Preschool Special Education (Birth-Age 5) license holders who teach children who are hearing impaired (Birth-Age 5) or vision impaired (Birth-Age 5) or both, in self-contained, categorical classrooms shall hold an endorsement for Deaf and Hard of Hearing (Birth-Age 5) or Blind and Visually Impaired (Birth-Age 5) or both.

R277-504-7. Miscellaneous.

A. Beginning with the 2015-2016 school year, an LEA that employs intern teachers shall have a policy that includes the following:

(1) the maximum number of interns that may be supported by each LEA assigned mentor, and

(2) a specific resource commitment to significant and quality LEA support services to interns.

B. The Middle Level license (5-9) continues to be valid; however, the Board has not issued a middle level license (5-9) since April 1, 1989 and it is no longer required of teachers or issued to teachers assigned to the middle school.

C. Consistent with LEA and university policy and R277-

508-5E, a student teacher may work as a paid substitute in the classroom of the student teacher's classroom mentor teacher for no more than five days and no more than three consecutive days per university semester.

D. On the days a student teacher is working as a substitute teacher, the candidate's legal status as a substitute teacher/district employee will take precedence over the legal status as a teacher candidate.

E. A student teaching placement may be changed to an internship placement upon agreement of the student teacher, the university program, and the LEA.

KEY: teacher licensing, professional education
February 9, 2015 Art X Sec 3
Notice of Continuation September 2, 2014 53A-1-402(1)(a)
53A-1-401(3)

R305. Environmental Quality, Administration.
R305-5. Health Reform -- Health Insurance Coverage in DEQ State Contracts -- Implementation.
R305-5-1. Purpose.

The purpose of this rule is to comply with the provisions of UCA Section 19-1-206.

R305-5-2. Authority.

This rule is established under UCA Section19-1-206(6) which authorizes the Department of Environmental Quality to make rules governing health insurance in certain design and construction contracts.

R305-5-3. Definitions.

(1) "Employee" means an "employee," "worker," or "operative" as defined in UCA Section 34A-2-104 who works in the State at least 30 hours per calendar week, and meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(2) "Health benefit plan" has the same meaning as provided in UCA Section 31A-1-301.

(3) "Qualified health insurance coverage" means at the time the contract is entered into or renewed:

(a) a health benefit plan and employer contribution level with a combined actuarial value at least actuarially equivalent to the combined actuarial value of the benchmark plan (posted at http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf) determined by the Children's Health Insurance Program under UCA Section 26-40-106(2)(a), and a contribution level of 50% of the premium for the employee and the dependents of the employee who reside or work in the state, in which:

(i) the employer pays at least 50% of the premium for the employee and the dependents of the employee who reside or work in the state; and

(ii) for purposes of calculating actuarial equivalency under this Subsection (3)(a):

(A) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket maximum based on income levels the deductible is $750 per individual and $2,250 per family; and the out-of-pocket maximum is $3,000 per individual and $9,000 per family;

(B) dental coverage is not required; and

(C) other than UCA Section 26-40-106(2)(a), the provisions of UCA Section 26-40-106 do not apply; or

(b)(i) is a federally qualified high deductible health plan that, at a minimum, has a deductible that is either the lowest deductible permitted for a federally qualified high deductible health plan; or a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan;

(ii) an out-of-pocket maximum that does not exceed three times the amount of the annual deductible; and

(iii) under which the employer pays 75% of the premium for the employee and the dependents of the employee who work or reside in the state.

(4) "Subcontractor" has the same meaning provided for in UCA Section 63A-5-208.

R305-5-4. Applicability of Rule.

(1)(a) Except as provided in Subsection R305-5-4(2) below, this Rule R305-5 applies to a design or construction contract entered into by or delegated to the department or a division or board of the department on or after July 1, 2009, and to a prime contractor or subcontractor in accordance with Subsection (1)(b)

(b)(i) A prime contractor is subject to this section if the prime contract is in the amount of $1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of $750,000 or greater.

(2) This Rule R305-5 does not apply to contracts entered into by the department or a division or board of the department if:

(a) the application of this Rule R305-5 jeopardizes the receipt of federal funds;

(b) the contract or agreement is between the department or a division or board of the department and another agency of the state, the federal government, another state, an interstate agency, a political subdivision of this state, or a political subdivision of another state;

(c) the executive director determines that applying the requirements of this section to a particular contract interferes with the effective response to an immediate health and safety threat from the environment; or

(d) the contract is a sole source contract or an emergency procurement.

(3) This Rule R305-5 does not apply to a change order as defined in UCA Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by R305-5-4(1).

R305-5-5. Compliance Requirement.

A contractor or subcontractor that is subject to the requirements of R305-5 shall have and will maintain an offer of qualified health insurance coverage for the contractor's or subcontractor's employees and dependents during the duration of the contract.

R305-5-6. Demonstration of Compliance.

(1) A contractor or subcontractor subject to this rule R305-5 shall demonstrate compliance with R305-5-5 by submitting to the department a written certification of compliance initially no later than the time of the execution of the contract by the contractor and thereafter on an annual basis unless the department requests a biannual certification.

(2) The written certification of compliance shall include information demonstrating that qualified health insurance coverage as defined in R305-5-3(3) is being offered. The actuarially equivalent determination in R305-5-3(3) is met by the contractor or subcontractor if the contractor or subcontractor provides the department with a written statement of actuarial equivalency from either the Utah Insurance Department, an actuary selected by the contractor or subcontractor or their insurer, or an underwriter who is responsible for developing the employer group's premium rates.

R305-5-7. Effect of Failure to Comply.

The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by R305-5-5 may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under UCA Section 63G-6-801 or any other provision in UCA 63G, Chapter 6, Part 8, Legal and Contractual Remedies, and may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

R305-5-8. Penalties, Sanctions, and Liabilities.

(1) Pursuant to UCA Section 19-1-206(4)(b), a person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection R305-5-5 and R305-5-6 is guilty of an infraction.

(2) Pursuant to UCA Section 19-1-303 and UCA Section

19-1-206(6), a contractor or subcontractor who fails to comply with R305-5-5 and R305-5-6 is subject to an administrative civil penalty of up to $5000 per day, except that monetary penalties may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(3) If a contractor or subcontractor intentionally violates the provisions of R305-5-5, the contractor or subcontractor is subject to:

(a) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(b) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract; and

(c) an action for debarment of the contractor or subcontractor in accordance with UCA Section 63G-6-804 upon the third or subsequent violation.

(4)(a) In addition to the penalties imposed under R305-5-8 and the referenced statutes and rules, a contractor or subcontractor who intentionally violates the provisions of UCA Section 19-1-206 and R305-5, pursuant to UCA Section 19-1-206(7), shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(b) An employer has an affirmative defense to a cause of action under Subsection 4(a) if:

(i) the employer relied in good faith on a written statement of actuarial equivalency provided by an actuary, or underwriter who is responsible for developing the employer group's premium rates; or

(ii) the department determines that compliance is not required under the provisions of R305-5-4(2) or (3).

KEY: contract requirements, health insurance
June 23, 2010 19-1-206
Notice of Continuation February 9, 2015

R307. Environmental Quality, Air Quality.
R307-103. Administrative Procedures.
R307-103-1. Administrative Procedures.

Administrative proceedings under Utah Air Quality Act are governed by Rule R305-7.

KEY: air pollution, administrative procedures, administrative proceedings, hearings
August 29, 2011 63G-4
Notice of Continuation February 5, 2015

R307. Environmental Quality, Air Quality.
R307-165. Emission Testing.
R307-165-1. Purpose.

R307-165 establishes the frequency of emission testing requirements for all areas in the state.

R307-165-2. Testing Every 5 Years.

Emission testing is required at least once every five years of all sources with established emission limitations specified in approval orders issued under R307-401 or in section IX, Part H of the Utah state implementation plan. In addition, if the director has reason to believe that an applicable emission limitation is being exceeded, the director may require the owner or operator to perform such emission testing as is necessary to determine actual compliance status. Sources approved in accordance with R307-401 will be tested within six months of start-up. The Board may grant exceptions to the mandatory testing requirements of R307-165-2 that are consistent with the purposes of R307.

R307-165-3. Notification of DAQ.

At least 30 days prior to conducting any emission testing required under any part of R307, the owner or operator shall notify the director of the date, time and place of such testing and, if determined necessary by the director, the owner or operator shall attend a pretest conference.

R307-165-4. Test Conditions.

All tests shall be conducted while the source is operating at the maximum production or combustion rate at which such source will be operated. During the tests, the source shall burn fuels or combinations of fuels, use raw materials, and maintain process conditions representative of normal operations. In addition, the source shall operate under such other relevant conditions as the director shall specify.

R307-165-5. Rejection of Test Results.

The director may reject emissions test data if they are determined to be incomplete, inadequate, not representative of operating conditions specified for the test, or if the director was not provided an opportunity to have an observer present at the test.

KEY: air pollution, emission testing
September 2, 2005 19-2-104(1)
Notice of Continuation February 5, 2015

R307. Environmental Quality, Air Quality.
R307-201. Emission Standards: General Emission Standards.
R307-201-1. Purpose.

R307-201 establishes emission standards for all areas of the state except for sources listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-201-2. Applicability.

R307-201 applies statewide to any sources of emissions except for sources listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-201-3. Visible Emissions Standards.

(1) Visible emissions from installations constructed on or before April 25, 1971, except diesel engines, shall be of a shade or density no darker than 40% opacity, except as otherwise provided in these rules.

(2) Visible emissions from installations constructed after April 25, 1971, except diesel engines shall be of a shade or density no darker than 20% opacity, except as otherwise provided in these rules.

(3) Visible emissions for all incinerators, no matter when constructed, shall be of shade or density no darker than 20% opacity.

(4) No owner or operator of a gasoline powered engine or vehicle shall allow, cause or permit visible emissions.

(5) Emissions from diesel engines, except locomotives, manufactured after January 1, 1973, shall be of a shade or density no darker than 20% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding three minutes in any hour.

(6) Emissions from diesel engines manufactured before January 1, 1973, shall be of a shade or density no darker than 40% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding three minutes in any hour.

(7) Visible emissions exceeding the opacity standards for short time periods as the result of initial warm-up, soot blowing, cleaning of grates, building of boiler fires, cooling, etc., caused by start-up or shutdown of a facility, installation or operation, or unavoidable combustion irregularities which do not exceed three minutes in length (unavoidable combustion irregularities which exceed three minutes in length must be handled in accordance with R307-107), shall not be deemed in violation provided that the director finds that adequate control technology has been applied. The owner or operator shall minimize visible and non-visible emissions during start-up or shutdown of a facility, installation, or operation through the use of adequate control technology and proper procedures.

(8) Compliance Method. Emissions shall be brought into compliance with these requirements by reduction of the total weight of contaminants discharged per unit of time rather than by dilution of emissions with clean air.

(9) Opacity Observation. Opacity observations of emissions from stationary sources shall be conducted in accordance with EPA Method 9. Opacity observers of mobile sources and intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a 6-minute period shall not apply.

R307-201-4. Automobile Emission Control Devices.

Any person owning or operating any motor vehicle or motor vehicle engine registered or principally operated in the State of Utah on which is installed or incorporated a system or device for the control of crankcase emissions or exhaust emissions in compliance with the Federal motor vehicle rules, shall maintain the system or device in operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. No person shall remove or make inoperable the system or device or any part thereof, except for the purpose of installing another system or device, or part thereof, which is equally or more effective in reducing emissions from the vehicle to the atmosphere.

KEY: air pollution, PM10
September 2, 2005 19-2-101
Notice of Continuation February 5, 2015 19-2-104

R307. Environmental Quality, Air Quality.
R307-202. Emission Standards: General Burning.
R307-202-1. Applicability.

R307-202-4 through R307-202-8 applies to general burning within incorporated community under the authority of county or municipal fire authority.

R307-202-2. Definitions.

The following additional definitions apply only to R307-202.

"Attainment areas" means any area that meets the national primary and secondary ambient air quality standard (NAAQS) for the pollutant.

"County or municipal fire authority" means the public official so designated with the responsibility, authority, and training to protect people, property, and the environment from fire, within their respective area of jurisdiction.

"Federal Class I Area" means an area that consists of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. See Clean Air Act section 162(a).

"Fire hazard" means a hazardous condition involving combustible, flammable, or explosive material that represents a substantial threat to life or property if not immediately abated, as declared by the county or municipal fire authority.

"Native American spiritual advisor" means a person who leads, instructs, or facilitates a Native American religious ceremony or service; or provides religious counseling; is an enrolled member of a federally recognized Native American tribe; and is recognized as a spiritual advisor by a federally recognized Native American tribe. "Native American spiritual advisor" includes a sweat lodge leader, medicine person, traditional religious practitioner, or holy man or woman.

R307-202-3. Exclusions.

As provided in Section 19-2-114, the provisions of R307-202 are not applicable to:

(1) Except for areas zoned as residential, burning incident to horticultural or agricultural operations of:

(a) Prunings from trees, bushes, and plants; and

(b) Dead or diseased trees, bushes, and plants, including stubble.

(2) Burning of weed growth along ditch banks for clearing these ditches for irrigation purposes;

(3) Controlled heating of orchards or other crops during the frost season to lessen the chances of their being frozen so long as the emissions from this heating do not cause or contribute to an exceedance of any national ambient air quality standards and is consistent with the federally approved State Implementation Plan; and

(4) The controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the National Weather Service clearing index is above 500. See also Section 11-7-1(2)(a).

(5) Ceremonial burning is excluded from R307-202-4(2) when conducted by a Native American spiritual advisor.

R307-202-4. Prohibitions.

(1) No open burning shall be done at sites used for disposal of community trash, garbage and other wastes.

(2) No person shall burn under this rule when the director issues a public announcement under R307-302. The director will distribute such announcement to the local media notifying the public that a mandatory no-burn period is in effect for the area where the burning is to occur.

R307-202-5. General Requirements.

(1) Except as otherwise provided in this rule, no person shall set or use an open outdoor fire for the purpose of disposal or burning of petroleum wastes; demolition or construction debris; residential rubbish; garbage or vegetation; tires; tar; trees; wood waste; other combustible or flammable solid, liquid or gaseous waste; or for metal salvage or burning of motor vehicle bodies.

(2) The county or municipal fire authority shall approve burning based on the predicted meteorological conditions and whether the emissions would impact the health and welfare of the public or cause or contribute to an exceedance of any national ambient air quality standard.

(3) Nothing in this regulation shall be construed as relieving any person conducting open burning from meeting the requirements of any applicable federal, state or local requirements concerning disposal of any combustible materials.

(4) The county or municipal fire authority that approves any open burning permit will retain a copy of each permit issued for one year.

R307-202-6. Open Burning - Without Permit.

The following types of open burning do not require a permit when not prohibited by other local, state or federal laws and regulations, when it does not create a nuisance, as defined in Section 76-10-803, and does not impact the health and welfare of the public.

(1) Devices for the primary purpose of preparing food such as outdoor grills and fireplaces;

(2) Campfires and fires used solely for recreational purposes where such fires are under control of a responsible person and the combustible material is clean, dry wood or charcoal; and

(3) Indoor fireplaces and residential solid fuel burning devices except as provided in R307-302-2.

R307-202-7. Open Burning - With Permit.

(1) No person shall knowingly conduct open burning unless the open burning activities may be conducted without a permit pursuant to R307-202-6 or the person has a valid permit for burning on a specified date or period, issued by the county or municipal fire authority having jurisdiction in the area where the open burning will take place.

(2) A permit applicant shall provide information as requested by the county or municipal fire authority. No permit or authorization shall be deemed valid unless the issuing authority determines that the applicant has provided the required information.

(3) Persons seeking an open burning permit shall submit to the county or municipal fire authority an application on a form provided by the director for each separate burn.

(4) A permit shall be valid only on the lands specified on the permit.

(5) No material shall be burned unless it is clearly described and quantified as material to be burned on a valid permit.

(6) No burning shall be conducted contrary to the conditions specified on the permit.

(7) Any permit issued by a county or municipal fire authority shall be subject to the local, state, and federal rules and regulations.

(8) Open burning is authorized by the issuance of a permit, as stipulated within this rule, for specification in R307-202-7(10). These permits can only be issued when not prohibited by other local, state, or federal laws and regulations and when a nuisance as defined in Section 76-10-803 is not created and does not impact the health and welfare of the public.

(9) Individual permits, as stipulated within this rule, for the types of burning listed in R307-202-7(10) may be issued by a county or municipal fire authority when the clearing index is

500 or greater. When the clearing index is below 500, all permits issued for that day will be null and void until further notice from the county or municipal fire authority. Additionally, anyone burning on the day when the clearing index is below 500 or is found to be violating any part of this rule shall be liable for a fine in accordance with R307-130.

(10) Types of open burning for which a permit may be granted are:

(a) Except in nonattainment and maintenance areas, open burning of tree cuttings and slash in forest areas where the cuttings accrue from pulping, lumbering, and similar operations, but excluding waste from sawmill operations such as sawdust and scrap lumber.

(b) Open burning of trees and brush within railroad rights-of-way provided that dirt is removed from stumps before burning, and that tires, oil more dense than #2 fuel oil, tar, or other materials which can cause severe air pollution are not present in the materials to be burned, and are not used to start fires or to keep fires burning.

(c) Open burning of a fire hazard that a county or municipal fire authority determines cannot be abated by any other viable option.

(d) Open burning of highly explosive materials when a county or municipal fire authority, law enforcement agency or governmental agency having jurisdiction determines that onsite burning or detonation in place is the only reasonably available method for safely disposing of the material.

(e) Open burning for the disposal of contraband in the possession of public law enforcement personnel provided they demonstrate to the county or municipal fire authority that open burning is the only reasonably available method for safely disposing of the material.

(f) Open burning of clippings, bushes, plants and prunings from trees incident to property clean-up activities, including residential cleanup, provided that the following conditions have been met:

(i) Within only the counties of Washington, Kane, San Juan, Iron, Garfield, Beaver, Piute, Wayne, Grand and Emery, the county or municipal fire authority may issue a permit between March 1 and May 30 when the clearing index is 500 or greater. The county or municipal fire authority may issue a permit between September 15 to November 15 for such burning to occur when the state forester has approved the burning window under Section 65A-8-211 and the clearing index is 500 or greater.

(ii) In all other areas of the state, the county or municipal fire authority may issue a permit between March 30 and May 30 for such burning to occur when the clearing index is 500 or greater. The county or municipal fire authority may issue a permit between September 15 and October 30 for such burning to occur when the state forester has approved the burning window under Section 65A-8-211 and the clearing index is 500 or greater.

(iii) Such burnings occur in accordance with state and federal requirements;

(iv) Materials to be burned are thoroughly dry; and

(v) No trash, rubbish, tires, or oil are included in the material to be burned, used to start fires, or used to keep fires burning.

(g) Except for nonattainment and maintenance areas, the director may grant a permit for types of open burning not specified in R307-202-7(3) on written application if the director finds that the burning is consistent with the federally approved State Implementation Plan and does not cause or contribute to an exceedance of any national ambient air quality standards.

(i) This permit may be granted once the director has reviewed the written application with the requirements and criteria found within this rule at R307-202-7.

(ii) Open Burning Permit Criteria.

(A) The director or the county or municipal fire authority shall consider the following factors in determining whether, and upon what conditions, to issue an open burning permit:

(I) The location and proximity of the proposed burning to any building, other structures, the public, and federal Class I areas that might be impacted by the smoke and emissions from the burn;

(II) Burning will only be conducted when the clearing index is 500 or above; and

(III) Whether there is any practical alternative method for the disposal of the material to be burned.

(B) Methods to minimize emissions and smoke impacts may include, but are not limited to:

(I) The use of clean auxiliary fuel;

(II) Drying the material prior to ignition; and

(III) Separation for alternative disposal of materials that produce higher levels of emissions and smoke during the combustion process.

(C) Open burning permits are not valid during periods when the clearing index is below 500 or publicly announced air pollution emergencies or alerts have been declared in the area of the proposed burn.

(D) For burns of piled material, all piles shall be reasonably dry and free of dirt.

(E) Open burns shall be supervised by a responsible person who shall notify the local fire department and have available, either on-site or by the local fire department, the means to suppress the burn if the fire does not comply with the terms and conditions of the permit.

(F) All open burning operations shall be subject to inspection by the director or county or municipal fire authority. The permittee shall maintain at the burn site the original or a copy of the permit that shall be made available without unreasonable delay to the inspector.

(G) If at any time the director or the county or municipal fire authority granting the permit determines that the permittee has not complied with any term or condition of the permit, the permit is subject to partial or complete suspension, revocation or imposition of additional conditions. All burning activity subject to the permit shall be terminated immediately upon notice of suspension or revocation. In addition to suspension or revocation of the permit, the director or county or municipal fire authority may take any other enforcement action authorized under state or local law.

R307-202-8. Special Conditions.

(1) Open burning for special purposes or under unusual or emergency circumstances may be approved by the director if it is consistent with the federally approved State Implementation Plan and does not cause or contribute to an exceedance of any national ambient air quality standards.

(a) This permit may be granted once the director has reviewed the written application with the requirements and criteria in R307-202-7.

KEY: air pollution, open burning, fire authority

October 6, 2014	**19-2-104**
Notice of Continuation February 5, 2015	**11-7-1(2)(a)**
	65A-8-211
	76-10-803

R307. Environmental Quality, Air Quality.
R307-203. Emission Standards: Sulfur Content of Fuels.
R307-203-1. Commercial and Industrial Sources.

(1) Any coal, oil, or mixture thereof, burned in any fuel burning or process installation not covered by New Source Performance Standards for sulfur emissions shall contain no more than 1.0 pound sulfur per million gross BTU heat input for any mixture of coal nor .85 pounds sulfur per million gross BTU heat input for any oil.

(a) In the case of fuel oil, it shall be sufficient to record the following specifications for each purchase of fuel oil from the vendor: weight percent sulfur, gross heating value (btu per unit volume), and density. These parameters shall be ascertained in accordance with the methods of the American Society for Testing and Materials.

(b) In the case of coal, it shall be necessary to obtain a representative grab sample for every 24 hours of operation and the sample shall be tested in accordance with the methods of the American Society for Testing and Materials.

(c) All sources located in the SO_2 nonattainment area covered by Section IX, Part H of the Utah State Implementation Plan which are required to comply with specific fuel (oil or coal) sulfur content limitations must demonstrate compliance with their limitations in accordance with (a) and (b) above.

(d) Records of fuel sulfur content shall be kept for all periods when the plant is in operation and shall be made available to the director upon request, and shall include a period of two years ending with the date of the request.

(e) If the owner/operator of the source can demonstrate to the director that the inherent variability of the coal they are receiving from the vendor is low enough such that the testing requirements outlined above may be deemed excessive, then an alternative testing plan may be approved for use with the same source of coal.

(f) Any person may apply to the director for approval of an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule. The application must include a demonstration that the proposed alternative produces an equal or greater air quality benefit than that required by R307-203, or that the alternative test method is equivalent to that required by R307-203. The director shall obtain concurrence from EPA when approving an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule.

(2) Any person engaged in operating fuel burning equipment using coal or fuel oil, which is not covered by New Source Performance Standards for sulfur emissions, may apply for an exemption from the sulfur content restrictions of (1) above. The applicant shall furnish evidence, that the fuel burning equipment is operating in such a manner as to prevent the emission of sulfur dioxide in amounts greater than would be produced under the limitations of (1) above. Control apparatus to continuously prevent the emission of sulfur greater than provided by (1) above must be specified in the application for an exemption.

(3) In case an exemption is granted, the operator shall install continuous emission monitoring devices approved by the director. The operator shall provide the director with a monthly summary of the data from such monitors. This summary shall be such as to show the degree of compliance with (1) above. It shall be submitted no later than the calendar month succeeding its recording. When exemptions from (1) above are granted, the source's application for such exemption must specify the test method for determining sulfur emissions. The test method must agree with the NSPS test method for the same industrial category.

(4) Methods for determining sulfur content of coal and fuel oil shall be those methods of the American Society for Testing and Materials.

(a) For determining sulfur content in coal, ASTM Methods D3177-75 or D4239-85 are to be used.

(b) For determining sulfur content in oil, ASTM Methods D2880-71 or D4294-89 are to be used.

(c) For determining the gross calorific (or BTU) content of coal, ASTM Methods D2015-77 or D3286-85 are to be used.

R307-203-2. Sulfur and Ash Content of Coal for Residential Use.

(1) After July 1, 1987, no person shall sell, distribute, use or make available for use any coal or coal containing fuel for direct space heating in residential solid fuel burning devices and fireplaces which exceeds the following limitations as measured by the American Society for Testing Materials Methods:

(a) 1.0 pound sulfur per million BTU's, and

(b) 12% volatile ash content.

(2) Any person selling coal or coal containing fuel used for direct residential space heating within the State of Utah shall provide written documentation to the coal consumer of the sulfur and volatile ash content of the coal being purchased.

R307-203-3. Emissions Standards.

Other provisions of R307 may require more stringent controls than listed herein, in which case those requirements must be met.

KEY: air pollution, fuel composition*, fuel oil*
September 15, 1998 19-2-104
Notice of Continuation February 5, 2015

R307. Environmental Quality, Air Quality.
R307-204. Emission Standards: Smoke Management.
R307-204-1. Purpose and Goals.

(1) The purpose of R307-204 is to establish by rule procedures that mitigate the impact on public health and visibility of prescribed fire and wildland fire.

R307-204-2. Applicability.

(1) R307-204 applies to all persons using prescribed fire or wildland fire on land they own or manage.

(2) R307-204 does not apply to agricultural activities specified in 19-2-114 and to those regulated under R307-202, or to activities otherwise permitted under R307.

R307-204-3. Definitions.

The following additional definitions apply only to R307-204.

"Annual Emissions Goal" means the annual establishment of a planned quantitative value of emissions reductions from prescribed fire.

"Best Management Practices" means smoke management and dispersion techniques used during a prescribed fire or a wildland fire use event that affect the direction, duration, height or density of smoke.

"Burn Plan" means the plan required for each fire application ignited by managers. It must be prepared by qualified personnel and approved by the appropriate agency administrator prior to implementation. Each plan follows specific agency direction and must include critical elements described in agency manuals.

"Burn Window" means the period of time during which the prescribed fire is scheduled for ignition.

"Emission Reduction Techniques (ERT)" mean techniques for controlling emissions from prescribed fires to minimize the amount of emission output per unit or acre burned.

"Federal Class I Area" means any Federal land that is federally classified or reclassified Class I.

"Fire Prescription" means the measurable criteria that define conditions under which a prescribed fire may be ignited, guide selection of appropriate management responses, and indicates other required actions. Prescription criteria may include safety, economic, public health, environmental, geographic, administrative, social, or legal considerations.

"Land Manager" means any federal, state, local or private entity that owns, administers, directs, oversees or controls the use of public or private land, including the application of fire to the land.

"Non-burning Alternatives to Fire" means non-burning techniques that are used to achieve a particular land management objective, including but not limited to reduction of fuel loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restructuring. These alternatives are designed to replace the use of fire for at least the next five years.

"Particulate Matter" means the liquid or solid particles such as dust, smoke, mist, or smog found in air emissions.

"Pile" means natural materials or debris resulting from some type of fuels management practice that have been relocated either by hand or machinery into a concentrated area.

"Pile Burn" means burning of individual piles.

"Prescribed Fire or Prescribed Burn" means any fire ignited by management actions to meet specific objectives, such as achieving resource benefits.

"Smoke Sensitive Receptors" means population centers such as towns and villages, campgrounds and trails, hospitals, nursing homes, schools, roads, airports, Class I areas, nonattainment and maintenance areas, areas whose air quality monitoring data indicate pollutant levels that are close to health standards, and any other areas where smoke and air pollutants can adversely affect public health, safety and welfare.

"Wildland" means an area in which development is essentially non-existent, except for pipelines, power lines, roads, railroads, or other transportation or conveyance facilities. Structures, if any, are widely scattered.

"Wildland Fire" means any non-structure fire, other than prescribed fire, that occurs in the wildland.

"Wildland Fire Use Event" means naturally ignited wildland fire that is managed to accomplish specific prestated resource management objectives in predefined geographic areas.

"Wildland Fire Implementation Plan(WFIP)" means the plan required for each fire that is allowed to burn.

"WFIP Stage I" means the initial wildland fire strategy planning document. It is developed for fires less than 20 acres, with a low potential of spread and negative impacts. It must be completed within 8-hrs. of start.

"WFIP Stage II" means a more detailed wildland fire strategy planning document. It is developed for fires greater than 20 acres that are more active fires with a greater potential for geographic extent. It must be completed within 24-hrs. of start.

R307-204-4. General Requirements.

(1) Management of On-Going Fires. If, after consultation with the land manager, the director determines that a prescribed fire, wildland fire use event, wildland fire, or any smoke transported from other locations, is degrading air quality to levels that could violate the National Ambient Air Quality Standards or burn plan conditions, the land manager shall promptly stop igniting additional prescribed fires.

(2) Emissions Calculations. In calculating emissions information required under R307-204, each land manager shall use emission factors approved by the director.

(3) Non-burning Alternatives to Fire. Beginning in 2004 and annually thereafter, each land manager shall submit to the director by March 15 a list of areas treated using non-burning alternatives to fire during the previous calendar year, including the number of acres, the specific types of alternatives used, and the location of these areas.

(4) Annual Emissions Goal. The director shall provide an opportunity for an annual meeting with land managers for the purpose of evaluation and adoption of the annual emission goal. The annual emission goal shall be developed in cooperation with states, federal land management agencies and private entities, to control prescribed fire emissions increases to the maximum feasible extent.

(5) Long-term Fire Projections. Each land manager shall provide to the director by March 15 annually long-term projections of future prescribed fire activity for annual assessment of visibility impairment.

R307-204-5. Burn Schedule.

(1) Any land manager planning prescribed fire burning more than 50 acres per year shall submit the burn schedule to the director on forms provided by the Division of Air Quality, and shall include the following information for all prescribed fires including those smaller than 20 acres:

(a) Project number and project name;

(b) Air Quality Basin, UTM coordinate for the central point of the prescribed fire, project elevation, and county;

(c) Total project acres, description of major fuels, type of burn, ignition method, and planned use of emission reduction techniques to support establishment of the annual emissions goal;

(d) Earliest burn date and burn duration.

(2) Each land manager shall submit each year's burn schedule no later than March 15 of that year.

(3) Any land manager who makes changes to the burn schedule shall submit an amendment to the burn schedule within 10 days after the change.

R307-204-6. Small Prescribed Fires (de minimis).

(1) A prescribed fire that covers less than 20 acres per burn shall be ignited only when the clearing index is 500 or greater.

(2) A prescribed fire that covers less than 20 acres per day may be ignited when the National Weather Service Clearing Index is between 500 and 400 with approval of the director.

(a) The prescribed fire should be recorded as a de minimis prescribed fire on the Utah Annual Burn Schedule.

(b) The Land Manager is required to notify the director by fax, e-mail, or phone prior to ignition of the burn when burning below a National Weather Service Clearing Index is between 500 and 400.

(c) The land manager must include hourly photographs, a record of any complaints, hourly meteorological conditions and an hourly description of the smoke plume must be recorded and submitted.

R307-204-7. Small Prescribed Pile Fires (de minimis).

(1) Pile burns covering up to 30,000 cubic feet per day shall be ignited only when the clearing index is 500 or greater.

(2) Pile burns covering up to 30,000 cubic feet per day may be ignited when the National Weather Service Clearing Index is between 500 and 400 with approval of the director.

(a) The pile fire should be recorded as a de minimis prescribed fire on the Utah Annual Burn Schedule.

(b) The Land Manager is required to notify the director by fax, e-mail, or phone prior to ignition of the burn when burning below a National Weather Service Clearing Index is between 500 and 400.

(c) The land manager must include hourly photographs, a record of any complaints, hourly meteorological conditions and an hourly description of the smoke plume must be recorded and submitted.

R307-204-8. Large Prescribed Fires.

(1) Burn Plan. For a prescribed fire that covers 20 acres or more per burn, the land manager shall submit to the director a burn plan, including a fire prescription.

(2) Pre-Burn Information. For a prescribed fire that covers 20 acres or more per burn, the land manager shall submit pre-burn information to the director at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the director on the appropriate form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:

(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;

(b) Summary of burn objectives, such as restoration or maintenance of ecological functions or indication of fire resiliency;

(c) Any sensitive receptor within 15 miles, including any Class I or nonattainment or maintenance area, and distance and direction in degrees from the project site;

(d) Planned mitigation methods;

(e) The smoke dispersion or visibility model used and results;

(f) The estimated amount of total particulate matter anticipated;

(g) A description of how the public and land managers in neighboring states will be notified;

(h) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

(i) Safety and contingency plans for addressing any smoke intrusions; and

(j) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(c)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and conforms with the applicable State Implementation Plan.

(k) Planned use of emission reduction techniques to support establishment of an annual emissions goal, if not already submitted under R307-204-5.

(l) Any other information needed by the director for smoke management purposes, or for assessment of contribution to visibility impairment in any Class I area.

(3) Burn Request.

(a) The land manager shall submit to the director a burn request on the form provided by the Division of Air Quality by 1000 hours at least two business days before the planned ignition time. The form may be submitted by fax or electronic mail, and must include the following information:

(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(ii) The date submitted and by whom; and

(iii) The burn manager conducting the burn and phone numbers.

(b) No prescribed fire requiring a burn plan shall be ignited before the director approves the burn request.

(c) If a prescribed fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the director before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the director by 0800 hours the following business day.

(4) Daily Emissions Report. By 0800 hours on the day following the prescribed burn, for each day of prescribed fire activity covering 20 acres or more, the land manager shall submit to the director a daily emission report on the form provided by the Division of Air Quality including the following information:

(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime ventilation;

(g) Nighttime smoke behavior;

(h) Evaluation of the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed burn; and

(i) Emission reduction techniques applied.

(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the land managers project file. Records shall be available for inspection by the director for six months following the end of the fire.

R307-204-9. Large Prescribed Pile Fires.

(1) Burn Plan. For a prescribed pile fire that exceeds

30,000 cubic feet per day, the land manager shall submit to the director a burn plan, including a fire prescription.

(2) Pre-Burn Information. For a prescribed pile fire that exceeds 30,000 cubic feet or more per burn, the land manager shall submit pre-burn information to the director at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the director on the appropriate form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:

(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;

(b) Summary of burn objectives, such as restoration or maintenance of ecological functions or indication of fire resiliency;

(c) Any sensitive receptor within 15 miles, including any Class I or nonattainment or maintenance area, and distance and direction in degrees from the project site;

(d) Planned mitigation methods;

(e) The smoke dispersion or visibility model used and results;

(f) The estimated amount of total particulate matter anticipated;

(g) A description of how the public and land managers in neighboring states will be notified;

(h) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

(i) Safety and contingency plans for addressing any smoke intrusions; and

(j) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(c)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and conforms with the applicable State Implementation Plan.

(k) Planned use of emission reduction techniques to support establishment of an annual emissions goal, if not already submitted under R307-204-5.

(l) Any other information needed by the director for smoke management purposes, or for assessment of contribution to visibility impairment in any Class I area.

(3) Burn Request.

(a) The land manager shall submit to the director a burn request on the form provided by the Division of Air Quality by 1000 hours at least two business days before the planned ignition time. The form may be submitted by fax or electronic mail, and must include the following information:

(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(ii) The date submitted and by whom; and

(iii) The burn manager conducting the burn and phone numbers.

(b) No prescribed pile fire requiring a burn plan shall be ignited before the director approves the burn request.

(c) If a prescribed pile fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the director before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the director by 0800 hours the following business day.

(4) Daily Emissions Report. By 0800 hours on the day following the prescribed pile burn, for each day of pile fire activity exceeding 30,000 cubic feet, the land manager shall submit to the director a daily emission report on the form provided by the Division of Air Quality including the following information:

(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime ventilation;

(g) Nighttime smoke behavior;

(h) Evaluation of the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed pile burn; and

(i) Emission reduction techniques applied.

(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed pile fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the land managers project file. Records shall be available for inspection by the director for six months following the end of the fire.

R307-204-10. Requirements for Wildland Fire Use Events.

(1) Burn Approval Required.

(a) The land manager shall notify the director of any potential wildland fire use (WFU) event having a WFIP Stage I. The following information will be provided:

(i) UTM coordinate of the fire;

(ii) Active burning acres;

(iii) Probable fire size and daily anticipated growth in acres;

(iv) Types of wildland fuel involved;

(v) An emergency telephone number that is answered 24 hours a day;

(vi) Wilderness or Resource Natural Area designation, if applicable;

(vii) Distance to nearest community;

(viii) Elevation of fire; and

(ix) Fire's airshed number.

(b) The Land Managers shall notify the director of any potential wildland fire use event covering more than 20 acres or having a WFIP Stage II due to higher potential for spread and negative impacts. In addition to the information required for a WFU with a WFIP Stage I, the following additional information will be provided to the director as it is being developed:

(i) WFIP Stage II wildland fire implementation plan and anticipated emissions;

(ii) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated; and

(iii) Additional computer smoke modeling, if requested by the director.

(c) The director's approval of the smoke management element of the wildland fire implementation plan shall be obtained before managing the fire as a wildland fire use event.

(2) Daily Emission Report for wildland fire use event. By 0800 hours on the business day following fire activity covering 20 acres or more, the land manager shall submit to the director the daily emission report on the form provided by the Division of Air Quality, including the following information:

(a) The three-letter identification, project number, Air Quality Basin, and name of the burn manager;
(b) UTM coordinate;
(c) Dates and times of the start and end of the burn;
(d) Black acres by wildland fuel type;
(e) Estimated proportion of wildland fuel consumed by wildland fuel type;
(f) Proportion of moisture in the wildland fuel by size class;
(g) Emission estimates;
(h) Level of public interest or concern regarding smoke; and
(i) Conformance to the wildland fire implementation plan.

(3) Monitoring. The land manager shall monitor the effects of smoke on smoke sensitive receptors and visibility in Class I areas as directed by the wildland fire implementation plan. Complaints from the public shall be recorded in the project file. Records shall be available for inspection by the director for six months following the end of the fire.

KEY: air quality, wildland fire, smoke, land manager
July 7, 2011 19-2-104(1)(a)
Notice of Continuation February 5, 2015

R307. Environmental Quality, Air Quality.
R307-205. Emission Standards: Fugitive Emissions and Fugitive Dust.
R307-205-1. Purpose.

R307-205 establishes minimum work practices and emission standards for sources of fugitive emissions and fugitive dust for sources located in all areas in the state except those listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-205-2. Applicability.

R307-205 applies statewide to all sources of fugitive emissions and fugitive dust, except for agricultural or horticultural activities specified in 19-2-114(1)-(3) and any source listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-205-3. Definitions.

The following definition applies throughout R307-205:

"Material" means sand, gravel, soil, minerals or other matter that may create fugitive dust.

R307-205-4. Fugitive Emissions.

Fugitive emissions from sources which were constructed on or before April 25, 1971, shall not exceed 40% opacity. Fugitive emissions from sources constructed or modified after April 25, 1971, shall not exceed 20% opacity.

R307-205-5. Fugitive Dust.

(1) Storage and Handling of Materials. Any person owning, operating or maintaining a new or existing material storage, handling or hauling operation shall minimize fugitive dust from such an operation. Such control may include the use of enclosures, covers, stabilization or other equivalent methods or techniques as approved by the director.

(2) Construction and Demolition Activities.

(a) Any person engaging in clearing or leveling of land greater than one-quarter acre in size, earthmoving, excavation, or movement of trucks or construction equipment over cleared land greater than one-quarter acre in size or access haul roads shall take steps to minimize fugitive dust from such activities. Such control may include watering and chemical stabilization of potential fugitive dust sources or other equivalent methods or techniques approved by the director.

(b) The owner or operator of any land area greater than one-quarter acre in size that has been cleared or excavated shall take measures to prevent fugitive particulate matter from becoming airborne. Such measures may include:

(i) planting vegetative cover,
(ii) providing synthetic cover,
(iii) watering,
(iv) chemical stabilization,
(v) wind breaks, or
(vi) other equivalent methods or techniques approved by the director.

(c) Any person engaging in demolition activities including razing homes, buildings, or other structures or removing paving material from roads or parking areas shall take steps to minimize fugitive dust from such activities. Such control may include watering and chemical stabilization or other equivalent methods or techniques approved by the director.

R307-205-6. Roads.

(1) The director may require persons owning, operating or maintaining any new or existing road, or having right-of-way easement or possessory right to use the same, to supply traffic count information as determined necessary to ascertain whether or not control techniques are adequate or additional controls are necessary.

(2) Any person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-205-7. Mining Activities.

(1) Fugitive dust, construction activities, and roadways associated with mining activities are regulated under the provisions of R307-205-7 and not by R307-205-5 and 6.

(2) Any person who owns or operates a mining operation shall minimize fugitive dust as an integral part of site preparation, mining activities, and reclamation operations.

(3) The fugitive dust control measures to be used may include:

(a) periodic watering of unpaved roads,
(b) chemical stabilization of unpaved roads,
(c) paving of roads,
(d) prompt removal of coal, rock minerals, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface,
(e) restricting the speed of vehicles in and around the mining operation,
(f) revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are a source of fugitive dust,
(g) restricting the travel of vehicles on other than established roads,
(h) enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to minimize loss of material to wind and spillage,
(i) substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion,
(j) minimizing the area of disturbed land,
(k) prompt revegetation of regraded lands,
(l) planting of special windbreak vegetation at critical points in the permit area,
(m) control of dust from drilling, using water sprays, hoods, dust collectors or other controls approved by the director,
(n) restricting the areas to be blasted at any one time,
(o) reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization,
(p) restricting fugitive dust at spoil and coal transfer and loading points,
(q) control of dust from storage piles through use of enclosures, covers, or stabilization and other equivalent methods or techniques as approved by the director, or
(r) other techniques as determined necessary by the director.

R307-205-8. Tailings Piles and Ponds.

(1) Fugitive dust, construction activities, and roadways associated with tailings piles and ponds are regulated under the provisions of R307-205-8 and not by R307-205-5 and 6.

(2) Any person owning or operating an existing tailings operation where fugitive dust results from grading, excavating, depositing, or natural erosion or other causes in association with such operation shall take steps to minimize fugitive dust from such activities. Such controls may include:

(a) watering,
(b) chemical stabilization,
(c) synthetic covers,
(d) vegetative covers,
(e) wind breaks,
(f) minimizing the area of disturbed tailings,
(g) restricting the speed of vehicles in and around the tailings operation, or
(h) other equivalent methods or techniques which may be approvable by the director.

KEY: air pollution, fugitive emissions, mining, tailings
July 7, 2005 19-2-101
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19-2-109

R307. Environmental Quality, Air Quality.
R307-206. Emission Standards: Abrasive Blasting.
R307-206-1. Purpose.

R307-206 establishes work practice and emission standards for abrasive blasting operations for sources located statewide except for those sources listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-206-2. Definitions.

(1) The following additional definitions apply to R307-206:

"Abrasive Blasting" means the operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface.

"Abrasive Blasting Equipment" means any equipment utilized in abrasive blasting operations.

"Confined Blasting" means any abrasive blasting conducted in an enclosure which significantly restricts air contaminants from being emitted to the ambient atmosphere, including but not limited to shrouds, tanks, drydocks, buildings and structures.

"Multiple Nozzles" means a group of two or more nozzles being used for abrasive cleaning of the same surface in such close proximity that their separate plumes are indistinguishable.

"Unconfined Blasting" means any abrasive blasting which is not confined blasting as defined above.

R307-206-3. Applicability.

R307-206 applies statewide to any abrasive blasting operation, except for any source that is listed in Section IX, Part H of the state implementation plan or that is located in a PM10 nonattainment or maintenance area.

R307-206-4. Visible Emission Standards.

Visible emissions from abrasive blasting operations shall not exceed 40% opacity, except for an aggregate period of three minutes in any one hour.

R307-206-5. Visible Emission Evaluation Techniques.

(1) Visible emissions shall be measured using EPA Method 9. Visible emissions from intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a six-minute period shall not apply.

(2) Visible emissions from unconfined blasting shall be measured at the densest point of the emission after a major portion of the spent abrasive has fallen out, at a point not less than five feet nor more than twenty-five feet from the impact surface from any single abrasive blasting nozzle.

(3) An unconfined blasting operation that uses multiple nozzles shall be considered a single source unless it can be demonstrated by the owner or operator that each nozzle, measured separately, meets the emission and performance standards provided in R307-206-2 through 4.

(4) Visible emissions from confined blasting shall be measured at the densest point after the air contaminant leaves the enclosure.

KEY: air pollution, abrasive blasting, PM10
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R307. Environmental Quality, Air Quality.
R307-207. Residential Fireplaces and Solid Fuel Burning Devices.
R307-207-1. Purpose and Definition.

R307-207 establishes emission standards for residential fireplaces and solid fuel burning devices.

"Solid fuel burning device" means any device used for burning wood, coal, or any other nongaseous and non-liquid fuel, including, but not limited to, wood stoves, but excluding outdoor wood boilers, which are regulated under R307-208.

R307-207-2. Applicability.

(1) R307-207 applies to residential fireplaces and solid fuel burning devices in all areas of the state, except for PM10 and PM2.5 nonattainment and maintenance areas. R307-302 applies to PM10 and PM2.5 nonattainment or maintenance areas.

R307-207-3. Opacity for Residential Heating.

Visible emissions from residential solid fuel burning devices and fireplaces shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following:

(1) An initial fifteen minute start-up period, and

(2) A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling.

KEY: fireplaces, residential, solid fuel burning
November 8, 2012 19-2-101
Notice of Continuation February 5, 2015 19-2-104

R307. Environmental Quality, Air Quality.
R307-302. Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties.
R307-302-1. Purpose and Definitions.

(1) R307-302 establishes emission standards for fireplaces and solid fuel burning devices used in residential, commercial, institutional and industrial facilities and associated outbuildings used to provide comfort heating.

(2) The following additional definitions apply to R307-302:

"Sole source of heat" means the solid fuel burning device is the only available source of heat for the entire residence, except for small portable heaters.

"Solid fuel burning device" means fireplaces, wood stoves and boilers used for burning wood, coal, or any other nongaseous and non-liquid fuel, both indoors and outdoors, but excluding outdoor wood boilers, which are regulated under R307-208.

R307-302-2. Applicability.

(1) R307-302-3 and R307-302-6 shall apply to any solid fuel burning device in PM10 and PM2.5 nonattainment and maintenance areas as defined in 40 CFR 81.345 (July 1, 2011) and geographically described as all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber and Utah counties west of the Wasatch mountain range; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

(2) R307-302-4 shall apply only within the city limits of Provo in Utah County.

(3) R307-302-5 shall apply in all portions of Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(4) The following exemptions apply to R307-302:

(a) R307-302 does not apply to restaurant and institutional food preparation.

(b) R307-302 does not apply to commercial and industrial boilers subject to an approval order issued under R307-401.

(c) R307-302-3 does not apply to sources located above 7,000 feet in elevation within Box Elder, Davis, Salt Lake, Tooele, Utah and Weber counties.

(d) R307-302 does not apply to firefighting training devices that meet the definition of a solid fuel burning device.

R307-302-3. No-Burn Periods for Fine Particulate.

(1) By June 1, 2015, sole sources of residential heating using solid fuel burning devices must be registered with the director in order to be exempt during mandatory no-burn periods.

(2) When the ambient concentration of PM10 measured by the monitors in Salt Lake, Davis, Weber, or Utah counties reaches the level of 120 micrograms per cubic meter and the forecasted weather for the specific area includes a temperature inversion which is predicted to continue for at least 24 hours, the director will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those areas or counties impacting the real-time monitoring site registering the 120 micrograms per cubic meter concentration. Residents, commercial, institutional and industrial facilities of the affected areas shall not use solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and registered with the director.

(3) PM10 Contingency Plan. If the PM10 Contingency Plan described in Section IX, Part A, of the State Implementation Plan has been implemented, the trigger level for no-burn periods as specified in R307-302-3(2) will be 110 micrograms per cubic meter for that area where the PM10 Contingency Plan has been implemented.

(4) When the ambient concentration of PM2.5 measured by monitors in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties are forecasted to reach or exceed 25 micrograms per cubic meter, the director will issue a public announcement to provide broad notification that a mandatory no-burn period for solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those counties identified by the director. Residents, commercial, institutional and industrial facilities within the geographical boundaries described in R307-302-2(1) shall not use solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and registered with the director.

(5) PM2.5 Contingency Plan. If the PM2.5 contingency plan of the State Implementation Plan has been implemented, the trigger level for no-burn periods as specified in R307-302-3(4) shall be 15 micrograms per cubic meter for the area where the PM2.5 contingency plan has been implemented.

R307-302-4. No-Burn Periods for Carbon Monoxide.

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

(2) In addition to the conditions contained in R307-302-4(1), the director may use meteorological conditions to initiate a no-burn period. These conditions are:

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

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

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

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

(3) During the no-burn periods specified in R307-302-4(1) and (2), residents, commercial, institutional and industrial facilities in Provo City shall not use solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and are registered with the director or the local health district office.

R307-302-5. Opacity for Heating Appliances.

Except during no-burn periods as required by R307-302-3 and 4, visible emissions from solid fuel burning devices and fireplaces shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following:

(1) An initial fifteen minute start-up period, and

(2) A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling.

R307-302-6. Prohibition.

(1) Beginning September 1, 2013, no person shall sell, offer for sale, supply, install, or transfer a wood burning stove that is not EPA Phase 2 certified or a fireplace that is not EPA qualified.

(2) Ownership of a non EPA Phase 2 certified stove within a residential dwelling installed prior to March 6, 2014 may be transferred as part of a real estate transaction, so long as the unit remains intact within the real property of sale.

KEY: air pollution, fireplaces, stoves, solid fuel burning

February 4, 2015	**19-2-101**
Notice of Continuation June 2, 2010	**19-2-104**

R307. Environmental Quality, Air Quality.
R307-305. Nonattainment and Maintenance Areas for PM10: Emission Standards.
R307-305-1. Purpose.

This rule establishes emission standards and work practices for sources located in PM10 nonattainment and maintenance areas to meet the reasonably available control measures requirement in section 189(a)(1)(C) of the Act.

R307-305-2. Applicability.

The requirements of R307-305 apply to the owner or operator of any source that is listed in Section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-305-3. Visible Emissions.

(1) Visible emissions from existing installations except diesel engines shall be of a shade or density no darker than 20% opacity. Visible emissions shall be measured using EPA Method 9.

(2) No owner or operator of a gasoline engine or vehicle shall allow, cause or permit the emissions of visible contaminants.

(3) Emissions from diesel engines, except locomotives, shall be of a shade or density no darker than 20% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding three minutes in any hour.

(4) Visible emissions exceeding the opacity standards for short time periods as the result of initial warm-up, soot blowing, cleaning of grates, building of boiler fires, cooling, etc., caused by start-up or shutdown of a facility, installation or operation, or unavoidable combustion irregularities which do not exceed three minutes in length (unavoidable combustion irregularities which exceed three minutes in length must be handled in accordance with R307-107), shall not be deemed in violation provided that the director finds that adequate control technology has been applied. The owner or operator shall minimize visible and non-visible emissions during start-up or shutdown of a facility, installation, or operation through the use of adequate control technology and proper procedures.

R307-305-4. Particulate Emission Limitations and Operating Parameters (PM10).

Any source with emission limits included in Section IX, Part H, of the Utah state implementation plan shall comply with those emission limitations and operating parameters. Specific limitations will be set by the director, through an approval order issued under R307-401, for installations within a source that do not have limitations specified in the state implementation plan.

R307-305-5. Compliance Testing (PM10).

Compliance testing for PM10, sulfur dioxide, and oxides of nitrogen emission limitations shall be done in accordance with Section IX, Part H of the state implementation plan. PM10 compliance shall be determined from the results of EPA test method 201 or 201a. A backhalf analysis shall be performed for inventory purposes for each PM10 compliance test in accordance with Method 202, or other appropriate EPA approved reference method.

R307-305-6. Automobile Emission Control Devices.

Any person owning or operating any motor vehicle or motor vehicle engine registered in the State of Utah on which is installed or incorporated a system or device for the control of crankcase emissions or exhaust emissions in compliance with the Federal motor vehicle rules, shall maintain the system or device in operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. No person shall remove or make inoperable within the State of Utah the system or device or any part thereof, except for the purpose of installing another system or device, or part thereof, which is equally or more effective in reducing emissions from the vehicle to the atmosphere.

R307-305-7. Compliance Schedule for New Nonattainment Areas.

The provisions of R307-305 shall apply to the owner or operator of a source that is located in any new PM10 nonattainment area 180 days after the area is officially designated a nonattainment area for PM10 by the Environmental Protection Agency. Provisions of R307-201 shall continue to apply to the owner or operator of a source during this transition period.

KEY: air pollution, particulate matter, PM10, PM 2.5
September 2, 2005 19-2-104(1)(a)
Notice of Continuation February 5, 2015

R307. Environmental Quality, Air Quality.
R307-306. PM10 Nonattainment and Maintenance Areas: Abrasive Blasting.
R307-306-1. Purpose.

This rule establishes requirements that apply to abrasive blasting operations in PM10 nonattainment and maintenance areas.

R307-306-2. Definitions.

The following additional definitions apply to R307-306.

"Abrasive Blasting" means the operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface.

"Abrasive Blasting Equipment" means any equipment used in abrasive blasting operations.

"Abrasives" means any material used in abrasive blasting operations including but not limited to sand, slag, steel shot, garnet or walnut shells.

"Confined Blasting" means any abrasive blasting conducted in an enclosure that significantly restricts air contaminants from being emitted to the ambient atmosphere, including but not limited to shrouds, tanks, drydocks, buildings and structures.

"Hydroblasting" means any abrasive blasting using high pressure liquid as the propelling force.

"Multiple Nozzles" means a group of two or more nozzles used for abrasive cleaning of the same surface in such close proximity that their separate plumes are indistinguishable.

"Unconfined Blasting" means any abrasive blasting that is not confined blasting as defined above.

"Wet Abrasive Blasting" means any abrasive blasting using compressed air as the propelling force and sufficient water to minimize the plume.

R307-306-3. Applicability.

R307-306 applies to any person who operates abrasive blasting equipment in a PM10 nonattainment or maintenance area, or to sources listed in Section IX, Part H of the state implementation plan.

R307-306-4. Visible Emission Standard.

(1) Except as provided in (2) below, visible emissions from abrasive blasting operations shall not exceed 20% opacity except for an aggregate period of three minutes in any one hour.

(2) If the abrasive blasting operation complies with the performance standards in R307-306-6, visible emissions from the operation shall not exceed 40% opacity, except for an aggregate period of 3 minutes in any one hour.

R307-306-5. Visible Emission Evaluation Techniques.

(1) Visible emissions shall be measured using EPA Method 9. Visible emissions from intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a six minute period shall not apply.

(2) Visible emissions from unconfined blasting shall be measured at the densest point of the emission after a major portion of the spent abrasive has fallen out at a point not less than five feet nor more than twenty-five feet from the impact surface from any single abrasive blasting nozzle.

(3) An unconfined blasting operation that uses multiple nozzles shall be considered a single source unless it can be demonstrated by the owner or operator that each nozzle, measured separately, meets the visible emission standards in R307-306-4.

(4) Emissions from confined blasting shall be measured at the densest point after the air contaminant leaves the enclosure.

R307-306-6. Performance Standards.

(1) To satisfy the requirements of R307-306-4(2), the abrasive blasting operation shall use at least one of the following performance standards:

(a) confined blasting;

(b) wet abrasive blasting;

(c) hydroblasting; or

(d) unconfined blasting using abrasives as defined in (2) below.

(2) Abrasives.

(a) Abrasives used for dry unconfined blasting referenced in (1) above shall comply with the following performance standards:

(i) Before blasting, the abrasive shall not contain more than 1% by weight material passing a #70 U.S. Standard sieve.

(ii) After blasting the abrasive shall not contain more than 1.8% by weight material 5 microns or smaller.

(b) Abrasives reused for dry unconfined blasting are exempt from (a)(ii) above, but must conform with (a)(i) above.

(3) Abrasive Certification. Sources using the performance standard of (1)(d) above to meet the requirements of R307-306-4(2) must demonstrate they have obtained abrasives from a supplier who has certified (submitted test results) to the director at least annually that such abrasives meet the requirements of (2) above.

R307-306-7. Compliance Schedule.

The provisions of R307-306 shall apply in any new PM10 nonattainment area 180 days after the area is officially designated a nonattainment area for PM10 by the Environmental Protection Agency. Provisions of R307-206 shall continue to apply to the owner or operator of a source during this transition period.

KEY: air pollution, abrasive blasting, PM10
September 2, 2005 19-2-101(1)(a)
Notice of Continuation February 5, 2015

R307. Environmental Quality, Air Quality.
R307-307. Road Salting and Sanding.
R307-307-1. Applicability.

R307-307 applies to all persons who apply salt or abrasives such as crushed slag and sand to roads in PM10 and PM2.5 nonattainment and maintenance areas as defined in 40 CFR 81.345 (July 1, 2011) and geographically described as all regions of Davis, Salt Lake, and Utah counties; all portions of the Cache Valley; all regions in Weber County west of the Wasatch mountain range; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

R307-307-2. Definitions.

The following additional definition applies to R307-307:

"Arterial roadway" has the same meaning as outlined in U.S. DOT Federal Highway Administration Publication No. FHWA-ED-90-006, Revised March 1989, "Highway Functional Classification: Concepts, Criteria, and Procedures" as interpreted by Utah Department of Transportation and shown in the following maps: Salt Lake Urbanized Area, Provo-Orem Urbanized Area, and Ogden Urbanized Area (1992 or later).

R307-307-3. Records.

(1) Any person who applies salt or abrasives such as crushed slag and sand to roads in PM10 and PM2.5 nonattainment and maintenance areas shall maintain records of the material applied.

(a) For salt, the records shall include the quantity applied, the percent by weight of insoluble solids in the salt, and the percentage of the material that is sodium chloride (Nacl), magnesium chloride (MgCl2), calcium chloride (CaCl2), or potassium chloride (KCl).

(b) For abrasives such as sand or crushed slag, the records shall include the quantity applied and the percent by weight of fine material which passes the number 200 sieve in a standard gradation analysis.

(2) All records shall be maintained for a period of at least two years, and the records shall be made available to the director or his designated representative upon request.

R307-307-4. Content.

(1) After October 1, 1993, any salt applied to roads in Salt Lake, Davis, or Utah counties shall be at least 92% NaCl, MgCl2, CaCl2, and/or KCl.

(2) After January 1, 2014, any salt applied to roads in all other areas specified in R307-307-1 shall be no less than 92% by weight NaCl, MgCl2, CaCl2, and/or KCl.

R307-307-5. Alternatives.

(1) After October 1, 1993, any person who applies an abrasive such as crushed slag, or sand or who applies salt that is less than 92% by weight NaCl, MgCl2, CaCl2 and/or KCl to roads in Salt Lake, Davis, or Utah Counties shall either:

(a) demonstrate to the director that the material applied has no more PM10 or PM2.5 emissions than salt which is at least 92% NaCl, MgCl2, CaCl2, and/or KCl; or

(b) vacuum sweep every arterial roadway (principal and minor) to which the material was applied within three days of the end of the storm for which the application was made.

(2) After January 1, 2014,any person who applies an abrasive such as crushed slag or sand, or who applies salt that is less than 92% by weight NaCl, MgCl2, and/or CaCl2 to roads in all other areas specified in R307-307-1 shall comply with the requirements of either R307-307-5(1)(a) or (b).

R307-307-6. Exemptions.

(1) In the interest of public safety, any person who applies an abrasive such as crushed slag or sand to arterial roadways because salt alone would not ensure safe driving conditions due to steepness of grade or extreme weather is exempt from the requirements in R307-307-4.

(2) The following roads are specifically excluded from the requirements of R307-307-5(1):

(a) all canyon roads;

(b) the portion of Interstate 15 near Point of the Mountain;

(c) I-15, from Exit 385 northward to the Idaho Border;

(d) I-84 from Exit 17 eastward to Exit 40 at Tremonton;

(e) SR-39 from Harrison Boulevard eastward into Ogden Canyon;

(f) I-84 from the junction with US-89 eastward into Weber Canyon;

(g) I-80 near Black Rock, from the junction with SR-36 to the junction with SR-202;

(h) SR-199; and

(i) SR-196.

KEY: air pollution, roads, particulate
February 1, 2013 19-2-104
Notice of Continuation February 5, 2015

R307. Environmental Quality, Air Quality.
R307-309. Nonattainment and Maintenance Areas for PM10 and PM2.5: Fugitive Emissions and Fugitive Dust.
R307-309-1. Purpose.

This rule establishes minimum work practices and emission standards for sources of fugitive emissions and fugitive dust.

R307-309-2. Definitions.

The following additional definition applies to R307-309:

"Material" means sand, gravel, soil, minerals, and other matter that may create fugitive dust.

R307-309-3. Applicability.

(1) Applicability. R307-309 applies to all sources of fugitive dust and fugitive emissions located in PM10 and PM2.5 nonattainment and maintenance plan areas as defined in 40 CFR 81.345 (July 1, 2011), except as specified in R307-309-3(2).

(2) Exemptions.

(a) Agriculturally derived fugitive dust sources, including agricultural or horticultural activities specified in 19-2-114 (1)-(3) are exempt from the provisions of R307-309.

(b) Any activity subject to R307-307 is exempt from R307-309-7.

R307-309-4. Fugitive Emissions.

(1) Fugitive emissions from any source shall not exceed 15% opacity.

(2) Opacity observations of fugitive emissions from stationary sources shall be conducted in accordance with EPA Method 9.

(3) For intermittent sources and mobile sources, opacity observations shall be conducted using Method 9; however, the requirement for observations to be made at 15 second intervals over a six-minute period shall not apply.

R307-309-5. General Requirements for Fugitive Dust.

(1) Except as provided in R307-309-5(3), opacity caused by fugitive dust shall not exceed:

(a) 10% at the property boundary; and

(b) 20% on site

(2) Any person owning or operating a new or existing source of fugitive dust one-quarter acre or greater in size shall submit a fugitive dust control plan to the director in accordance with R307-309-6.

(3) Opacity in R307-309-5(1) shall not apply when the wind speed exceeds 25 miles per hour if the owner or operator has implemented, and continues to implement, the accepted fugitive dust control plan in R307-309-6 and administers at least one of the following contingency measures:

(a) Pre-event watering;

(b) Hourly watering;

(c) Additional chemical stabilization; or

(d) Cease or reduce fugitive dust producing operations.

(e) Other contingency measure approved by the director.

(4) Wind speed may be measured by a hand-held anemometer or equivalent device.

(5) Opacity observations of fugitive dust from any source shall be measured at the densest point of the plume.

(a) For mobile sources, visible emissions shall be measured at a point not less than 1/2 vehicle length behind the vehicle and not less than 1/2 the height of the vehicle.

(b) Opacity observations of emissions from stationary sources shall be measured in accordance with EPA Method 9.

(c) For intermittent sources, opacity observations shall be conducted using Method 9; however, the requirement for observations to be made at 15 second intervals over a six-minute period shall not apply.

R307-309-6. Fugitive Dust Control Plan.

(1) Any person owning or operating a new or existing source of fugitive dust, including storage, hauling or handling operations, clearing or leveling of land one-quarter acre or greater in size, earthmoving, excavation, moving trucks or construction equipment over cleared land one-quarter acre or greater in size or access haul roads, or demolition activities including razing homes, buildings or other structures, shall submit a fugitive dust control plan on a form provided by the director or another format approved by the director.

(a) A fugitive dust control plan that has been submitted to and accepted by the director prior to December 3, 2012, will fulfill the requirements of R307-309-6.

(2) Activities regulated by R307-309 shall not commence before the fugitive dust control plan is approved by the director.

(a) Successful completion of the web-based division-sponsored fugitive dust control plan tool shall constitute plan approval.

(b) Hard copy fugitive control plan submission must be reviewed and approved by the director prior to commencing activities regulated by R307-309.

(3) Sources with an existing fugitive dust control plan who make site modifications that result in emission changes shall submit an updated fugitive dust control plan.

(4) Minimum fugitive dust control plan requirements. At a minimum, a fugitive dust control plan must include the following requirements as they apply to a source:

(a) Backfilling.

(i) Stabilize backfill material when not actively handling.

(ii) Stabilize backfill material during handling.

(iii) Stabilize soil at completion of backfilling activity.

(iv) Stabilize material while using pipe padder equipment.

(b) Blasting.

(i) Stabilize surface soils where drills, support equipment and vehicles will operate.

(ii) Stabilize soil during blast preparation activities.

(iii) Stabilize soil after blasting.

(c) Clearing.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(ii) Stabilize disturbed soil immediately after clearing and grubbing activities.

(iii) Stabilize slopes at completion of activity.

(d) Clearing forms, foundations and slabs.

(i) Use water, sweeping and vacuum to clear.

(e) Crushing.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(ii) Stabilize material before, during and after crushing.

(iii) Traffic mileage or speed controls.

(iv) Minimize transfer height.

(f) Cut and fill.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(ii) Pre-water soils.

(iii) Stabilize soil during and after cut activities.

(g) Demolition-implosion.

(i) Stabilize surface area where support equipment and vehicles will be operated.

(ii) Stabilize demolition debris immediately following blast and safety clearance.

(iii) Stabilize and clean surrounding area immediately following blast and safety clearance.

(h) Demolition-mechanical and manual.

(i) Stabilize surface areas where support equipment and vehicles will operate.

(ii) Stabilize demolition debris during handling.

(iii) Stabilize debris following demolition.

(iv) Stabilize surrounding area following demolition.

(i) Disturbed soil.

(i) Limit disturbance of soils where possible.
(ii) Stabilize and maintain stability of all disturbed soil throughout construction site.
(j) Hauling materials.
(i) Limit visible dust opacity from vehicular operations.
(ii) Stabilize materials during transport on site.
(iii) Clean wheels and undercarriage of haul trucks prior to leaving construction site.
(k) Paving subgrade preparation.
(i) Stabilize adjacent disturbed soils following paving activities by applying water, chemical stabilizer and/or synthetic cover.
(l) Sawing and cutting materials.
(i) Limit visible emissions using water or vacuum.
(m) Screening.
(i) Stabilize surface soils where support equipment and vehicles will operate.
(ii) Pre-treat material prior to screening.
(iii) Stabilize material during screening.
(iv) Stabilize material and surrounding area immediately after screening.
(v) Minimize transfer height.
(n) Staging areas.
(i) Limit visible dust opacity from vehicular operations.
(ii) Stabilize staging area soils during use.
(iii) Stabilize staging area soils at project completion.
(o) Stockpiling.
(i) Stabilize stockpile materials during and after handling.
(ii) Stabilize surface soils where support equipment and vehicles will operate.
(p) Trackout prevention and cleanup.
(i) Install and maintain trackout control devices in effective condition at all access points where paved and unpaved access or travel routes intersect.
(q) Traffic on unpaved routes and parking areas.
(i) Stabilize surface soils where support equipment and vehicles will operate.
(r) Trenching.
(i) Stabilize surface soils where trenching equipment, support equipment and vehicles will operate.
(ii) Stabilize soils after trenching.
(s) Truck loading.
(i) Empty loader bucket slowly and keep loader bucket close to the truck to minimize the drop height while dumping.
(ii) Stabilize surface soils where support equipment and vehicles will operate.
(5) The fugitive dust control plan must include contact information, site address, total area of disturbance, expected start and completion dates, identification of dust suppressant and plan certification by signature of a responsible person.

R307-309-7. Storage, Hauling and Handling of Aggregate Materials.

Any person owning, operating or maintaining a new or existing material storage, handling or hauling operation shall prevent, to the maximum extent possible, material from being deposited onto any paved road other than a designated deposit site. Any such person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-8. Construction and Demolition Activities.

Any person engaging in clearing or leveling of land with an area of one-quarter acre or more, earthmoving, excavating, construction, demolition, or moving trucks or construction equipment over cleared land or access haul roads shall prevent, to the maximum extent possible, material from being deposited onto any paved road other than a designated deposit site. Any such person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-9. Roads.

(1) Any person responsible for construction or maintenance of any existing road or having right-of-way easement or possessing the right to use the same whose activities result in fugitive dust from the road shall minimize fugitive dust to the maximum extent possible. Any such person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.
(2) Unpaved Roads. Any person responsible for construction or maintenance of any new or existing unpaved road shall prevent, to the maximum extent possible, the deposit of material from the unpaved road onto any intersecting paved road during construction or maintenance. Any person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-10. Mining Activities.

(1) Fugitive dust, construction activities, and roadways associated with mining activities are regulated under the provisions of R307-309-10 and not by R307-309-6,7, 8, 9, and 11.
(2) Any person who owns or operates a mining operation shall minimize fugitive dust as an integral part of site preparation, mining activities, and reclamation operations.
(3) The fugitive dust control measures to be used shall include:
(a) Periodic watering of unpaved roads or;
(b) Use of chemical stabilizers on unpaved roads or;
(c) Paving of roads.
(d) Immediate removal of coal, rock minerals, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface.
(e) Restricting the speed of vehicles in and around the mining operation,
(f) Revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are a source of fugitive dust.
(g) Restricting the travel of vehicles on other than established roads.
(h) Enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to minimize loss of material to wind and spillage.
(i) Substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion.
(j) Minimizing the area of disturbed land.
(k) Prompt revegetation of regraded lands.
(l) Planting of special windbreak vegetation at critical points in the permit area.
(m) Control of dust from drilling, using water sprays, hoods, dust collectors or other controls approved by the director.
(n) Restricting the areas to be blasted at any one time.
(o) Reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization.
(p) Restricting fugitive dust at spoil and coal transfer and loading points.
(q) Control of dust from storage piles through use of enclosures, covers, or stabilization and other equivalent methods or techniques as approved by the director, or
(r) Other techniques as determined necessary by the director.
(4) Owners or operators shall submit a fugitive dust control plan to the director on a form provided by the director or another format approved by the director.
(a) Activities regulated by R307-309-10 shall not

commence before the fugitive dust control plan is approved by the director.

(b) A fugitive dust control plan that has been submitted to and accepted by the director prior to December 3, 2012, will fulfill the requirements of R307-309-10.

(c) Sources with an existing fugitive dust control plan that make site modifications that result in emission changes shall submit an updated fugitive dust control plan.

(d) The fugitive dust control plan shall include site location, contact information, plot plan, total area of land to be disturbed, sources of fugitive dust, types of dust suppressants, high wind contingency measures, treatments for preventing trackout controls and plan certification by signature of a responsible person.

R307-309-11. Tailings Piles and Ponds.

(1) Fugitive dust, construction activities, and roadways associated with tailings piles and ponds are regulated under the provisions of R307-309-11 and not by R307-309-6,7, 8, 9, and 10.

(2) Any person owning or operating an existing tailings operation where fugitive dust results from grading, excavating, depositing, or natural erosion or other causes in association with such operation shall take steps to minimize fugitive dust from such activities. Such controls shall include:

(a) Watering or;

(b) Chemical stabilization or;

(c) Synthetic covers or;

(d) Vegetative covers or;

(e) Wind breaks or;

(f) A combination of R307-309-11(2)(a)-(e);

(g) Minimizing the area of disturbed tailings;

(h) Restricting the speed of vehicles in and around the tailings operation; or

(h) Other equivalent methods or techniques which may be approvable by the director.

(3) Owners or operators shall submit a fugitive dust control plan to the director.

(a) Activities regulated by R307-309-11 shall not commence before the fugitive dust control plan is approved by the director.

(b) A fugitive dust control plan that has been submitted to and accepted by the director prior to December 3, 2012, will fulfill the requirements of R307-309-11.

(c) Sources with an existing fugitive dust control plan that make site modifications that result in emission changes shall submit an updated fugitive dust control plan.

(d) The fugitive dust control plan shall include site location, contact information, plot plan, total area of land to be disturbed, sources of fugitive dust, types of dust suppressants, high wind contingency measures, treatments for preventing trackout controls and plan certification by signature of a responsible person.

R307-309-12. Record Keeping.

All sources subject to R307-309-5(2) and (3) shall maintain records demonstrating compliance with R307-309. These records shall be available to the director upon request.

R307-309-13. Compliance Schedule.

(1) All sources within the applicable portions of Salt Lake County, Utah County and the city of Ogden shall be in compliance with R307-309 upon the effective date of this rule.

(2) All sources within the remaining areas described in R307-309-3(1) shall be in compliance with R307-309-4 through 9 and R307-309-12 within 30 days of the effective date of this rule and shall be in compliance with R307-309-10 and 11 within 90 days of the effectiveness of this rule.

KEY: air pollution, fugitive dust

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Notice of Continuation February 5, 2015 19-2-104

19-2-109

R307. Environmental Quality, Air Quality.
R307-310. Salt Lake County: Trading of Emission Budgets for Transportation Conformity.
R307-310-1. Purpose.

This rule establishes the procedures that may be used to trade a portion of the primary PM10 budget when demonstrating that a transportation plan, transportation improvement program, or project conforms with the motor vehicle emission budgets in the Salt Lake County portion of Section IX, Part A of the State Implementation Plan, "Fine Particulate Matter (PM10)"

R307-310-2. Definitions.

The definitions contained in 40 CFR 93.101, effective as of the date referenced in R307-101-3, are incorporated into this rule by reference. The following additional definitions apply to this rule.

"Budget" means the motor vehicle emission projections used in the attainment demonstration in the Salt Lake County portion of Section IX, Part A of the State Implementation Plan, "Fine Particulate Matter (PM10)."

"NOx" means oxides of nitrogen.

"Primary PM10" means PM10 that is emitted directly by a source. Primary PM10 does not include particulate matter that is formed when gaseous emissions undergo chemical reactions in the ambient air.

"Transportation Conformity" means a demonstration that a transportation plan, transportation improvement program, or project conforms with the emissions budgets in a state implementation plan, as outlined in 40 CFR, Chapter 1, Part 93, "Determining Conformity of Federal Actions to State or Federal Implementation Plans."

R307-310-3. Applicability.

(1) This rule applies to agencies responsible for demonstrating transportation conformity with the Salt Lake County portion of Section IX, Part A of the State Implementation Plan, "Fine Particulate Matter (PM10)."

(2) This rule does not apply to emission budgets from Section IX, Part D.2 of the State Implementation Plan, "Ozone Maintenance Plan."

(3) This rule does not apply to emission budgets from Section IX, Part C.7 of the State Implementation Plan, "Carbon Monoxide Maintenance Provisions."

R307-310-4. Trading Between Emission Budgets.

(1) The agencies responsible for demonstrating transportation conformity are authorized to supplement the budget for NOx with a portion of the budget for primary PM10 for the purpose of demonstrating transportation conformity for NOx. The NOx budget shall be supplemented using the following procedures.

(a) The metropolitan planning organization shall include the following information in the transportation conformity demonstration:

(i) The budget for primary PM10 and NOx for each required year of the conformity demonstration, before trading allowed by this rule has been applied;

(ii) The portion of the primary PM10 budget that will be used to supplement the NOx budget, specified in tons per day using a 1:1 ratio of primary PM10 to NOx, for each required year of the conformity demonstration;

(iii) The remainder of the primary PM10 budget that will be used in the conformity demonstration for primary PM10, specified in tons per day for each required year of the conformity demonstration; and

(iv) The budget for primary PM10 and NOx for each required year of the conformity demonstration after the trading allowed by this rule has been applied.

(b) Transportation conformity for NOx shall be demonstrated using the NOx budget supplemented by a portion of the primary PM10 budget as described in (a)(ii). Transportation conformity for primary PM10 shall be demonstrated using the remainder of the primary PM10 budget described in (a)(iii).

(c) The primary PM10 budget shall not be supplemented by using a portion of the NOx budget.

R307-310-5. Transition Provision.

R307-310, sections 1-4 will remain in effect until the day that EPA approves the conformity budget in the PM10 maintenance plan adopted by the board on July 6, 2005.

KEY: air pollution, transportation conformity, PM10
February 8, 2008 19-2-104
Notice of Continuation February 5, 2015

R307. Environmental Quality, Air Quality.
R307-401. Permit: New and Modified Sources.
R307-401-1. Purpose.

This rule establishes the application and permitting requirements for new installations and modifications to existing installations throughout the State of Utah. Additional permitting requirements apply to larger installations or installations located in nonattainment or maintenance areas. These additional requirements can be found in R307-403, R307-405, R307-406, R307-420, and R307-421. Modeling requirements in R307-410 may also apply. Each of the permitting rules establishes independent requirements, and the owner or operator must comply with all of the requirements that apply to the installation. Exemptions under R307-401 do not affect applicability of the other permitting rules.

R307-401-2. Definitions.

(1) The following additional definitions apply to R307-401.

"Actual emissions" (a) means the actual rate of emissions of an air contaminant from an emissions unit, as determined in accordance with paragraphs (b) through (d) below.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air contaminant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air contaminant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air contaminant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

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

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air contaminant.

R307-401-3. Applicability.

(1) R307-401 applies to any person intending to:

(a) construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution, or

(b) make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or

(c) install a control apparatus or other equipment intended to control emissions of air contaminants.

(2) R307-403, R307-405 and R307-406 may establish additional permitting requirements for new or modified sources.

(a) Exemptions contained in R307-401 do not affect applicability or other requirements under R307-403, R307-405 or R307-406.

(b) Exemptions contained in R307-403, R307-405 or R307-406 do not affect applicability or other requirements under R307-401, unless specifically authorized in this rule.

R307-401-4. General Requirements.

The general requirements in (1) through (3) below apply to all new and modified installations, including installations that are exempt from the requirement to obtain an approval order.

(1) Any control apparatus installed on an installation shall be adequately and properly maintained.

(2) If the director determines that an exempted installation is not meeting an approval order or State Implementation Plan limitation, is creating an adverse impact to the environment, or would be injurious to human health or welfare, then the director may require the owner or operator to submit a notice of intent and obtain an approval order in accordance with R307-401-5 through R307-401-8. The director will complete an appropriate analysis and evaluation in consultation with the owner or operator before determining that an approval order is required.

(3) Low Oxides of Nitrogen Burner Technology.

(a) Except as provided in (b) below, whenever existing fuel combustion burners are replaced, the owner or operator shall install low oxides of nitrogen burners or equivalent oxides of nitrogen controls, as determined by the director, unless such equipment is not physically practical or cost effective. The owner or operator shall submit a demonstration that the equipment is not physically practical or cost effective to the director for review and approval prior to beginning construction.

(b) The provisions of (a) above do not apply to non-commercial, residential buildings.

R307-401-5. Notice of Intent.

(1) Except as provided in R307-401-9 through R307-401-17, any person subject to R307-401 shall submit a notice of intent to the director and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall be in a format specified by the director.

(2) The notice of intent shall include the following information:

(a) A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

(b) Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

(c) Size, type and performance characteristics of any control apparatus.

(d) An analysis of best available control technology for the proposed source or modification. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, the owner or operator of the source shall consider EPA Control Technique Guidance (CTG) documents and Alternative Control Technique documents that are applicable to the source. Best available control technology shall be at least as stringent as any published CTG that is applicable to the source.

(e) Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

(f) The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

(g) The typical operating schedule.

(h) A schedule for construction.

(i) Any plans, specifications and related information that are in final form at the time of submission of notice of intent.

(j) Any additional information required by:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties; or

(vi) R307-421, Permits: PM10 Offset Requirements in Salt Lake County and Utah County.

(k) Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

(3) Notwithstanding the exemption in R307-401-9 through 16, any person that is subject to R307-403, R307-405, or R307-406 shall submit a notice of intent to the director and receive an approval order prior to intiation of construction, modification, or relocation.

R307-401-6. Review Period.

(1) Completeness Determination. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the director will advise the applicant of any deficiency in the notice of intent or the information submitted.

(2) Within 90 days of receipt of a complete application including all the information described in R307- 401-5, the director will

(a) issue an approval order for the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-401-8, or

(b) issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of the proposal is inadequate to meet the applicable requirements of R307.

(3) The review period under (2) above may be extended by up to three 30-day extensions if more time is needed to review the proposal.

R307-401-7. Public Notice.

(1) Issuing the Notice. Prior to issuing an approval or disapproval order, the director will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment.

(2) Opportunity for Review and Comment.

(a) At least one location will be provided where the information submitted by the owner or operator, the director's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(b) Public Comment.

(i) A 30-day public comment period will be established.

(ii) A request to extend the length of the comment period, up to 30 days, may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iii) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iv) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.

(v) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the director to review plans and specifications.

(3) The director will consider all comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval order or disapproval order.

R307-401-8. Approval Order.

(1) The director will issue an approval order if the following conditions have been met:

(a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, best available control technology shall be at least as stringent as any Control Technique Guidance document that has been published by EPA that is applicable to the source.

(b) The proposed installation will meet the applicable requirements of:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties;

(vi) R307-210, National Standards of Performance for New Stationary Sources;

(vii) National Primary and Secondary Ambient Air Quality Standards;

(viii) R307-214, National Emission Standards for Hazardous Air Pollutants;

(ix) R307-110, Utah State Implementation Plan; and

(x) all other provisions of R307.

(2) The approval order will require that all pollution control equipment be adequately and properly maintained.

(3) Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of R307 or the State Implementation Plan.

(4) To accommodate staged construction of a large source, the director may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the director under the intent of R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-401-8(1) and (2) will be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

(5) If the director determines that a proposed stationary source, modification or relocation does not meet the conditions established in (1) above, the director will not issue an approval order.

R307-401-9. Small Source Exemption.

(1) A small stationary source is exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM_{10}, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air contaminant not listed in (a)(or (b) above and less than 2000 pounds per year of any combination of air contaminants not listed in (a) or (b) above.

(d) Air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) Small Source Exemption - Registration. The director will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the director. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

(5) A stationary source that is not required to obtain a permit under R307-405 for greenhouse gases, as defined in R307-405-3(9)(a), is not required to obtain an approval order for greenhouse gases under R307-401. This exemption does not affect the requirement to obtain an approval order for any other air contaminant emitted by the stationary source.

R307-401-10. Source Category Exemptions.

The following source categories described in (1) through (5) below are exempted from the requirement to obtain an approval order. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

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

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

R307-401-11. Replacement-in-Kind Equipment.

(1) Applicability. Existing process equipment or pollution control equipment that is covered by an existing approval order or State Implementation Plan requirement may be replaced using the procedures in (2) below if:

(a) the potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the process equipment or pollution control equipment is identical to or functionally equivalent to the replaced equipment;

(e) the replacement does not change the basic design parameters of the process unit or pollution control equipment;

(f) the replaced process equipment or pollution control equipment is permanently removed from the stationary source, otherwise permanently disabled, or permanently barred from operation;

(g) the replacement process equipment or pollution control equipment does not trigger New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants under 42 U.S.C. 7411 or 7412; and

(h) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-401-5, the owner or operator of a stationary source shall submit a written notification to the director before replacing the equipment. The notification shall contain a description of the replacement-in-kind equipment, including the control capability of any control apparatus and a demonstration that the conditions of (1) above are met.

(b) If the replacement-in-kind meets the conditions of (1) above, the director will update the source's approval order and notify the owner or operator. Public review under R307-401-7 is not required for the update to the approval order.

(3) If the replaced process equipment or pollution control equipment is brought back into operation, it shall constitute a new emissions unit.

R307-401-12. Reduction in Air Contaminants.

(1) Applicability. The owner or operator of a stationary source of air contaminants that reduces or eliminates air contaminants is exempt from the requirement to submit a notice of intent and obtain an approval order prior to construction if:

(a) the project does not increase the potential to emit of any air contaminant or cause emissions of any new air contaminant, and

(b) the director is notified of the change and the reduction of air contaminants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the director no later than 60 days after the changes are made. The director will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

R307-401-13. Plantwide Applicability Limits.

A plantwide applicability limit under R307-405-21 does not exempt a stationary source from the requirements of R307-401.

R307-401-14. Used Oil Fuel Burned for Energy Recovery.

(1) Definitions.

"Boiler" means boiler as defined in R315-1-1(b).

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated by physical or chemical impurities.

(2) Boilers burning used oil for energy recovery are exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following requirements are met:

(a) the heat input design is less than one million BTU/hr;

(b) contamination levels of all used oil to be burned do not exceed any of the following values:

(i) arsenic - 5 ppm by weight,

(ii) cadmium - 2 ppm by weight,

(iii) chromium - 10 ppm by weight,

(iv) lead - 100 ppm by weight,

(v) total halogens - 1,000 ppm by weight,

(vi) Sulfur - 0.50% by weight; and

(c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.

(3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the director to ensure it meets these requirements. Testing may be performed by the owner/operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the director. Records for used oil consumption and test reports are to be kept for all periods when fuel-burning equipment is in operation. The records shall be kept on site and made available to the director or the director's representative upon request. Records must be kept for a three-year period.

R307-401-15. Air Strippers and Soil Venting Projects.

(1) The owner or operator of an air stripper or soil venting system that is used to remediate contaminated groundwater or soil is exempt from the notice of intent and approval order requirements of R307-401-5 through 8 if the following conditions are met:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-401-9(1)(a), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-410-5(1)(c)(i)(C).

(2) The owner or operator shall submit documentation that the project meets the exemption requirements in R307-401-15(1) to the director prior to beginning the remediation project.

(3) After beginning the soil remediation project, the owner or operator shall submit emissions information to the director to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in R307-401-15(1) are not exceeded.

(a) Emissions estimates of volatile organic compounds shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8260c or 8261a, or the most recent EPA revision of either test method if approved by the director.

(b) Emissions estimates of hazardous air pollutants shall be based on test data obtained in accordance with the test method in EPA document SW-846, Test #8021B or the most recent EPA revision of the test method if approved by the director.

(c) Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the director within one month of sampling.

(d) The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the director.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil venting project exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-401-16. De minimis Emissions From Soil Aeration Projects.

An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements

of R307-401-5 through 8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits the following information to the director prior to beginning the remediation project:

(1) documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);

(2) documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and

(3) the location of the remediation and where the remediated material originated.

R307-401-17. Temporary Relocation.

The owner or operator of a stationary source previously approved under R307-401 may temporarily relocate and operate the stationary source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The director will evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be submitted to the director at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the director as requested. R307-401-7, Public Notice, does not apply to temporary relocations under R307-401-17.

R307-401-18. Eighteen Month Review.

Approval orders issued by the director in accordance with the provisions of R307-401 will be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the director may revoke the approval order.

R307-401-19. General Approval Order.

(1) The director may issue a general approval order that would establish conditions for similar new or modified sources of the same type or for specific types of equipment. The general approval order may apply throughout the state or in a specific area.

(a) A major source or major modification as defined in R307-403, R307-405, or R307-420 for each respective area is not eligible for coverage under a general approval order.

(b) A source that is subject to the requirements of R307-403-5 is not eligible for coverage under a general approval order.

(c) A source that is subject to the requirements of R307-410-4 is not eligible for coverage under a general approval order unless a demonstration that meets the requirements of R307-410-4 was conducted.

(d) A source that is subject to the requirements of R307-410-5(1)(c)(ii) is not eligible for coverage under a general approval order unless a demonstration that meets the requirements of R307-410-5(1)(c)(ii) was conducted.

(e) A source that is subject to the requirements of R307-410-5(1)(c)(iii) is not eligible for coverage under a general approval order.

(2) A general approval order shall meet all applicable requirements of R307-401-8.

(3) The public notice requirements in R307-401-7 shall apply to a general approval order except that the director will advertise the notice of intent in a newspaper of statewide circulation.

(4) Application.

(a) After a general approval order has been issued, the owner or operator of a proposed new or modified source may apply to be covered under the conditions of the general approval order.

(b) The owner or operator shall submit the application on forms provided by the director in lieu of the notice of intent requirements in R307-401-5 for all equipment covered by the general approval order.

(c) The owner or operator may request that an existing, individual approval order for the source be revoked, and that it be covered by the general approval order.

(d) The owner or operator that has applied to be covered by a general approval order shall not initiate construction, modification, or relocation until the application has been approved by the director.

(5) Approval.

(a) The director will review the application and approve or deny the request based on criteria specified in the general approval order for that type of source. If approved, the director will issue an authorization to the applicant to operate under the general approval order.

(b) The public notice requirements in R307-401-7 do not apply to the approval of an application to be covered under the general approval order.

(c) The director will maintain a record of all stationary sources that are covered by a specific general approval order and this record will be available for public review.

(6) Exclusions and Revocation.

(a) The director may require any source that has applied for or is authorized by a general approval order to submit a notice of intent and obtain an individual approval order under R307-401-8. Cases where an individual approval order will be required include, but are not limited to, the following:

(i) the director determines that the source does not meet the criteria specified in the general approval order;

(ii) the director determines that the application for the general approval order did not contain all necessary information to evaluate applicability under the general approval order;

(iii) modifications were made to the source that were not authorized by the general approval order or an individual approval order;

(iv) the director determines the source may cause a violation of a national ambient air quality standard; or

(v) the director determines that one is required based on the compliance history and current compliance status of the source or applicant.

(b)(i) Any source authorized by a general approval order may request to be excluded from the coverage of the general approval order by submitting a notice of intent under R307-401-5 and receiving an individual approval order under R307-401-8.

(ii) When the director issues an individual approval order to a source subject to a general approval order, the applicability of the general approval order to the individual source is revoked on the effective date of the individual approval order.

(7) Modification of General Approval Order. The director may modify, replace, or discontinue the general approval order.

(a) Administrative corrections may be made to the existing version of the general approval order. These corrections are to correct typographical errors or similar minor administrative changes.

(b) All other modifications or the discontinuation of a general approval order shall not apply to any source authorized under previous versions of the general approval order unless the owner or operator submits an application to be covered under the new version of the general approval order. Modifications under R307-401-19(7)(b) shall meet the public notice requirements in R307-401-19(3).

(c) A general approval order shall be reviewed at least

every three year. The review of the general approval order shall follow the public notice requirements of R307-401-19(3).

(8) Modifications at a source covered by a general approval order. A source may make modifications only as authorized by the approved general approval order. Modifications outside the scope authorized by the approved general approval order shall require a new application for either an individual approval order under R307-401-8 or a general approval order under R307-401-19.

KEY: air pollution, permits, approval orders, greenhouse gases

February 5, 2015 19-2-104(3)(q)

Notice of Continuation June 6, 2012 19-2-108

R307. Environmental Quality, Air Quality.
R307-841. Residential Property and Child-Occupied Facility Renovation.
R307-841-1. Purpose.

This rule contains regulations developed under Sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this rule is to ensure the following:

(1) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(2) Individuals performing renovations regulated in accordance with R307-841-3 are properly trained; renovators and firms performing these renovations are certified; and the work practices in R307-841-5 are followed during these renovations.

R307-841-2. Effective Dates.

(1) Training, certification and accreditation requirements, and work practice standards. The training, certification and accreditation requirements and work practice standards in this rule are applicable as follows:

(a) Training programs. Effective April 8, 2010, no training program may provide, offer, or claim to provide training or refresher training for director certification as a renovator or a dust sampling technician without accreditation from the director under R307-842-1. Training programs may apply for accreditation under R307-842-1;

(b) Firms.

(i) Firms may apply for certification under R307-841-7 beginning April 8, 2010.

(ii) On or after April 8, 2010, no firm may perform, offer, or claim to perform renovations without certification from the director under R307-841-7 in target housing or child-occupied facilities, unless the renovation qualifies as one of the exceptions identified in R307-841-3(1).

(c) Individuals. On or after April 8, 2010, all renovations must be directed by renovators certified in accordance with R307-841-8(1) and performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in R307-841-3(1).

(d) Work practices.

(i) On or after April 8, 2010 and before July 5, 2012, all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(a) and (2)(f) in target housing or child-occupied facilities, unless the renovation qualifies for the exceptions identified in R307-841-3(1). This does not apply to renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age six resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

(ii) On or after July 5, 2012, all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(a) and (2)(f) in target housing or child-occupied facilities, unless the renovation qualifies for the exception identified in R307-841-3(1).

(2) Renovation-specific pamphlet. Renovators or firms performing renovations must provide owners and occupants with "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools."

R307-841-3. Applicability.

(1) This rule applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(a) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor, certified pursuant to R307-842-2, that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm^2) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination; or

(b) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA-recognized test kit as defined in R307-840-2 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(c) Renovations in target housing or child-occupied facilities in which a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip samples has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(2) The information distribution requirements in R307-841-4 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in R307-841-5, R307-841-7, and R307-841-8 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of R307-841-5(1)(e) which must be performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b), the cleaning verification requirements of R307-841-5(2), which must be performed by certified renovators, and the recordkeeping requirements of R307-841-6(2)(e) and (f).

R307-841-4. Information Distribution Requirements.

(1) Renovations in dwelling units. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(a) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation; and

(b) If the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet, or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

(a) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities, the expected starting and ending dates, and a statement of how the occupant can obtain the pamphlet and a copy of the records required by R307-841-6(3) and (4) at no cost to the occupants; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the occupants;

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet; and

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(3) Renovations in child-occupied facilities. No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(a)(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(B) Obtain a certificate of mailing at least 7 days prior to the renovation;

(ii) If the adult representative of the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet, or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature; or

(B) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians.

(c) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(4) Written acknowledgment. The written acknowledgments required by paragraphs (1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(a)(ii)(A) of this section must:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature;

(b) Be either a separate sheet or part of any written contract or service agreement for the renovation; and

(c) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

R307-841-5. Work Practice Standards.

(1) Standards for renovation activities. Renovations must be performed by firms certified under R307-841-7 using renovators certified under R307-841-8. The responsibilities of certified firms are set forth in R307-841-7(4) and the responsibilities of certified renovators are set forth in R307-841-8(2).

(a) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation, must remain in place, and must be readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(b) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior renovations. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed;

(B) Close and cover all duct openings in the work area with taped-down plastic sheeting or other impermeable material;

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling, and walls; and

(E) Use precautions to ensure that all personnel, tools, and other items, including the exterior of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation;

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system; and

(D) If the renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.

(c) Prohibited and restricted practices. The work practices listed below are prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of painted surfaces is prohibited;

(ii) The use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planning, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system; and

(iii) Operating a heat gun on painted surfaces is permitted only at temperatures below 1,100 degrees Fahrenheit.

(d) Waste from renovations.

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(e) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris, or residue remains.

(i) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag; and

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth;

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs; and

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp

cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(2) Standards for post-renovation cleaning verification.

(a) Interiors.

(i) A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present. If dust, debris, or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(I) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(II) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(III) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.

(IV) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(I) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(II) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.

(III) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.

(b) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris, or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(3) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another federal, state, territorial, tribal, or local law or regulation requires:

(a) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this rule.

(b) The dust clearance samples are required to be collected by a certified inspector, risk assessor, or dust sampling technician.

(c) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in R307-842-3(5)(h) or any local standard.

(4) Activities conducted after post-renovation cleaning verification. Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this rule if they are conducted after post-renovation cleaning verification has been performed.

R307-841-6. Recordkeeping and Reporting Requirements.

(1) Firms performing renovations must retain and, if requested, make available to the director all records necessary to demonstrate compliance with this rule for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation.

(2) Records that must be retained pursuant to paragraph (1) of this section shall include (where applicable):

(a) Records or reports certifying that a determination had been made that lead-based paint is not present on the components affected by the renovation, as described in R307-841-3(1). These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor certified pursuant to R307-842-2.

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(iii) Records prepared by a certified renovator after collecting paint chip samples, including a description of the components that were tested including their locations, the name and address of the NLLAP-recognized entity performing the analysis, and the results for each sample.

(b) Signed and dated acknowledgments of receipt as described in R307-841-4(1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(a)(ii)(A).

(c) Certifications of attempted delivery as described in R307-841-4(1)(b)(i) and (3)(a)(ii)(A).

(d) Certificates of mailing as described in R307-841-4(1)(a)(ii), (1)(b)(ii), (2)(a)(ii), (3)(a)(i)(B), and (3)(a)(ii)(B).

(e) Records of notification activities performed regarding common area renovations, as described in R307-841-4(2)(c) and (2)(d), and renovations in child-occupied facilities, as described in R307-841-4(3)(b).

(f) Documentation of compliance with the requirements of R307-841-5, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in R307-841-5(1), and that the certified renovator performed the post-renovation cleaning verification described in R307-841-5(2). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in R307-841-3, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's current Utah Lead-Based

Paint Renovator certification card, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(iv) If paint chip samples were collected, that the samples were collected at the specified locations, that the specified NLLAP-recognized laboratory analyzed the samples, and that the results were as specified.

(v) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors);

(B) Closing and covering all HVAC ducts in the work area (interiors);

(C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors);

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors);

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust;

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors); and

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(vi) Waste was contained on-site and while being transported off-site.

(vii) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal; and

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(viii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(3)(a) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this rule to the following persons:

(i) The owner of the building; and, if different,

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(b) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this rule or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(c) The information required to be provided by paragraph (3) of this section may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required by R307-841-6(2)(a)(ii) and the training and work practice compliance information required by R307-841-6(2)(f).

(4) If dust clearance sampling is performed in lieu of cleaning verification as permitted by R307-841-5(3), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(a) The owner of the building; and, if different,

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(c) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

R307-841-7. Firm Certification.

(1) Initial certification.

(a) Firms that perform renovations for compensation must apply to the director for certification to perform renovations or dust sampling. To apply, a firm must submit to the director a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, and pay the correct amount of fees.

(b) After the director receives a firm's application, the director will take one of the following actions within 90 days of the date the application is received:

(i) The director will approve a firm's application if the director determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When the director approves a firm's application, the director will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved;

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete. If the director requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request; and

(iii) The director will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (1)(b)(ii) of this section or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(2) Re-certification. To maintain its certification, a firm must be re-certified by the director.

(a) Timely and complete application. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Lead-Based Paint Certification Application for Firms" which

contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include the correct amount of fees.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until the director has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and the director does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until the director approves its re-certification application.

(iii) If the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (1), of this section.

(b) Director's action on an application. After the director receives a firm's application for re-certification, the director will review the application and take one of the following actions within 90 days of receipt:

(i) The director will approve a firm's application if the director determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When the director approves a firm's application for re-certification, the director will issue the firm a new certificate with an expiration date not more than 5 years from the date that the firm's current certification expires.

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete.

(iii) The director will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(3) Amendment of certification. A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(a) To amend a certification, a firm must submit a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(b) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, the director will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(c) Amending a certification does not affect the certification expiration date.

(4) Firm responsibilities. Firms performing renovations must ensure that:

(a) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with R307-841-8;

(b) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in R307-841-8;

(c) All renovations performed by the firm are performed in accordance with the work practice standards in R307-841-5;

(d) The pre-renovation education requirements of R307-841-4 have been performed; and

(e) The recordkeeping requirements of R307-841-6 are met.

R307-841-8. Renovator Certification and Dust Sampling Technician Certification.

(1) Renovator certification and dust sampling technician certification.

(a) To become a certified renovator or certified dust sampling technician, an individual must successfully complete an initial lead-based paint renovator or dust-sampling technician course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745.

(b) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who have successfully completed a director, EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(c) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.

(d) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or by a state or tribal program that is authorized under subpart Q of 40 CFR 745 within 5 years of the date the individual completed the initial course described in paragraph (1)(a) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again.

(2) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with R307-841-5 at all renovations to which they are assigned. A certified renovator:

(a) Must perform all of the tasks described in R307-841-5(2) and must either perform or direct workers who perform all of the tasks described in R307-841-5(1);

(b) Must provide training to workers on the work practices required by R307-841-5(1) that they will be using in performing their assigned tasks;

(c) Must be physically present at the work site when the signs required by R307-841-5(1)(a) are posted, while the work area containment required by R307-841-5(1)(b) is being established, and while the work area cleaning required by R307-841-5(1)(e) is performed;

(d) Must regularly direct work being performed by other individuals to ensure that the work practices required by R307-841-5(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Must be available, either on-site or by telephone, at all times that renovations are being conducted;

(f) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint;

(g) Must have with them at the work site their current Utah Lead-Based Paint Renovator certification card; and

(h) Must prepare the records required by R307-841-6(2)(a)(ii), (iii), and (f).

(3) Dust sampling technician responsibilities. When performing optional dust clearance sampling under R307-841-5(3), a certified dust sampling technician:

(a) Must collect dust samples in accordance with R307-842-3(5)(h), must send the collected samples to a laboratory recognized by EPA under TSCA Section 405(b), and must compare the results to the clearance levels in accordance with R307-842-3(5)(h); and

(b) Must have with them at the work site their current Utah Lead-Based Paint Dust Sampling Technician certification card.

R307-841-9. Suspending, Revoking, or Modifying an Individual's or Firm's Certification.

(1) Grounds for suspending, revoking, or modifying an individual's certification. The director may suspend, revoke, or modify an individual's certification if the individual fails to comply with state lead-based paint administrative rules. The director may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with R307-841-5. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) Grounds for suspending, revoking, or modifying a firm's certification. The director may suspend, revoke, or modify a firm's certification if the firm:

(a) Submits false or misleading information to the director in its application for certification or re-certification,

(b) Fails to maintain or falsifies records required in R307-841-6, or

(c) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with state lead-based paint administrative rules. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

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R307. Environmental Quality, Air Quality.
R307-842. Lead-Based Paint Activities.
R307-842-1. Accreditation of Training Programs: Target Housing and Child-Occupied Facilities.

(1) Scope.

(a) A training program may seek accreditation to offer courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(b) Training programs may apply to the director for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section. Training programs may apply to the director for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section.

(c) A training program must not provide, offer, or claim to provide director-accredited lead-based paint activities courses without applying for and receiving accreditation from the director as required under paragraph (2) of this section. A training program must not provide, offer, or claim to provide director-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from the director as required under paragraph (2) of this section.

(2) Application process. The following are procedures a training program must follow to receive director accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(a) A training program seeking accreditation shall submit a written application to the director containing the following information:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements;

(iii) The name and documentation of the qualifications of the training program manager;

(iv) The name(s) and documentation of qualifications of any principal instructor(s); and

(v) A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (3) of this section. If a training program uses EPA-recommended model training materials, the training program manager shall include a statement certifying that, as well; or

(vi) If a training program does not use EPA-recommended model training materials, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course;

(B) A copy of the course agenda for each course; and

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate;

(vii) All training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and

(D) A copy of the quality control plan as described in paragraph (3)(i) of this section.

(b) If a training program meets the requirements in paragraph (3) of this section, then the director shall approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the director may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The director may also request additional materials retained by the training program under paragraph (8) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time.

(c) A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

(d) A training program applying for accreditation must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(3) Requirements for the accreditation of training programs. For a training program to obtain accreditation from the director to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses, the program must meet the following requirements:

(a) The training program shall employ a training manager who has:

(i) At least 2 years of experience, education, or training in teaching workers or adults; or

(ii) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(iii) Two years of experience in managing a training program specializing in environmental hazards; and

(iv) Demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(b) The training manager shall designate a qualified principal instructor for each course who has:

(i) Demonstrated experience, education, or training in teaching workers or adults; and

(ii) Successfully completed at least 16 hours of any director-accredited, EPA-accredited, or EPA-authorized state or tribal-accredited lead-specific training for instructors of lead-based paint activities courses or 8 hours of any director-accredited, EPA-accredited or EPA-authorized state or tribal-accredited lead-specific training for instructors of renovator or dust sampling technician courses; and

(iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(c) The principal instructor shall be responsible for the organization of the course, course delivery, and oversight of the teaching of all course material. The training manager may designate guest instructors as needed for a portion of the course to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. However, the principal instructor is primarily responsible for teaching the course materials and must be present to provide instruction (or oversight of portions of the course taught by guest instructors) for the course for which he or she has been designated the principal instructor.

(d) The following documents shall be recognized by the

director as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (3)(a) and (3)(b) of this section. This documentation must be submitted with the accreditation application and retained by the training program as required by the recordkeeping requirements contained in paragraph (8) of this section. Those documents include the following:

(i) Official academic transcripts or diploma as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(e) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(f) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training requirements:

(i) The inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in paragraph (4)(a) of this section;

(ii) The risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in paragraph (4)(b) of this section;

(iii) The supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the supervisor course are contained in paragraph (4)(c) of this section;

(iv) The project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the project designer course are contained in paragraph (4)(d) of this section;

(v) The abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in paragraph (4)(e) of this section;

(vi) The renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in paragraph (4)(f) of this section; and

(vii) The dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in paragraph (4)(g) of this section.

(viii) Electronic learning and other alternative course delivery methods are permitted for the classroom portion of renovator, dust sampling technician, or lead-based paint activities courses but not the hands-on portion of these courses, or for final course tests or proficiency tests described in paragraph (3)(g) of this section. Electronic learning courses must comply with the following requirements:

(A) A unique identifier must be assigned to each student for them to use to launch and re-launch the course;

(B) The training provider must track each student's course log-ins, launches, progress, and completion, and maintain these records in accordance with paragraph (8) of this section;

(C) The course must include periodic knowledge checks equivalent to the number and content of the knowledge checks contained in EPA's model course, but at least 16 over the entire course. The knowledge checks must be successfully completed before the student can go on to the next module;

(D) There must be a test of at least 20 questions at the end of the electronic learning portion of the course, of which 80% must be answered correctly by the student for successful completion of the electronic learning portion of the course. The test must be designed so that students do not receive feedback on their test answers until after they have completed and submitted the test; and

(E) Each student must be able to save or print a copy of an electronic learning course completion certificate. The electronic certificate must not be susceptible to easy editing.

(g) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each student must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in paragraph (4) of this section;

(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics; and

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(h) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(i) The name, a unique identification number, and address of the individual;

(ii) The name of the particular course that the individual completed;

(iii) Dates of course completion/test passage;

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion;

(v) The name, address, and telephone number of the training program;

(vi) The language in which the course was taught; and

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual. The photograph must be an accurate and recognizable image of the individual. As reproduced on the certificate, the photograph must not be smaller than 1 square inch.

(i) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(ii) Procedures for the training manager's annual review of principal instructor competency.

(j) Courses offered by the training program must teach the work practice standards contained in R307-841-5 or R307-842-3, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-

based paint activities they will be responsible for conducting.

(k) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

(l) The training manager shall allow the director or the director's authorized representative to audit the training program to verify the contents of the application for accreditation as described in paragraph (2) of this section.

(m) The training manager must provide notification of renovator, dust sampling technician, or lead-based paint activities courses offered.

(i) The training manager must provide the director with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered. The original notification must be received by the director at least 7 business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course;

(ii) The training manager must provide the director updated notification when renovator, dust sampling technician, or lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

(A) For renovator, dust sampling technician, or lead-based paint activities courses beginning prior to the start date provided to the director, an updated notification must be received by the director at least 7 business days before the new start date; and

(B) For renovator, dust sampling technician, or lead-based paint activities courses beginning after the start date provided to the director, an updated notification must be received by the director at least 2 business days before the start date provided to the director;

(iii) The training manager must update the director of any change in location of renovator, dust sampling technician, or lead-based paint activities courses at least 7 business days prior to the start date provided to the director;

(iv) The training manager must update the director regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the director at least 2 business days prior to the start date provided to the director;

(v) Each notification, including updates, must include the following:

(A) Notification type (original, update, or cancellation);

(B) Training program name, address, and telephone number;

(C) Course discipline, type (initial/refresher), and the language in which instruction will be given;

(D) Date(s) and time(s) of training;

(E) Training location(s) telephone number, and address;

(F) Principal instructor's name; and

(G) Training manager's name and signature;

(vi) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification of renovator, dust sampling technician, or lead-based paint activities course schedules can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(m)(v) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, or hand delivery. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(vii) Renovator, dust sampling technician, or lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification; and

(viii) No training program shall provide renovator, dust sampling technician, or lead-based paint activities courses without first notifying the director of such activities in accordance with the requirements of this paragraph.

(n) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide the director notification after the completion of any renovator, dust sampling technician, or lead-based paint activities course. This notice must be received by the director no later than 10 business days following the course completion;

(ii) The notification must include the following:

(A) Training program name, address, and telephone number;

(B) Course discipline and type (initial/refresher);

(C) Date(s) of training;

(D) The following information for each student who took the course:

(I) Name,

(II) Address,

(III) Date of birth,

(IV) Course completion certificate number,

(V) Course test score, and

(VI) For renovator or dust sampling technician courses, a digital photograph of the student;

(E) Training manager's name and signature; and

(F) Utah Division of Air Quality Lead-Based Paint Program training verification statement; and

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification following renovator, dust sampling technician, or lead-based paint activities training courses can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(n)(ii) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, or hand delivery. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site.

(4) Minimum training curriculum requirements. To become accredited to offer lead-based paint courses in the specific disciplines listed in this paragraph, training programs must ensure that their courses of study include, at a minimum, the following course topics.

(a) Inspector. Instruction in the topics described in paragraphs (4)(a)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an inspector.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing.

(v) Paint, dust, and soil sampling methodologies.

(vi) Clearance standards and testing, including random sampling.

(vii) Preparation of the final inspection report.

(viii) Recordkeeping.

(b) Risk assessor. Instruction in the topics described in paragraphs (4)(b)(iv), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a risk assessor.

(ii) Collection of background information to perform a risk assessment.

(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.

(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.

(v) Lead hazard screen protocol.

(vi) Sampling for other sources of lead exposure.

(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable federal or state guidance or regulations pertaining to lead-based paint hazards.

(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

(ix) Preparation of a final risk assessment report.

(c) Supervisor. Instruction in the topics described in paragraphs (4)(c)(v), (vii), (viii), (ix), and (x) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a supervisor.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Liability and insurance issues relating to lead-based paint abatement.

(v) Risk assessment and inspection report interpretation.

(vi) Development and implementation of an occupant protection plan and abatement report.

(vii) Lead-based paint hazard recognition and control.

(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.

(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.

(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.

(xi) Clearance standards and testing.

(xii) Cleanup and waste disposal.

(xiii) Recordkeeping.

(d) Project designer.

(i) Role and responsibilities of a project designer.

(ii) Development and implementation of an occupant protection plan for large-scale abatement projects.

(iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

(iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

(v) Clearance standards and testing for large scale abatement projects.

(vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(e) Abatement worker. Instruction in the topics described in paragraphs (4)(e)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an abatement worker.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Lead-based paint hazard recognition and control.

(v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.

(vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction.

(vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.

(f) Renovator. Instruction in the topics described in paragraphs (4)(f)(iv), (vi), (vii), and (viii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a renovator.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on EPA, HUD, OSHA, and other federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint.

(v) Procedures for collecting a paint chip sample and sending it to a laboratory recognized by EPA under section 405(b) of TSCA.

(vi) Renovation methods to minimize the creation of dust and lead-based paint hazards.

(vii) Interior and exterior containment and cleanup methods.

(viii) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing.

(ix) Waste handling and disposal.

(x) Providing on-the-job training to other workers.

(xi) Record preparation.

(g) Dust sampling technician. Instruction in the topics described in paragraphs (4)(g)(iv) and (vi) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a dust sampling technician.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Dust sampling methodologies.

(v) Clearance standards and testing.

(vi) Report preparation.

(5) Requirements for the accreditation of refresher training programs. A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. To obtain director accreditation to offer refresher training, a training program must meet the following minimum requirements:

(a) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (4) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(i) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;

(ii) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline; and

(iii) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;

(b) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours. Refresher courses for all disciplines except project designer must include a hands-on component;

(c) Except for project designer courses, for all other courses offered, the training program shall conduct a hands-on assessment, and at the completion of the course, a course test;

(d) A training program may apply for accreditation of a

refresher course concurrently with its application for accreditation of the corresponding training course as described in paragraph (2) of this section. If so, the director shall use the approval procedure described in paragraph (2) of this section. In addition, the minimum requirements contained in paragraphs (3)(a) through 3)(e) and (3)(g) through (3)(n), and (5)(a) through (5)(c) of this section shall also apply; and

(e) A training program seeking accreditation to offer refresher training courses only shall submit a written application to the director containing the following information:

(i) The refresher training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for accreditation;

(iii) The name and documentation of the qualifications of the training program manager;

(iv) The name(s) and documentation of the qualifications of the principal instructor(s);

(v) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (3) of this section, except for the requirements in paragraph (3)(f) of this section. If a training program uses EPA-developed model training materials, the training manager shall include a statement certifying that, as well;

(vi) If the refresher training course materials are not based on EPA-developed model training materials, the training program's application for accreditation shall include:

(A) A copy of the student and instructor manuals to be used for each course; and

(B) A copy of the course agenda for each course;

(vii) All refresher training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable); and

(D) A copy of the quality control plan as described in paragraph (3)(i) of this section;

(viii) The requirements in paragraphs (3)(a) through (3)(e), and (3)(g) through (3)(n) of this section apply to refresher training providers; and

(ix) If a refresher training program meets the requirements listed in this paragraph, then the director shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the director may, at the director's discretion, work with the applicant to address inadequacies in the application for accreditation. The director may also request additional materials retained by the refresher training program under paragraph (8) of this section. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

(6) Re-accreditation of training programs.

(a) Unless re-accredited, a training program's accreditation, including refresher training accreditation, shall expire 4 years after the date of issuance. If a training program meets the requirements of this section, the training program shall be re-accredited.

(b) A training program seeking re-accreditation shall submit an application to the director no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, the director cannot guarantee that the program will be re-accredited before the end of the accreditation period.

(c) The training program's application for re-accreditation shall contain:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for re-accreditation;

(iii) The name and qualifications of the training program manager;

(iv) The name(s) and qualifications of the principal instructor(s);

(v) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students' ability to learn;

(vi) A statement signed by the program manager stating:

(A) That the training program complies at all times with all requirements in paragraphs (3) and (5) of this section, as applicable; and

(B) The recordkeeping and reporting requirements of paragraph (8) of this section shall be followed; and

(vii) A payment of appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(d) Upon request, the training program shall allow the director or the director's authorized representative to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (6)(c) of this section.

(7) Suspension, revocation, and modification of accredited training programs.

(a) The director may, after notice and an opportunity, for hearing, suspend, revoke, or modify training program accreditation, including refresher training accreditation, if a training program, training manager, or other person with supervisory authority over the training program has:

(i) Misrepresented the contents of a training course to the director and/or the student population;

(ii) Failed to submit required information or notifications in a timely manner;

(iii) Failed to maintain required records;

(iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation;

(v) Failed to comply with the training standards and requirements in this section;

(vi) Failed to comply with federal, state, or local lead-based paint statutes or regulations; or

(vii) Made false or misleading statements to the director in its application for accreditation or re-accreditation which the director relied upon in approving the application.

(b) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(8) Training program recordkeeping requirements.

(a) Accredited training programs shall maintain, and make available to the director or the director's authorized representative, upon request, the following records:

(i) All documents specified in paragraph (3)(d) of this section that demonstrate the qualifications listed in paragraphs (3)(a) and (3)(b) of this section of the training manager and principal instructors;

(ii) Current curriculum/course materials and documents reflecting any changes made to these materials;

(iii) The course test blueprint;

(iv) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment;

(B) How the skills are graded;

(C) What facilities are used; and

(D) The pass/fail rate;

(v) The quality control plan as described in paragraph (3)(i) of this section;

(vi) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate;

(vii) Any other material not listed in paragraphs (8)(a)(i) through (8)(a)(vi) of this section that was submitted to the director as part of the program's application for accreditation.

(viii) For renovator refresher and dust sampling technician refresher courses, a copy of each trainee's prior course completion certificate showing that each trainee was eligible to take the refresher course; and

(ix) For course modules delivered in an electronic format, a record of each student's log-ins, launches, progress, and completion, and a copy of the electronic learning completion certificate for each student.

(b) The training program must retain records pertaining to renovator, dust sampling technician and lead-based paint activities courses at the address specified on the training program accreditation application (or as modified in accordance with paragraph (8)(c) of this section) for the following minimum periods:

(i) Records pertaining to lead-based paint activities courses must be retained for a minimum of 3 years and 6 months;

(ii) Records pertaining to renovator or dust sampling technician courses offered must be retained for a minimum of 5 years and 6 months.

(c) The training program shall notify the director in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

(9) Amendment of accreditation.

(a) A training program must amend its accreditation within 90 days of the date a change occurs to information included in the program's most recent application. If the training program fails to amend its accreditation within 90 days of the date the change occurs, the program may not provide renovator, dust sampling technician, or lead-based paint activities training until its accreditation is amended.

(b) To amend an accreditation, a training program must submit a completed Division of Air Quality Lead-Based Paint Application for Course Accreditation, signed by an authorized agent of the training provider, noting on the form that it is submitted as an amendment and indicating the information that has changed.

(c) Training managers, principal instructors, permanent training locations. If the amendment includes a new training program manager, any new or additional principal instructor(s), or any new permanent training location(s), the training provider is not permitted to provide training under the new training manager or offer courses taught by any new principal instructor(s) or at the new training location(s) until the director either approves the amendment or 30 days have elapsed, whichever occurs earlier. Except:

(i) If the amendment includes a new training program manager or new or additional principal instructor that was identified in a training provider accreditation application that the director has already approved under this section, the training provider may begin to provide training under the new training manager or offer courses taught by the new principal instructor on an interim basis as soon as the provider submits the amendment to the director. The training provider may continue to provide training under the new training manager or offer courses taught by the new principal instructor if the director approves the amendment or if the director does not disapprove the amendment within 30 days.

(ii) If the amendment includes a new permanent training location, the training provider may begin to provide training at the new permanent training location on an interim basis as soon as the provider submits the amendment to the director. The training provider may continue to provide training at the new permanent training location if the director approves the amendment or if the director does not disapprove the amendment within 30 days.

R307-842-2. Certification of Individuals and Firms Engaged in Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.

(1) Certification of individuals.

(a) Individuals seeking certification by the director to engage in lead-based paint activities must either:

(i) Submit to the director an application demonstrating that they meet the requirements established in paragraphs (2) or (3) of this section for the particular discipline for which certification is sought; or

(ii) Submit to the director an application with a copy of a valid lead-based paint activities certification (or equivalent) from the EPA or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745; or

(iii) For supervisor, inspector, and/or risk assessor certification, submit to the director an application with a copy of a valid lead-based paint training certificate from an EPA-accredited, or EPA-authorized state or tribal-accredited lead-specific training in the appropriate discipline and pass the certification exam in the appropriate discipline offered by the director.

(b) Following the submission of an application demonstrating that all the requirements of this section have been met, the director shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(c) Upon receiving director certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in R307-842-3.

(d) It shall be a violation of state administrative rules for an individual to conduct any of the lead-based paint activities described in R307-842-3 if that individual has not been certified by the director pursuant to this section to do so.

(e) Individuals applying for certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(2) Inspector, risk assessor or supervisor.

(a) To become certified by the director as an inspector, risk assessor, or supervisor, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program;

(ii) Pass the certification exam in the appropriate discipline offered by the director; and

(iii) Meet or exceed the following experience and/or education requirements:

(A) Inspectors. No additional experience and/or education requirements;

(B) Risk assessors.

(I) Successful completion of an accredited training course for inspectors; and

(II) Bachelor's degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associates degree and 2 years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(III) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g., safety professional, environmental scientist); or

(IV) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction);

(C) Supervisor.

(I) One year of experience as a certified lead-based paint abatement worker; or

(II) At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(b) The following documents shall be recognized by the director as evidence of meeting the requirements listed in (2)(b)(iii) of this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) In order to take the certification examination for a particular discipline an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the education and/or experience requirements in paragraph (2)(a)(iii) of this section.

(d) The course completion certificate shall serve as interim certification for an individual until the next available opportunity to take the certification exam. Such interim certification shall expire 6 months after issuance.

(e) After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in paragraph (2)(a) of this section, an individual shall be issued a certificate by the director. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(f) An individual may take the certification exam no more than three times within 6 months of receiving a course completion certificate.

(g) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her course completion certificate, the individual must retake the appropriate course from an accredited training program before reapplying for certification from the director.

(3) Abatement worker and project designer.

(a) To become certified by the director as an abatement worker or project designer, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the following additional experience and/or education requirements:

(A) Abatement workers. No additional experience and/or education requirements; and

(B) Project designers.

(I) Successful completion of an accredited training course for supervisors;

(II) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or

(III) Four years of experience in building construction and design or a related field.

(b) The following documents shall be recognized by the director as evidence of meeting the requirements listed in this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) The course completion certificate shall serve as an interim certification until certification from the director is received, but shall be valid for no more than 6 months from the date of completion.

(d) After successfully completing the appropriate training courses and meeting any other qualifications described in paragraph (3)(a) of this section, an individual shall be issued a certificate from the director. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(4) Re-certification.

(a) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by the director in that discipline by the director either:

(i) Every 3 years if the individual completed a training course with a course test and hands-on assessment; or

(ii) Every 5 years if the individual completed a training course with a proficiency test.

(b) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and submits a valid copy of the appropriate refresher course completion certificate. If more than 3 years but less than 4 years have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a course test and hands-on assessment, or if more than 5 years but less than 6 years have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a proficiency test for the supervisor, inspector, and/or risk assessor disciplines, then the individual must also pass the certification exam in the appropriate discipline offered by the director.

(c) Individuals applying for re-certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(5) Certification of firms.

(a) All firms which perform or offer to perform any of the lead-based paint activities or renovations described in R307-842-3 shall be certified by the director.

(b) A firm seeking certification shall submit to the director a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in R307-842-3 for conducting lead-based paint activities.

(c) From the date of receiving the firm's letter requesting certification, the director shall have 90 days to approve or disapprove the firm's request for certification. Within that time, the director shall respond with either a certificate of approval or a letter describing the reasons for disapproval.

(d) The firm shall maintain all records pursuant to the requirements in R307-842-3.

(e) Firms may apply to the director for certification to engage in lead-based paint activities pursuant to this section.

(f) Firms applying for certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(g) To maintain certification a firm shall submit appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(6) Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint

activities.

(a) The director may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Obtained training documentation through fraudulent means;

(ii) Gained admission to and completed an accredited training program through misrepresentation of admission requirements;

(iii) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience;

(iv) Performed work requiring certification at a job site without having proof of certification;

(v) Permitted the duplication or use of the individual's own certificate by another;

(vi) Performed work for which certification is required, but for which appropriate certification has not been received;

(vii) Failed to comply with the appropriate work practice standards for lead-based paint activities at R307-842-3; or

(viii) Failed to comply with federal, state, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(7) Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities.

(a) The director may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified;

(ii) Failed to comply with the work practice standards established in R307-842-3;

(iii) Misrepresented facts in its letter of application for certification to the director;

(iv) Failed to maintain required records; or

(v) Failed to comply with federal, state, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

R307-842-3. Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.

(1) Effective date, applicability, and terms.

(a) All lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

(b) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment, or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.

(c) Documented methodologies that are appropriate for this section are found in the following: the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil, the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001), and other equivalent methods and guidelines.

(d) Clearance levels are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil or other equivalent guidelines.

(2) Inspection.

(a) An inspection shall be conducted only by a person certified by the director as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint:

(i) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

(ii) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(c) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:

(i) Date of each inspection;

(ii) Address of building;

(iii) Date of construction;

(iv) Apartment numbers (if applicable);

(v) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(vi) Name, signature, and certification number of each certified inspector and/or risk assessor conducting testing;

(vii) Name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable;

(viii) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device;

(ix) Specific locations of each painted component tested for the presence of lead-based paint; and

(x) The results of the inspection expressed in terms appropriate to the sampling method used.

(3) Lead hazard screen.

(a) A lead hazard screen shall be conducted only by a person certified by the director as a risk assessor.

(b) If conducted, a lead hazard screen shall be conducted as follows:

(i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected;

(ii) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:

(A) Determine if any deteriorated paint is present; and

(B) Locate at least two dust sampling locations;

(iii) If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead;

(iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the

windows, in rooms, hallways, or stairwells where one or more children, age 6 and under, are most likely to come in contact with dust; and

(v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (3)(b)(iv) of this section, the risk assessor shall also collect composite dust samples from common areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(c) Dust samples shall be collected and analyzed in the following manner:

(i) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures; and

(ii) All collected dust samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(e) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(i) The information required in a risk assessment report as specified in paragraph (4) of this section, including paragraphs (4)(k)(i) through (4)(k)(xiv), and excluding paragraphs (4)(k)(xv) through (4)(k)(xviii) of this section. Additionally, any background information collected pursuant to paragraph (3)(b)(i) of this section shall be included in the lead hazard screen report; and

(ii) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

(4) Risk assessment.

(a) A risk assessment shall be conducted only by a person certified by the director as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(c) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(d) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint; and

(ii) All other surfaces with visibly deteriorated paint.

(e) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(f) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (4)(d) of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come into contact with dust.

(g) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway, or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where one or more children, age 6 and under, are likely to come into contact with dust.

(h) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(i) Exterior play areas where bare soil is present;

(ii) The rest of the yard (i.e., non-play areas) where bare soil is present; and

(iii) Dripline/foundation areas where bare soil is present.

(i) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(j) Any collected paint chip, dust, or soil samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(k) The certified risk assessor shall prepare a risk assessment report which shall include the following information:

(i) Date of assessment;

(ii) Address of each building;

(iii) Date of construction of buildings;

(iv) Apartment number (if applicable);

(v) Name, address, and telephone number of each owner of each building;

(vi) Name, signature, and certification of the certified risk assessor conducting the assessment;

(vii) Name, address, and telephone number of the certified firm employing each certified risk assessor if applicable;

(viii) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples;

(ix) Results of the visual inspection;

(x) Testing method and sampling procedure for paint analysis employed;

(xi) Specific locations of each painted component tested for the presence of lead;

(xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples;

(xiv) Any other sampling results;

(xv) Any background information collected pursuant to paragraph (4)(c) of this section;

(xvi) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards;

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(5) Abatement.

(a) An abatement shall be conducted only by an individual certified by the director, and if conducted, shall be conducted according to the procedures in this paragraph.

(b) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours.

(c) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other federal, state, and local requirements.

(d) A certified firm must notify the director of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (5)(d)(ii) of this section, the director must be notified prior to conducting lead-based paint abatement activities. The original notification must be received by the director at least 5 business days before the start date of any lead-based paint abatement activities;

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or federal, state, tribal, or local emergency abatement order should be received by the director as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to the director change, an updated notification must be received by the director on or before the start date provided to the director. Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period;

(iii) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the director for lead-based paint abatement activities that will begin on a date other than the start date specified in the original notification, as follows:

(A) For lead-based paint abatement activities beginning prior to the start date provided to the director an updated notification must be received by the director at least 5 business days before the new start date included in the notification; and

(B) For lead-based paint abatement activities beginning after the start date provided to the director an updated notification must be received by the director on or before the start date provided to the director;

(iv) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the director for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to the director;

(v) Updated notification must be provided to the director when lead-based paint abatement activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by the director on or before the start date provided to the director, or if work has already begun, within 24 hours of the change;

(vi) The following must be included in each notification:

(A) Notification type (original, updated, or cancellation);

(B) Date when lead-based paint abatement activities will start;

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgment);

(D) Firm's name, Utah lead-based paint firm certification number, address, and telephone number;

(E) Type of building (e.g., single family dwelling, multi-family dwelling, and/or child-occupied facilities) on/in which abatement work will be performed;

(F) Property name (if applicable);

(G) Property address including apartment or unit number(s) (if applicable) for abatement work;

(H) Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order, if using the abbreviated time period as described in paragraph (5)(d)(ii) of this section;

(I) Name and Utah lead-based paint individual certification number of the project supervisor;

(J) Approximate square footage/acreage to be abated;

(K) Brief description of abatement activities to be performed; and

(L) Name, title, and signature of the representative of the certified firm who prepared the notification;

(vii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification can be accomplished using either the sample form titled "Lead-Based Paint Abatement Project Notification" or similar form containing the information required in paragraph (5)(d)(vi) of this section. All written notifications must be delivered by United States Postal Service, fax, commercial delivery service, or hand delivery on or before the applicable date. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification; and

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in R307-840-2, prior to notifying the director of such activities according to the requirements of this paragraph.

(e) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(i) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards; and

(ii) A certified supervisor or project designer shall prepare the occupant protection plan.

(f) The work practices listed below shall be restricted during an abatement as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97% or greater efficiency;

(iii) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(iv) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(g) If conducted, soil abatement shall be conducted in one of the following ways:

(i) If the soil is removed:

(A) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 ppm; and

(B) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility; or

(ii) If soil is not removed, the soil shall be permanently

covered, as defined in R307-840-2.

(h) The following post-abatement clearance procedures shall be performed only by a certified inspector or risk assessor:

(i) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris, or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures;

(ii) Following the visual inspection and any post-abatement cleanup required by paragraph (5)(h)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques;

(iii) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures;

(iv) Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities;

(v) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, or stairwells shall be sampled;

(B) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are less than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility, then all rooms, hallways, or stairwells shall be sampled; and

(C) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable federal, state, and local requirements;

(vi) The rooms, hallways, or stairwells selected for sampling shall be selected according to documented methodologies;

(vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust sample with clearance levels in paragraph (5)(h)(viii) of this section for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested; and

(viii) The clearance levels for lead in dust are 40 ug/ft^2 for floors, 250 ug/ft^2 for interior window sills, and 400 ug/ft^2 for window troughs.

(i) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample;

(ii) A sufficient number of residential dwellings are selected for dust sampling to provide a 95% level of confidence that no more than 5% or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels; and

(iii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph (5)(h) of this section.

(j) An abatement report shall be prepared by a certified supervisor or project designer no later than 30 business days after receiving the results of final clearance testing and all soil analyses (if applicable). The abatement report shall include the following information:

(i) Start and completion dates of abatement;

(ii) The name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project;

(iii) The occupant protection plan prepared pursuant to paragraph (5)(e) of this section;

(iv) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;

(v) The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses; and

(vi) A detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(6) Collection and laboratory analysis of samples. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

(a) Collected by persons certified by the director as an inspector or risk assessor; and

(b) Analyzed by a laboratory recognized by EPA pursuant to Section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.

(7) Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in paragraphs (3) through (5) of this section. If such sampling is conducted, the following conditions shall apply:

(a) Composite dust samples shall consist of at least two subsamples;

(b) Every component that is being tested shall be included in the sampling; and

(c) Composite dust samples shall not consist of subsamples from more than one type of component.

(8) Determinations.

(a) Lead-based paint is present:

(i) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and

(ii) On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

(b) A paint-lead hazard is present:

(i) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in the definition of "Dust-lead hazard" in R307-840-2;

(ii) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(iii) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame); and

(iv) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(c) A dust-lead hazard is present in a residential dwelling or child-occupied facility:

(i) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 40 ug/ft^2 for floors and 250 ug/ft^2 for interior window sills, respectively;

(ii) On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(iii) On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

(d) A soil-lead hazard is present:

(i) In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

(ii) In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

(9) Recordkeeping. All reports or plans required in this section shall be maintained by the certified firm or individual who prepared the report for no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services.

R307-842-4. Lead-Based Paint Activities Requirements.

Lead-based paint activities, as defined in R307-840-2, shall only be conducted according to the procedures and work practice standards contained in R307-842-3 of this rule. No individual or firm may offer to perform or perform any lead-based paint activity as defined in R307-840-2, unless certified to perform that activity according to the procedures in R307-842-2.

R307-842-5. Work Practice Requirements for Lead-Based Paint Hazards.

Applicable certification, occupant protection, and clearance requirements and work practice standards are found in R307-842 and in regulations issued by HUD at 24 CFR Part 35, Subpart R. The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(a) Two square feet of deteriorated lead-based paint per room or equivalent,

(b) Twenty square feet of deteriorated paint on the exterior building, or

(c) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

KEY: paint, lead-based paint, lead-based paint abatement
May 3, 2012 19-2-104(1)(i)
Notice of Continuation February 5, 2015

R311. Environmental Quality, Environmental Response and Remediation.
R311-500. Illegal Drug Operations Site Reporting and Decontamination Act, Decontamination Specialist Certification Program.
R311-500-1. Objective, Scope and Authority.

(a) Objective. The Decontamination Specialist Certification Program is designed to assist in helping ensure that personnel in charge of decontamination are trained to perform cleanups and knowledgeable of established decontamination standards; to develop methods whereby an applicant can demonstrate competency and obtain certification to become a Certified Decontamination Specialist; to protect the public health and the environment; and to provide for the health and safety of personnel involved in decontamination activities.

(b) Scope. These certification rules apply to individuals who perform decontamination of property that is on the contamination list specified in Section 19-6-903(3)(b) of the Illegal Drug Operations Site Reporting and Decontamination Act.

(c) Authority. Section 19-6-906 directs the Department of Environmental Quality Solid and Hazardous Waste Control Board, in consultation with the Department of Health and local Health Departments, to make rules to establish within the Division of Environmental Response and Remediation:

(1) certification standards for any private person, firm, or entity involved in the decontamination of contaminated property; and

(2) a process for revoking the certification of a Decontamination Specialist who fails to maintain the certification standards.

R311-500-2. Definitions.

(a) Refer to Section 19-6-902 for definitions not found in this rule.

(b) For the purposes of the Decontamination Specialist Certification Program rules:

(1) "Applicant" means any individual who applies to become a Certified Decontamination Specialist or applies to renew the existing certificate.

(2) "Board" means the Solid and Hazardous Waste Control Board.

(3) "Certificate" means a document that evidences certification.

(4) "Certification" means approval by the Director or the Board to perform decontamination of contaminated property under Title 19 Chapter 6, Illegal Drug Operations Site Reporting and Decontamination Act.

(5) "Certification Program" means the Division's process for issuing and revoking the Certification.

(6) "Confirmation Sampling" means collecting samples during a preliminary assessment or upon completion of decontamination activities to confirm that contamination is below the decontamination standards outlined in R392-600, Illegal Drug Operations Decontamination Standards.

(7) "Decontamination" means treatment or removal of contamination by a decontamination specialist or as otherwise allowed in the Illegal Drug Operations Site Reporting and Decontamination Act to reduce concentrations below the decontamination standards defined in R392-600 and to remove property from the contamination list specified in Subsection 19-6-903(3)(b).

(8) "Department" means the Utah Department of Environmental Quality.

(9) "Director" means the Director of the Division of Environmental Response and Remediation or the Director's designated representative.

(10) "Division" means the Division of Environmental Response and Remediation.

(11) "Lapse" in reference to the Certification, means to terminate automatically.

(12) "UAPA" means the Utah Administrative Procedures Act, Title 63 Chapter 46b.

R311-500-3. Delegation of Powers and Duties to the Director.

(a) The Director is delegated authority by the Board to administer the Decontamination Specialist Certification Program established within the Division.

(b) The Director may take any action necessary or incidental to develop certification standards and issue or revoke a certificate. These actions include but are not limited to:

(1) Establishing certification standards;

(2) Establishing and reviewing applications, certifications, or other data;

(3) Establishing and conducting testing and training;

(4) Denying applications;

(5) Issuing certifications;

(6) Evaluating compliance with the performance standards established in Section R311-500-8 through observations in the field, review of sampling methodologies and records or other means;

(7) Renewing certifications;

(8) Revoking certifications;

(9) Issuing notices and initial orders;

(10) Enforcing notices, orders and rules on behalf of the Board; and

(11) Requiring a Certified Decontamination Specialist or applicant to furnish information or records relating to his or her fitness to be a Certified Decontamination Specialist.

R311-500-4. Application for Certification.

(a) Any individual may apply for certification by paying the applicable fees and by submitting an application to the Director to demonstrate that the applicant:

(1) meets the eligibility requirements specified in R311-500-5; and

(2) will comply with the performance standards specified in R311-500-8 after receiving a certificate.

(b) Applications submitted under R311-500-4 shall be on a form approved by the Director and shall be reviewed by the Director to determine if the applicant is eligible for certification.

R311-500-5. Eligibility for Certification.

(a) For initial and renewal certification, an applicant must:

(1) Meet Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, including refresher training, as required by federal and state law; and

(2) Successfully pass a certification examination developed and administered under the direction of the Director.

(A) The contents of the initial certification examination and the renewal certification examination as well as the percentage of correct answers required to pass the examinations shall be determined by the Director before the tests are administered. The Director may offer a less comprehensive renewal certification examination to those individuals that have completed a Division sponsored renewal-training course.

(B) The Director shall determine the frequency and dates of the certification examinations.

(C) For applicants that fail the initial certification examination or the renewal certification examination, the Director may offer one additional examination within one month of the original test date without requiring submittal of a new application. The applicant shall pay a fee determined by the Director to cover the cost of the additional testing. Applicants that fail the re-examination shall wait six months prior to submitting a new application in accordance with R311-

500-4.

R311-500-6. Certification.

(a) Initial certification for all certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to R311-500-9. Certificates shall be subject to periodic renewal pursuant to R311-500-7.

R311-500-7. Renewal.

(a) A certificate holder may apply for certificate renewal by successfully completing the following prior to the expiration date of the current certificate:

(1) Submitting a completed renewal application on a form approved by the Director within the dates specified by the Director;

(2) Paying any applicable fees; and

(3) Passing a certification renewal examination.

(A) If the Director determines that the applicant meets the eligibility requirements of R311-500-5 and will comply with the performance standards of R311-500-8, the Director shall reissue the certificate to the applicant.

(B) If the Director determines that the applicant does not meet the eligibility requirements described in R311-500-5 or will not comply or has not complied with the performance standards of R311-500-8, the Director may issue a notice to deny certification in a manner consistent with R311-500-9.

(b) Renewal certificates shall be valid for two years and shall be subject to revocation under R311-500-9.

(c) Any individual who is not a Certified Decontamination Specialist on the date the renewal certification examination is given because the applicant's certification was revoked or expired prior to completing a renewal application must successfully meet the application and eligibility criteria for initial certification as specified in R311-500-4 and R311-500-5 prior to issuance of a certificate.

R311-500-8. Performance Standards.

(a) A Certified Decontamination Specialist performing decontamination activities at contaminated property:

(1) shall be certified prior to engaging in any decontamination activities for the purpose of removing the contaminated property from the list referenced in Section 19-6-903(3)(b) and display the certificate upon request;

(2) shall report to the local Health Department the location of any property that is the subject of decontamination work by the Decontamination Specialist;

(3) shall file a workplan with the local Health Department;

(4) shall perform work in accordance with the workplan;

(5) shall perform work meeting applicable local, state and federal laws, including certification and licensing requirements for performing construction work;

(6) shall oversee and supervise all decontamination activities and ensure any person(s) assisting with decontamination work at contaminated property meets Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120;

(7) shall disclose to any person(s) assisting with decontamination at contaminated property that work is being performed in a clandestine drug laboratory, inform the person(s) of the potential risks associated with this type of environment and ensure that the person(s) wears the necessary personal protective equipment as established by the Decontamination Specialist;

(8) shall make all decisions regarding decontamination and be the only individual conducting confirmation sampling;

(9) shall follow scientifically sound and accepted sampling procedures;

(10) shall submit a Final Report to the local Health Department, which includes an affidavit stating that the property has been decontaminated to the standards outlined in R392-600;

(11) shall maintain a current address and phone number on file with the Division;

(12) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and

(13) shall not participate in any other activities regulated under R311-500 without meeting all requirements of that certification program.

R311-500-9. Denial of Application and Revocation of Certification.

(a) Grounds for denial of an application or revocation of a certification may include any of the following:

(1) Failure to meet any of the application and eligibility criteria established in R311-500-4 and R311-500-5;

(2) Failure to submit a completed application;

(3) Evidence of past or current criminal activity;

(4) Demonstrated disregard for the public health, safety or the environment;

(5) Misrepresentation or falsification of figures, reports and/or data submitted to the local Health Department or the State;

(6) Cheating on a certification examination;

(7) Falsely obtaining or altering a certificate;

(8) Negligence, incompetence or misconduct in the performance of duties as a Certified Decontamination Specialist;

(9) Failure to furnish information or records required by the Director to demonstrate fitness to be a Certified Decontamination Specialist; or

(10) Violation of any certification or performance standard specified in this rule.

(b) Administrative proceedings regarding the denial of an application or the revocation of certification are governed by Rule R305-6.

R311-500-10. No Preemption.

(a) Certification to work as a Certified Decontamination Specialist does not relieve an individual from any requirement to obtain additional licenses or certificates in different specialties to the extent required by other agencies whose jurisdiction and authority may overlap the decontamination work. The Certified Decontamination Specialist shall obtain the additional licenses or certificates prior to performing the work for which the additional license or certificate is required. The Illegal Drug Operations Site Reporting and Decontamination Act Decontamination Specialist Certification Program rules do not preempt or supercede rules or standards promulgated by other regulatory programs in the State of Utah.

R311-500-11. Certified Decontamination Specialist List.

(a) The Director shall maintain a current list of Certified Decontamination Specialists that shall be made available to the public upon request.

KEY: meth lab contractor certification, adjudicative proceedings, administrative proceedings, revocation procedures
August 29, 2011 19-1-301
Notice of Continuation February 18, 2015 19-6-901 et seq.
63G-4-201 through 205
63G-4-503

R313. Environmental Quality, Radiation Control.
R313-17. Administrative Procedures.
R313-17-1. Authority.

The rules set forth herein are adopted pursuant to the provision of Subsection 19-3-104(4) and Sections 19-1-301 and 19-1-301.5.

R313-17-2. Public Notice and Public Comment Period.

(1) The Director shall give public notice of and provide an opportunity to comment on the following:

(a) A proposed major licensing action for license categories 2b and c, 4a, b, c, d and 6 identified in Section R313-70-7.

(i) Major licensing actions include:

(A) Pending issuance of a new license,

(B) Pending issuance of a license renewal,

(C) Pending approval of a license termination,

(D) An increase in process, storage, or disposal capacity,

(E) A geographic expansion,

(F) A change in engineering design, construction, or process controls that will more than likely cause an individual to receive a higher total effective dose equivalent or increase the annual quantity of radioactive effluents released to the environment,

(G) A decrease in environmental monitoring or sampling frequency,

(H) Pending approval of reclamation, decontamination or decommissioning plans,

(I) Pending approval of corrective actions to control or remediate existing radioactive material contamination, not already authorized by a license,

(J) A licensing issue the Director deems is of significant public interest.

(b) The initial proposed registration of an ionizing radiation producing machine which operates at a kilovoltage potential (kVp) greater than 200 in an open beam configuration. R313-17-2(1)(b) does not apply to ionizing radiation producing machines used in the healing arts.

(c) Board activities that may have significant public interest and the Board requests the Director to take public comment on those proposed activities.

(2) The Director may elect to give public notice of and provide an opportunity to comment on licensing actions that do not include the actions in Subsection R313-17-2(1)(a)(i), for all license categories identified in Section R313-70-7.

(3) Public notice shall allow at least 30 days for public comment.

(4) Public notice may describe more than one action listed in Subsection R313-17-2(1) and may combine notice of a public hearing with notice of the proposed action.

(5) Public notice shall be given by one or more of the following methods:

(a) Publication in a newspaper of general circulation in the area affected by the proposed action,

(b) Publication on the Division of Radiation Control website, or

(c) Distribution by an electronic mail server.

R313-17-3. Administrative Procedures.

Administrative proceedings under the Radiation Control Act are governed by Rule R305-7.

R313-17-4. Special Procedures for Decisions Associated with Licenses for Uranium Mills and Disposal of Byproduct Material.

(1) Definitions. For purposes of this rule:

(a) "Byproduct material" has the same meaning as defined in 42 U.S.C. Section 2014(e)(2);

(b) "License" means a radioactive materials license for a uranium mill or disposal of byproduct material, including any ground water discharge permit incorporated in a license; and

(c) "Question and answer hearing" means the informal hearing described in paragraphs (3) through (5) held for the purpose of responding to questions from the public.

(2) Scope. This rule R313-17-4 applies only to licensing activities that meet both of the following criteria:

(a) they are licensing activities described in R313-17-2(a)(i)(A) through (I); and

(b) they are for licenses or license amendments for uranium mills and disposal of byproduct materials.

(3) Opportunity for Question and Answer Hearing Prior to Director's Decision.

(a) For licensing actions that are subject to the scope of this rule, the division may, at its discretion, schedule a question and answer hearing at the time it proposes the action.

(b) If the division does not choose to schedule a question and answer hearing at the time it proposes a licensing action, it shall provide notice to the public of an opportunity to request a question and answer hearing, and it shall schedule and hold a hearing if there is a request from a member of the public.

(c) Notice of a hearing or an opportunity to request a hearing under this rule shall be made as provided in R313-17-3(5). Members of the public shall be given at least ten days to request a hearing.

(d) The division may combine the question and answer hearing with a licensing hearing held for the purpose of taking public comment on a proposed licensing action.

(4) Procedures Prior to Question and Answer Hearing.

(a) The division shall provide a notice of the question and answer hearing at least 30 days before the hearing. The notice shall also summarize the applicable procedures, including the obligation to provide questions in advance of the hearing.

(b) Any person who proposes to ask questions during the question and answer hearing shall submit the questions to the division. Questions must be received by the division by the deadline specified in the public notice, which shall be no fewer than 15 days after the notice of the question and answer hearing is posted. If a question relies on information that is not included in the licensing record, that information shall be submitted with the questions. The relevance of and the relevant portions of any supporting materials shall be described with reasonable specificity. Information submitted in accordance with this paragraph will become part of the record.

(c) If the Director determines that any of the questions submitted will not be answered during the question and answer hearing, as provided in paragraph (5)(f), the Director shall notify the person who submitted the questions prior to the hearing. Notification shall include a statement about the Director's reasons for the determination.

(5) Procedures for Question and Answer Hearing.

(a) The question and answer hearing shall ordinarily be held in the Department of Environmental Quality offices. Unless the question and answer hearing is held in a place near the proposed facility, the division shall provide an opportunity for the public to participate by telephone or other electronic means.

(b) The question and answer hearing will not ordinarily be scheduled for longer than three hours. The division may allocate time to those who have submitted questions after considering the number and nature of the questions submitted.

(c) A hearing officer who is not the director or a member of the director's staff shall manage the question and answer hearing. Representatives of the licensee and division staff shall attend the hearing.

(d) The question and answer hearing shall be recorded and transcribed. Alternatively, the division may elect to have a court reporter record and transcribe the hearing.

(e) The Director shall determine whether the initial and

follow-up question will be answered by the applicant, by division staff, or by both. Notwithstanding the Director's decision, the applicant may choose to respond to any question. After the response to a question, the person who submitted the question shall be allowed to follow up with additional questions based on the response provided.

(f) Appropriate questions are those that seek specific factual information about the license application, or about other documents created during the licensing process. The following kinds of questions do not require a response during a question and answer hearing:

(i) Questions that are not relevant to the licensing action;

(ii) Questions that are based on information that is not in the record;

(iii) Questions that are vague;

(iv) Questions that require speculation;

(v) Questions that seek legal conclusions;

(vi) Questions that have been previously answered;

(vii) Questions that are more appropriately characterized as comments; and

(viii) Questions that would not have to be answered during a trial-type hearing.

(g) Either the agency or the applicant may elect to answer a question even if it is a question that does not require a response under paragraph (f). No waiver will result from answering a question that does not require a response.

(h) Questions requesting information that is clear in the record may be answered by referring the questioner to the record.

(i) In the event that a questioner or the applicant disagrees with the Director's determinations under paragraphs (4)(c), (5)(b), or (5)(e), it may request a determination by the hearing officer. If the hearing officer disagrees with the Director's determination, the division or, as appropriate, the applicant may then:

(i) comply with the hearing officer's determination during the question and answer hearing;

(ii) comply with the hearing officer's determination by responding to the question in writing no fewer than 10 days before the end of the comment period; or

(iii) notify the questioner or applicant that it contests the determination, and provide information to the questioner about the procedures available to it under paragraph (5)(j).

(j) If a decision of the hearing officer is contested as described in paragraph (5)(i)(iii), the person who asked the question may challenge that failure to comply with the hearing officer's decision on appeal. If the hearing officer's determination is upheld on appeal, the record on appeal shall be supplemented as described in paragraph (6) and R305-7-607.

(6) Formal Questioning During Appeal.

If no opportunity for a question and answer hearing is provided, or if an opportunity that was provided is found by the ALJ to have been deficient, an opportunity for questions and answers shall be provided on appeal as described in R305-7-607. This opportunity for questions and answers on appeal shall be available only to a petitioner who has exhausted procedures and remedies available under paragraphs R313-17-4(1) through R313-17-4(5). The scope of questions and answers on appeal shall be limited by the scope of the deficiency.

KEY: administrative procedures, comment, hearings, adjudicative proceedings
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Notice of Continuation July 7, 2011 19-1-301 and 19-1-301.5

R313. Environmental Quality, Radiation Control.
R313-19. Requirements of General Applicability to Licensing of Radioactive Material.
R313-19-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements governing the licensing of radioactive material. This rule also gives notice to all persons who knowingly provide to any licensee, applicant, certificate of registration holder, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's, applicant's or certificate of registration holder's activities subject to these rules, that they may be individually subject to Director enforcement action for violation of Section R313-19-5.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

R313-19-2. General.

(1) A person shall not manufacture, produce, receive, possess, use, transfer, own or acquire radioactive material except as authorized in a specific or general license issued pursuant to Rules R313-21 or R313-22 or as otherwise provided in Rule R313-19.

(2) In addition to the requirements of Rules R313-19, R313-21 or R313-22, all licensees are subject to the requirements of Rules R313-12, R313-15, and R313-18. Licensees engaged in source material milling operations, authorized to possess byproduct material, as defined in Section R313-12-3 (see definition (b)) from source material milling operations, authorized to possess and maintain a source material milling facility in standby mode, authorized to receive byproduct material from other persons for disposal, or authorized to possess and dispose of byproduct material generated by source material milling operations are subject to the requirements of Rule R313-24. Licensees engaged in land disposal of radioactive material are subject to the requirements of Rule R313-25. Licensees using radioactive material in the healing arts are subject to the requirements of Rule R313-32. Licensees authorized to use sealed sources containing radioactive materials in panoramic irradiators with dry or wet storage of radioactive sealed sources, underwater irradiators, or irradiators with high dose rates from radioactive sealed sources are subject to the requirements of Rule R313-34. Licensees engaged in industrial radiographic operations are subject to the requirements of Rule R313-36. Licensees possessing category 1 or category 2 quantities of radioactive material, as defined in Section R313-37-3 (incorporating 10 CFR 37.5 by reference), are subject to the physical protection requirements of Rule R313-37. Licensees engaged in wireline and subsurface tracer studies are subject to the requirements of Rule R313-38.

R313-19-5. Deliberate Misconduct.

(1) Any licensee, certificate of registration holder, applicant for a license or certificate of registration, employee of a licensee, certificate of registration holder or applicant; or any contractor, including a supplier or consultant, subcontractor, employee of a contractor or subcontractor of any licensee or certificate of registration holder or applicant for a license or certificate of registration, who knowingly provides to any licensee, applicant, certificate holder, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's or applicant's activities in these rules, may not:

(a) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate of registration holder, or applicant to be in violation of any rule or order; or any term, condition, or limitation of any license issued by the Director; or

(b) Deliberately submit to the Director, a licensee, certificate of registration holder, an applicant, or a licensee's, certificate holder's or applicant's, contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the Director.

(2) A person who violates Subsections R313-19-5(1)(a) or (b) may be subject to enforcement action in accordance with Rule R313-14.

(3) For the purposes of Subsection R313-19-5(1)(a), deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) Would cause a licensee, certificate of registration holder or applicant to be in violation of any rule or order; or any term, condition, or limitation, of any license issued by the Director; or

(b) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate of registration holder, applicant, contractor, or subcontractor.

R313-19-7. Carriers.

Common and contract carriers, freight forwarders, warehousemen, and the U.S. Postal Service are exempt from the regulations in Rules R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, R313-37, and R313-38 and the requirements for a license set forth in Subsection 19-3-104(3) to the extent that they transport or store radioactive material in the regular course of carriage for another or storage incident thereto.

R313-19-13. Exemptions.

(1) Source material.

(a) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses, owns, or transfers source material in a chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of one percent (0.05 percent) of the mixture, compound, solution, or alloy.

(b) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided, that, except as authorized in a specific license, such person shall not refine or process the ore.

(c) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers:

(i) any quantities of thorium contained in:

(A) incandescent gas mantles,

(B) vacuum tubes,

(C) welding rods,

(D) electric lamps for illuminating purposes: provided that, each lamp does not contain more than 50 milligrams of thorium,

(E) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting provided that each lamp does not contain more than two grams of thorium,

(F) rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent by weight thorium, uranium, or any combination of these, or

(G) personnel neutron dosimeters provided that each dosimeter does not contain more than 50 milligrams of thorium;

(ii) source material contained in the following products:

(A) glazed ceramic tableware, provided that the glaze contains not more than 20 percent by weight source material,

(B) piezoelectric ceramic containing not more than two percent by weight source material, or

(C) glassware containing not more than ten percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

(iii) photographic film, negatives and prints containing uranium or thorium;

(iv) a finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed four percent by weight and that this exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of the product or part;

(v) uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of the counterweights, provided that:

(A) the counterweights are manufactured in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission authorizing distribution by the licensee pursuant to 10 CFR Part 40,

(B) each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM",

(C) each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED",

(D) The requirements specified in Subsections R313-19-13(1)(c)(v)(B) and (C) need not be met by counterweights manufactured prior to December 31, 1969, provided that such counterweights are impressed with the legend, "CAUTION - RADIOACTIVE MATERIAL - URANIUM", as previously required by the rules, and

(E) the exemption contained in Subsection R313-19-13(1)(c)(v) shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of counterweights other than repair or restoration of any plating or other covering;

(vi) natural or depleted uranium metal used as shielding constituting part of a shipping container which is conspicuously and legibly impressed with the legend "CAUTION - RADIOACTIVE SHIELDING - URANIUM" and the uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of one eighth inch (3.2 mm);

(vii) thorium contained in finished optical lenses, provided that each lens does not contain more than 30 percent by weight of thorium, and that this exemption shall not be deemed to authorize either:

(A) the shaping, grinding, or polishing of a lens or manufacturing processes other than the assembly of such lens into optical systems and devices without alteration of the lens, or

(B) the receipt, possession, use, or transfer of thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments;

(viii) uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcurie (185.0 Bq) of uranium; or

(ix) thorium contained in a finished aircraft engine part containing nickel-thoria alloy, provided that:

(A) the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide), and

(B) the thorium content in the nickel-thoria alloy does not exceed four percent by weight.

(d) The exemptions in Subsection R313-19-13(1)(c) do not authorize the manufacture of any of the products described.

(2) Radioactive material other than source material.

(a) Exempt concentrations.

(i) Except as provided in Subsection R313-19-13(2)(a)(iii) a person is exempt from Rules R313-19, R313-21 and R313-22 to the extent that the person receives, possesses, uses, transfers, owns or acquires products or materials containing:

(A) radioactive material introduced in concentrations not in excess of those listed in Section R313-19-70, or

(B) diffuse sources of natural occurring radioactive materials containing less than 15 picocuries per gram radium-226.

(ii) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license set forth in Rules R313-19, R313-21 and R313-22 and Rules R313-32, R313-34, R313-36, and R313-38 to the extent that the person transfers:

(A) radioactive material contained in a product or material in concentrations not in excess of those specified in R313-19-70; and

(B) introduced into the product or material by a licensee holding a specific license issued by the U.S. Nuclear Regulatory Commission authorizing the introduction.

(C) The exemption in R313-19-13-2(a)(ii)(A) and R313-19-13-2(a)(ii)(B) does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(iii) A person may not introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under Subsection R313-19-13(2)(a)(i) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued pursuant to Subsection R313-22-75(1).

(b) Exempt quantities.

(i) Except as provided in Subsections R313-19-13(2)(b)(ii) through (iv) a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities which do not exceed the applicable quantity set forth in Section R313-19-71.

(ii) Subsection R313-19-13(2)(b) does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(iii) A person may not, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Section R313-19-71, knowing or having reason to believe that the quantities of radioactive material will be transferred to persons exempt under Subsection R313-19-13(2)(b) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to 10 CFR Part 32 or by the Director pursuant to Subsection R313-22-75(2), which license states that the radioactive material may be transferred by the licensee to persons exempt under Subsection R313-19-13(2)(b) or the equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State.

(iv) A person who possesses radioactive material received or acquired prior to September 25, 1971, under the general license formerly provided in 10 CFR Part 31.4 or equivalent regulations of a State is exempt from the requirements for a license set forth in Rule R313-19 to the extent that the person possesses, uses, transfers or owns radioactive material. This exemption does not apply for diffuse sources of radium-226.

(v) No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceeds the limits set forth in R313-19-71, except for radioactive material combined within a device placed in use before May 3, 1999, or as otherwise provided by these rules.

(c) Exempt items.

(i) Certain items containing radioactive material. Except for persons who apply radioactive material to, or persons who

incorporate radioactive material into the following products, a person is exempt from these rules to the extent that person receives, possesses, uses, transfers, owns or acquires the following products:

(A) Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(I) 25 millicuries (925.0 MBq) of tritium per timepiece;

(II) five millicuries (185.0 MBq) of tritium per hand;

(III) 15 millicuries (555.0 MBq) of tritium per dial. Bezels when used shall be considered as part of the dial;

(IV) 100 microcuries (3.7 MBq) of promethium-147 per watch or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;

(V) 20 microcuries (0.74 MBq) of promethium-147 per watch hand or 40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;

(VI) 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial. Bezels when used shall be considered as part of the dial;

(VII) the radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

for wrist watches, 0.1 millirad (1.0 uGy) per hour at ten centimeters from any surface;

for pocket watches, 0.1 millirad (1.0 uGy) per hour at one centimeter from any surface;

for other timepieces, 0.2 millirad (2.0 uGy) per hour at ten centimeters from any surface;

(VIII) one microcurie (37.0 kBq) of radium-226 per timepiece in timepieces manufactured prior to November 30, 2007.

(B) Precision balances containing not more than one millicurie (37.0 MBq) of tritium per balance or not more than 0.5 millicurie (18.5 MBq) of tritium per balance part manufactured before June 9, 2010.

(C) Marine compasses containing not more than 750 millicuries (27.8 GBq) of tritium gas and other marine navigational instruments containing not more than 250 millicuries (9.25 GBq) of tritium gas manufactured before June 9, 2010.

(D) Ionization chamber smoke detectors containing not more than 1 microcurie (37 kBq) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

(E) Electron tubes, including spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and other completely sealed tubes that are designed to conduct or control electrical currents; provided that each tube does not contain more than one of the following specified quantities of radioactive material:

(I) 150 millicuries (5.55 GBq) of tritium per microwave receiver protector tube or ten millicuries (370.0 MBq) of tritium per any other electron tube;

(II) one microcurie (37.0 kBq) of cobalt-60;

(III) five microcuries (185.0 kBq) of nickel-63;

(IV) 30 microcuries (1.11 MBq) of krypton-85;

(V) five microcuries (185.0 kBq) of cesium-137;

(VI) 30 microcuries (1.11 MBq) of promethium-147;

(VII) one microcurie (37.0 kBq) of radium-226;

and provided further, that the radiation dose rate from each electron tube containing radioactive material will not exceed one millirad (10.0 uGy) per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber.

(F) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(I) each source contains no more than one exempt quantity set forth in Section R313-19-71; and

(II) each instrument contains no more than ten exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of exempt quantities in Section R313-19-71, provided that the sum of the fractions shall not exceed unity;

(III) for purposes of Subsection R313-19-13(2)(c)(i)(F), 0.05 microcurie (1.85 kBq) of americium-241 is considered an exempt quantity under Section R313-19-71.

(ii) Self-luminous products containing radioactive material.

(A) Tritium, krypton-85 or promethium-147. Except for persons who manufacture, process or produce self-luminous products containing tritium, krypton-85 or promethium-147, a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85 or promethium-147 in self-luminous products manufactured, processed, produced, imported or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Part 32.22, which license authorizes the transfer of the product to persons who are exempt from regulatory requirements. The exemption in Subsection R313-19-13(2)(c)(ii) does not apply to tritium, krypton-85, or promethium-147 used in products for frivolous purposes or in toys or adornments.

(B) Radium-226. A person is exempt from these rules, to the extent that such person receives, possesses, uses, transfers, or owns articles containing less than 0.1 microcurie (3.7 kBq) of radium-226 which were acquired prior to the effective date of these rules.

(iii) Gas and aerosol detectors containing radioactive material.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards, provided that detectors containing radioactive material shall have been manufactured, processed, produced, or initially transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Part 32.26, or manufactured or distributed before November 30, 2007 in accordance with a specific license issued by an Agreement State or Licensing State under comparable provisions to 10 CFR 32.26 (2010) authorizing distribution to persons who are exempt from regulatory requirements.

(iv) Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.

(A) Except as provided in Subsection R313-19-13(2)(c)(iv)(B), any person is exempt from the requirements in Rules R313-19 and R313-32 provided that the person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1 uCi) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

(B) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to Rule R313-32.

(C) Nothing in Subsection R313-19-13(2)(c)(iv) relieves persons from complying with applicable United States Food and Drug Administration, other Federal, and State requirements governing receipt, administration, and use of drugs.

(v) With respect to Subsections R313-19-13(2)(b)(iii),

R313-19-13(2)(c)(i), (iii) and (iv), the authority to transfer possession or control by the manufacturer, processor, or producer of equipment, devices, commodities, or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons is exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

R313-19-20. Types of Licenses.

Licenses for radioactive materials are of two types: general and specific.

(1) General licenses provided in Rule R313-21 are effective without the filing of applications with the Director or the issuance of licensing documents to the particular persons, although the filing of a registration certificate with the Director may be required by the particular general license. The general licensee is subject to the other applicable portions of these rules and limitations of the general license.

(2) Specific licenses require the submission of an application to the Director and the issuance of a licensing document by the Director. The licensee is subject to applicable portions of these rules as well as limitations specified in the licensing document.

R313-19-25. Prelicensing Inspection.

The Director may verify information contained in applications and secure additional information deemed necessary to make a reasonable determination as to whether to issue a license and whether special conditions should be attached thereto by visiting the facility or location where radioactive materials would be possessed or used, and by discussing details of the proposed possession or use of the radioactive materials with the applicant or representatives designated by the applicant. Such visits may be made by representatives of the Director.

R313-19-30. Reciprocal Recognition of Licenses.

(1) Subject to these rules, a person who holds a specific license from the U.S. Nuclear Regulatory Commission, an Agreement State, or Licensing State, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in the licensing document within this state, except in areas of exclusive federal jurisdiction, for a period not in excess of 180 days in a calendar year provided that:

(a) the licensing document does not limit the activity authorized by the document to specified installations or locations;

(b) the out-of-state licensee notifies the Director in writing at least three days prior to engaging in such activity. Notifications shall indicate the location, period, and type of proposed possession and use within the state, and shall be accompanied by a copy of the pertinent licensing document. If, for a specific case, the three-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the Director, obtain permission to proceed sooner. The Director may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in Subsection R313-19-30(1);

(c) the out-of-state licensee complies with all applicable rules of the Board and with the terms and conditions of the licensing document, except those terms and conditions which may be inconsistent with applicable rules of the Board;

(d) the out-of-state licensee supplies other information as the Director may request; and

(e) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used under the general license provided in Subsection R313-19-30(1) except by transfer to a person specifically licensed by the Director or by the U.S. Nuclear Regulatory Commission, a Licensing State, or an Agreement State to receive the material.

(2) Notwithstanding the provisions of Subsection R313-19-30(1), a person who holds a specific license issued by the U.S. Nuclear Regulatory Commission, a Licensing State, or an Agreement State authorizing the holder to manufacture, transfer, install, or service a device described in Subsection R313-21-22(4) within the areas subject to the jurisdiction of the licensing body is hereby granted a general license to install, transfer, demonstrate, or service a device in this state provided that:

(a) the person shall file a report with the Director within thirty days after the end of a calendar quarter in which a device is transferred to or installed in this state. Reports shall identify each general licensee to whom a device is transferred by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device;

(b) the device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to the person by the Nuclear Regulatory Commission, a Licensing State, or an Agreement State;

(c) the person shall assure that any labels required to be affixed to the device under rules of the authority which licensed manufacture of the device bear a statement that "Removal of this label is prohibited"; and

(d) the holder of the specific license shall furnish to the general licensee to whom the device is transferred or on whose premises a device is installed a copy of the general license contained in Subsection R313-21-22(4) or in equivalent rules of the agency having jurisdiction over the manufacture and distribution of the device.

(3) The Director may withdraw, limit, or qualify his acceptance of a specific license or equivalent licensing document issued by the U.S. Nuclear Regulatory Commission, a Licensing State or an Agreement State, or a product distributed pursuant to the licensing document, upon determining that the action is necessary in order to prevent undue hazard to public health and safety or the environment.

R313-19-34. Terms and Conditions of Licenses.

(1) Licenses issued pursuant to Rule R313-19 shall be subject to provisions of the Act, now or hereafter in effect, and to all rules, and orders of the Director.

(2) Licenses issued or granted under Rules R313-21 and R313-22 and rights to possess or utilize radioactive material granted by a license issued pursuant to Rules R313-21 and R313-22 shall not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of a license to a person unless the Director shall, after securing full information find that the transfer is in accordance with the provisions of the Act now or hereafter in effect, and to all rules, and orders of the Director, and shall give his consent in writing.

(3) Persons licensed by the Director pursuant to Rules R313-21 and R313-22 shall confine use and possession of the material licensed to the locations and purposes authorized in the license.

(4) Licensees shall notify the Director in writing and request termination of the license when the licensee decides to terminate activities involving materials authorized under the license.

(5) Licensees shall notify the Director in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11, Bankruptcy, of the United States Code by or against:

(a) the licensee;

(b) an entity, as that term is defined in 11 USC 101(14), controlling the licensee or listing the license or licensee as property of the estate; or

(c) an affiliate, as that term is defined in 11 USC 101(2), of the licensee.

(6) The notification specified in Subsection R313-19-34(5) shall indicate:

(a) the bankruptcy court in which the petition for bankruptcy was filed; and

(b) the date of the filing of the petition.

(7) Licensees required to submit emergency plans pursuant to Subsection R313-22-32(8) shall follow the emergency plan approved by the Director. The licensee may change the approved plan without the Director's approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Director and to affected off-site response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Director.

(8) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with Rule R313-32 (incorporating 10 CFR 35.204 by reference). The licensee shall record the results of each test and retain each record for three years after the record is made.

(9) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

(10) (a) Authorization under Subsection R313-22-32(9) to produce Positron Emission Tomography (PET) radioactive drugs for noncommercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs.

(b) A licensee authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall:

(i) Satisfy the labeling requirements in Subsection R313-22-75(9)(a)(iv) for each PET radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a PET radioactive drug intended for noncommercial distribution to members of its consortium.

(ii) Possess and use instrumentation to measure the radioactivity of the PET radioactive drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in Subsection R313-22-75(9)(c).

(c) A licensee that is a pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall require that any individual that prepares PET radioactive drugs shall be:

(i) an authorized nuclear pharmacist that meets the requirements in Subsection R313-22-75(9)(b)(ii); or

(ii) an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(d) A pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of Subsection R313-22-75(9)(b)(v).

R313-19-41. Transfer of Material.

(1) Licensees shall not transfer radioactive material except as authorized pursuant to Section R313-19-41.

(2) Except as otherwise provided in the license and subject to the provisions of Subsections R313-19-41(3) and (4), licensees may transfer radioactive material:

(a) to the Director, if prior approval from the Director has been received;

(b) to the U.S. Department of Energy;

(c) to persons exempt from the rules in Rule R313-19 to the extent permitted under the exemption;

(d) to persons authorized to receive the material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the Director, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a person otherwise authorized to receive the material by the federal government or an agency thereof, the Director, an Agreement State or a Licensing State; or

(e) as otherwise authorized by the Director in writing.

(3) Before transferring radioactive material to a specific licensee of the Director, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a general licensee who is required to register with the Director, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by Subsection R313-19-41(3) are acceptable:

(a) the transferor may possess, and read a current copy of the transferee's specific license or registration certificate;

(b) the transferor may possess a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(c) for emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days;

(d) the transferor may obtain other information compiled by a reporting service from official records of the Director, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State regarding the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) when none of the methods of verification described in Subsection R313-19-41(4) are readily available or when a transferor desires to verify that information received by one of the methods is correct or up-to-date, the transferor may obtain and record confirmation from the Director, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State that the transferee is licensed to receive the radioactive material.

(5) Shipment and transport of radioactive material shall be in accordance with the provisions of Section R313-19-100.

R313-19-50. Reporting Requirements.

(1) Licensees shall notify the Director as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could

exceed regulatory limits. Events may include fires, explosions, toxic gas releases, etc.

(2) The following events involving licensed material require notification of the Director by the licensee within 24 hours:

(a) an unplanned contamination event that:

(i) requires access to the contamination area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) involves a quantity of material greater than five times the lowest annual limit on intake specified in Appendix B of 10 CFR 20.1001 through 20.2402 (2010), which is incorporated by reference, for the material; and

(iii) has access to the area restricted for a reason other than to allow radionuclides with a half-life of less than 24 hours to decay prior to decontamination; or

(b) an event in which equipment is disabled or fails to function as designed when:

(i) the equipment is required by rule or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) the equipment is required by rule or license condition to be available and operable; and

(iii) no redundant equipment is available and operable to perform the required safety function; or

(c) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

(d) an unplanned fire or explosion damaging licensed material or a device, container, or equipment containing licensed material when:

(i) the quantity of material involved is greater than five times the lowest annual limit on intake specified in Appendix B of 10 CFR 20.1001 through 20.2402 (2010), which is incorporated by reference, for the material; and

(ii) the damage affects the integrity of the licensed material or its container.

(3) Preparation and submission of reports. Reports made by licensees in response to the requirements of Section R313-19-50 must be made as follows:

(a) For radioactive materials, other than special nuclear material, licensees shall make reports required by Subsections R313-19-50(1) and (2) by telephone to the Director. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) the caller's name and call back telephone number;

(ii) a description of the event, including date and time;

(iii) the exact location of the event;

(iv) the radionuclides, quantities, and chemical and physical form of the licensed material involved; and

(v) available personnel radiation exposure data.

(b) For special nuclear materials, licensees shall make reports required by Subsections R313-19-50(1) and (2) by telephone to the Director. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) the caller's name, position title, and call-back telephone number;

(ii) the date, time, and exact location of the event; and

(iii) a description of the event, including:

(A) radiological or chemical hazards involved, including isotopes, quantities, and chemical and physical form of any material released; and

(B) actual or potential health and safety consequences to the workers, the public, and the environment, including relevant chemical and radiation data for actual personnel exposures to radiation or radioactive materials or hazardous chemicals produced from radioactive materials (e.g., level of radiation exposure, concentration of chemicals, and duration of exposure).

(c) Written report for materials other than special nuclear materials. A licensee who makes a report required by Subsections R313-19-50(1) or (2) shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other rules may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports shall be sent to the Director. The report shall include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number, if applicable, of equipment that failed or malfunctioned;

(ii) the exact location of the event;

(iii) the radionuclides, quantities, and chemical and physical form of the licensed material involved;

(iv) date and time of the event;

(v) corrective actions taken or planned and results of evaluations or assessments; and

(vi) the extent of exposure of individuals to radiation or radioactive materials without identification of individuals by name.

(d) Written report for special nuclear material. A licensee who makes a report required by Subsections R313-19-50(1) or (2) shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other rules may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports shall be sent to the Director. The report shall include the following:

(i) the complete applicable information required by Subsection R313-19-50(3)(b);

(ii) the probable cause of the event, including all factors that contributed to the event and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned; and

(iii) corrective actions taken or planned to prevent occurrence of similar or identical events in the future and the results of any evaluations or assessments.

R313-19-61. Modification, Revocation, and Termination of Licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification or the license may be suspended or revoked by reason of amendments to the Act, or by reason of rules, and orders issued by the Director.

(2) Licenses may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under provisions of the Act, or because of conditions revealed by the application or statement of fact or any report, record, or inspection or other means which would warrant the Director to refuse to grant a license on an original application, or for violation of, or failure to observe any of the terms and conditions of the Act, or of the license, or of any rule, or order of the Director.

(3) Administrative reviews, modifications, revocations or terminations of licenses will be in accordance with Title 19, Chapter 3.

(4) The Director may terminate a specific license upon written request submitted by the licensee to the Director.

R313-19-70. Exempt Concentrations of Radioactive Materials.

Refer to Subsection R313-19-13(2)(a)

TABLE

Element (Atomic Number)	Radionuclide	Column I Concentration Material Normally Used As Gas (uCi/ml)	Column II Concentration Liquid (uCi/ml) Solid (uCi/g)
Antimony (51)	Sb-122		3 E-4
	Sb-124		2 E-4
	Sb-125		1 E-3
Argon (18)	Ar-37	1 E-3	
	Ar-41	4 E-7	
Arsenic (33)	As-73		5 E-3
	As-74		5 E-4
	As-76		2 E-4
	As-77		8 E-4
Barium (56)	Ba-131		2 E-3
	Ba-140		3 E-4
Beryllium (4)	Be-7		2 E-2
Bismuth (83)	Bi-206		4 E-4
Bromine (35)	Br-82	4 E-7	3 E-3
Cadmium (48)	Cd-109		2 E-3
	Cd-115m		3 E-4
	Cd-115		3 E-4
Calcium (20)	Ca-45		9 E-5
	Ca-47		5 E-4
Carbon (6)	C-14	1 E-6	8 E-3
Cerium (58)	Ce-141		9 E-4
	Ce-143		4 E-4
	Ce-144		1 E-4
Cesium (55)	Cs-131		2 E-2
	Cs-134m		6 E-2
	Cs-134		9 E-5
Chlorine (17)	Cl-38	9 E-7	4 E-3
Chromium (24)	Cr-51		2 E-2
Cobalt (27)	Co-57		5 E-3
	Co-58		1 E-3
	Co-60		5 E-4
Copper (29)	Cu-64		3 E-3
Dysprosium (66)	Dy-165		4 E-3
	Dy-166		4 E-4
Erbium (68)	Er-169		9 E-4
	Er-171		1 E-3
Europium (63)	Eu-152 (T = 9.2 h)		6 E-4
	Eu-155		2 E-3
Fluorine (9)	F-18	2 E-6	8 E-3
Gadolinium (64)	Gd-153		2 E-3
	Gd-159		8 E-4
Gallium (31)	Ga-72		4 E-4
Germanium (32)	Ge-71		2 E-2
Gold (79)	Au-196		2 E-3
	Au-198		5 E-4
	Au-199		2 E-3
Hafnium (72)	Hf-181		7 E-4
Hydrogen (1)	H-3	5 E-6	3 E-2
Indium (49)	In-113m		1 E-2
	In-114m		2 E-4
Iodine (53)	I-126	3 E-9	2 E-5
	I-131	3 E-9	2 E-5
	I-132	8 E-8	6 E-4
	I-133	1 E-8	7 E-5
	I-134	2 E-7	1 E-3
Iridium (77)	Ir-190		2 E-3
	Ir-192		4 E-4
	Ir-194		3 E-4
Iron (26)	Fe-55		8 E-3
	Fe-59		6 E-4
Krypton (36)	Kr-85m	1 E-6	
	Kr-85	3 E-6	
Lanthanum (57)	La-140		2 E-4
Lead (82)	Pb-203		4 E-3
Lutetium (71)	Lu-177		1 E-3
Manganese (25)	Mn-52		3 E-4
	Mn-54		1 E-3
	Mn-56		1 E-3
Mercury (80)	Hg-197m		2 E-3
	Hg-197		3 E-3
	Hg-203		2 E-4
Molybdenum (42)	Mo-99		2 E-3
Neodymium (60)	Nd-147		6 E-4
	Nd-149		3 E-3
Nickel (28)	Ni-65		1 E-3
Niobium (Columbium)(41)	Nb-95		1 E-3
	Nb-97		9 E-3
Osmium (76)	Os-185		7 E-4
	Os-191m		3 E-2
	Os-191		2 E-3
	Os-193		6 E-4
Palladium (46)	Pd-103		3 E-3
	Pd-109		9 E-4
Phosphorus (15)	P-32		2 E-4
Platinum (78)	Pt-191		1 E-3
	Pt-193m		1 E-2
	Pt-197m		1 E-2
	Pt-197		1 E-3
Potassium (19)	K-42		3 E-3
Praseodymium (59)	Pr-142		3 E-4
	Pr-143		5 E-4
Promethium (61)	Pm-147		2 E-3
	Pm-149		4 E-3
Rhenium (75)	Re-183		6 E-4
	Re-186		9 E-3
	Re-188		6 E-4
Rhodium (45)	Rh-103m		1 E-1
	Rh-105		1 E-3
Rubidium (37)	Rb-86		7 E-4
Ruthenium (44)	Ru-97		4 E-4
	Ru-103		8 E-4
	Ru-105		1 E-3
	Ru-106		1 E-4
Samarium (62)	Sm-153		8 E-4
Scandium (21)	Sc-46		4 E-4
	Sc-47		9 E-4
	Sc-48		3 E-4
Selenium (34)	Se-75		3 E-3
Silicon (14)	Si-31		9 E-3
Silver (47)	Ag-105		1 E-3
	Ag-110m		3 E-4
	Ag-111		4 E-4
Sodium (11)	Na-24		2 E-3
Strontium (38)	Sr-85		1 E-4
	Sr-89		1 E-4
	Sr-91		7 E-4
	Sr-92		7 E-4
Sulfur (16)	S-35	9 E-8	6 E-4
Tantalum (73)	Ta-182		4 E-4
Technetium (43)	Tc-96m		1 E-1
	Tc-96		1 E-3
Tellurium (52)	Te-125m		2 E-3
	Te-127m		6 E-4
	Te-127		3 E-3
	Te-129m		3 E-4
	Te-131m		6 E-4
	Te-132		3 E-4
Terbium (65)	Tb-160		4 E-4
Thallium (81)	Tl-200		4 E-3
	Tl-201		3 E-3
	Tl-202		1 E-3
	Tl-204		1 E-3
Thulium (69)	Tm-170		5 E-4
	Tm-171		5 E-3
Tin (50)	Sn-113		9 E-4
	Sn-125		2 E-4
Tungsten (Wolfram)(74)	W-181		4 E-3
	W-187		7 E-4
Vanadium (23)	V-48		3 E-4
Xenon (54)	Xe-131m	4 E-6	
	Xe-133	3 E-6	
	Xe-135	1 E-6	
Ytterbium (70)	Yb-175		1 E-3
Yttrium (39)	Y-90		2 E-4
	Y-91m		3 E-2
	Y-91		3 E-4
	Y-92		6 E-4
	Y-93		3 E-4
Zinc (30)	Zn-65		1 E-3
	Zn-69m		7 E-4
	Zn-69		2 E-2
Zirconium (40)	Zr-95		6 E-4
	Zr-97		2 E-4
Beta or gamma emitting radioactive material not listed above with half-life less than 3 years		1 E-10	1 E-6

(1) In expressing the concentrations in Section R313-19-70, the activity stated is that of the parent radionuclide and takes into account the radioactive decay products, because many radionuclides disintegrate into radionuclides which are also radioactive.

(2) For purposes of Subsection R313-19-13(2)(a) where there is involved a combination of radionuclides, the limit for the combination should be derived as follows: Determine for each radionuclide in the product the ratio between the radioactivity concentration present in the product and the exempt radioactivity concentration established in Section R313-19-70 for the specific

radionuclide when not in combination. The sum of the ratios may not exceed one or unity.

(3) To convert microcuries (uCi) to SI units of kilobecquerels (kBq), multiply the above values by 37.

R313-19-71. Exempt Quantities of Radioactive Materials.
Refer to Subsection R313-19-13(2)(b)

TABLE

RADIOACTIVE MATERIAL	MICROCURIES
Antimony-122 (Sb-122)	100
Antimony-124 (Sb-124)	10
Antimony-125 (Sb-125)	10
Arsenic-73 (As-73)	100
Arsenic-74 (As-74)	10
Arsenic-76 (As-76)	10
Arsenic-77 (As-77)	100
Barium-131 (Ba-131)	10
Barium-133 (Ba-133)	10
Barium-140 (Ba-140)	10
Bismuth-210 (Bi-210)	1
Bromine-82 (Br-82)	10
Cadmium-109 (Cd-109)	10
Cadmium-115m (Cd-115m)	10
Cadmium-115 (Cd-115)	100
Calcium-45 (Ca-45)	10
Calcium-47 (Ca-47)	10
Carbon-14 (C-14)	100
Cerium-141 (Ce-141)	100
Cerium-143 (Ce-143)	100
Cerium-144 (Ce-144)	1
Cesium-129 (Cs-129)	100
Cesium-131 (Cs-131)	1,000
Cesium-134m (Cs-134m)	100
Cesium-134 (Cs-134)	1
Cesium-135 (Cs-135)	10
Cesium-136 (Cs-136)	10
Cesium-137 (Cs-137)	10
Chlorine-36 (Cl-36)	10
Chlorine-38 (Cl-38)	10
Chromium-51 (Cr-51)	1,000
Cobalt-57 (Co-57)	100
Cobalt-58m (Co-58m)	10
Cobalt-58 (Co-58)	10
Cobalt-60 (Co-60)	1
Copper-64 (Cu-64)	100
Dysprosium-165 (Dy-165)	10
Dysprosium-166 (Dy-166)	100
Erbium-169 (Er-169)	100
Erbium-171 (Er-171)	100
Europium-152 (Eu-152) 9.2h	100
Europium-152 (Eu-152) 13 yr	1
Europium-154 (Eu-154)	1
Europium-155 (Eu-155)	10
Fluorine-18 (F-18)	1,000
Gadolinium-153 (Gd-153)	10
Gadolinium-159 (Gd-159)	100
Gallium-67 (Ga-67)	100
Gallium-72 (Ga-72)	10
Germanium-68 (Ge-68)	10
Germanium-71 (Ge-71)	100
Gold-195 (Au 195)	10
Gold-198 (Au-198)	100
Gold-199 (Au-199)	100
Hafnium-181 (Hf-181)	10
Holmium-166 (Ho-166)	100
Hydrogen-3 (H-3)	1,000
Indium-111 (In-111)	100
Indium-113m (In-113m)	100
Indium-114m (In-114m)	10
Indium-115m (In-115m)	100
Indium-115 (In-115)	10
Iodine-123 (I-123)	100
Iodine-125 (I-125)	1
Iodine-126 (I-126)	1
Iodine-129 (I-129)	0.1
Iodine-131 (I-131)	1
Iodine-132 (I-132)	10
Iodine-133 (I-133)	1
Iodine-134 (I-134)	10
Iodine-135 (I-135)	10
Iridium-192 (Ir-192)	10
Iridium-194 (Ir-194)	100
Iron-52 (Fe-52)	10
Iron-55 (Fe-55)	100
Iron-59 (Fe-59)	10
Krypton-85 (Kr-85)	100
Krypton-87 (Kr-87)	10
Lanthanum-140 (La-140)	10
Lutetium-177 (Lu-177)	100
Manganese-52 (Mn-52)	10
Manganese-54 (Mn-54)	10
Manganese-56 (Mn-56)	10
Mercury-197m (Hg-197m)	100
Mercury-197 (Hg-197)	100
Mercury-203 (Hg-203)	10
Molybdenum-99 (Mo-99)	100
Neodymium-147 (Nd-147)	100
Neodymium-149 (Nd-149)	100
Nickel-59 (Ni-59)	100
Nickel-63 (Ni-63)	10
Nickel-65 (Ni-65)	100
Niobium-93m (Nb-93m)	10
Niobium-95 (Nb-95)	10
Niobium-97 (Nb-97)	10
Osmium-185 (Os-185)	10
Osmium-191m (Os-191m)	100
Osmium-191 (Os-191)	100
Osmium-193 (Os-193)	100
Palladium-103 (Pd-103)	100
Palladium-109 (Pd-109)	100
Phosphorus-32 (P-32)	10
Platinum-191 (Pt-191)	100
Platinum-193m (Pt-193m)	100
Platinum-193 (Pt-193)	100
Platinum-197m (Pt-197m)	100
Platinum-197 (Pt-197)	100
Polonium-210 (Po-210)	0.1
Potassium-42 (K-42)	10
Potassium-43 (K-43)	10
Praseodymium-142 (Pr-142)	100
Praseodymium-143 (Pr-143)	100
Promethium-147 (Pm-147)	10
Promethium-149 (Pm-149)	10
Rhenium-186 (Re-186)	100
Rhenium-188 (Re-188)	100
Rhodium-103m (Rh-103m)	100
Rhodium-105 (Rh-105)	100
Rubidium-81 (Rb-81)	10
Rubidium-86 (Rb-86)	10
Rubidium-87 (Rb-87)	10
Ruthenium-97 (Ru-97)	100
Ruthenium-103 (Ru-103)	10
Ruthenium-105 (Ru-105)	10
Ruthenium-106 (Ru-106)	1
Samarium-151 (Sm-151)	10
Samarium-153 (Sm-153)	100
Scandium-46 (Sc-46)	10
Scandium-47 (Sc-47)	100
Scandium-48 (Sc-48)	10
Selenium-75 (Se-75)	10
Silicon-31 (Si-31)	100
Silver-105 (Ag-105)	10
Silver-110m (Ag-110m)	1
Silver-111 (Ag-111)	100
Sodium-22 (Na-22)	10
Sodium-24 (Na-24)	10
Strontium-85 (Sr-85)	10
Strontium-89 (Sr-89)	1
Strontium-90 (Sr-90)	0.1
Strontium-91 (Sr-91)	10
Strontium-92 (Sr-92)	10
Sulfur-35 (S-35)	100
Tantalum-182 (Ta-182)	10
Technetium-96 (Tc-96)	10
Technetium-97m (Tc-97m)	100
Technetium-97 (Tc-97)	100
Technetium-99m (Tc-99m)	100
Technetium-99 (Tc-99)	10
Tellurium-125m (Te-125m)	10
Tellurium-127m (Te-127m)	10
Tellurium-127 (Te-127)	100
Tellurium-129m (Te-129m)	10
Tellurium-129 (Te-129)	100
Tellurium 131m (Te-131m)	10
Tellurium-132 (Te-132)	10
Terbium-160 (Tb-160)	10
Thallium-200 (Tl-200)	100
Thallium-201 (Tl-201)	100
Thallium-202 (Tl-202)	100
Thallium-204 (Tl-204)	10
Thulium-170 (Tm-170)	10
Thulium-171 (Tm-171)	10
Tin-113 (Sn-113)	10
Tin-125 (Sn-125)	10
Tungsten-181 (W-181)	10

Tungsten-185 (W-185)	10
Tungsten-187 (W-187)	100
Vanadium-48 (V-48)	10
Xenon-131m (Xe-131m)	1,000
Xenon-133 (Xe-133)	100
Xenon-135 (Xe-135)	100
Ytterbium-175 (Yb-175)	100
Yttrium-87 (Y-87)	10
Yttrium-88 (Y-88)	10
Yttrium-90 (Y-90)	10
Yttrium-91 (Y-91)	10
Yttrium-92 (Y-92)	100
Yttrium-93 (Y-93)	100
Zinc-65 (Zn-65)	10
Zinc-69m (Zn-69m)	100
Zinc-69 (Zn-69)	1,000
Zirconium-93 (Zr-93)	10
Zirconium-95 (Zr-95)	10
Zirconium-97 (Zr-97)	10
Any radioactive material not listed above other than alpha emitting radioactive material.	0.1

(1) To convert microcuries (uCi) to SI units of kilobecquerels (kBq), multiply the above values by 37.

R313-19-100. Transportation.

For purposes of Section R313-19-100, 10 CFR 71.0(c), 71.1(a), 71.3, 71.4, 71.13, 71.14(a), 71.15, 71.17, 71.19(a), 71.19(b), 71.19(c), 71.20 through 71.23, 71.47, 71.83 through 71.89, 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, 71.127 through 71.137, and Appendix A to Part 71 (2014) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 71.4 the following definitions:

(i) "close reflection by water";

(ii) "licensed material";

(iii) "optimum interspersed hydrogenous moderation";

(iv) "spent nuclear fuel or spent fuel"; and

(v) "state."

(2) The substitution of the following date reference:

(a) "October 1, 2011" for "October 1, 2008".

(3) The substitution of the following rule references:

(a) "R313-36 (incorporating 10 CFR 34.31(b) by reference)" for "Sec. 34.31(b) of this chapter" as found in 10 CFR 71.101(g);

(b) "R313-15-502" for reference to "10 CFR 20.1502";

(c) "R313-14" for reference to "10 CFR Part 2 Subpart B";

(d) "Rule R313-32, 10 CFR Part 35," for reference to "10 CFR part 35";

(e) "R313-15-906(5)" for reference to "10 CFR 20.1906(e)";

(f) "R313-19-100(5)" for "Sec.71.5";

(g) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "subpart H of this part" or for "subpart H" except in 10 CFR 71.17(b), 71.20(b), 71.21(b), 71.22(b), 71.23(b);

(h) "10 CFR 71.0(c), 71.1(a), 71.3, 71.4, 71.17(c)(2), 71.20(c)(2), 71.21(d)(2), 71.83 through 71.89, 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "subparts A, G, and H of this part";

(i) "10 CFR 71.47" for "subparts E and F of this part"; and

(j) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "Sec. Sec. 71.101 through 71.137."

(4) The substitution of the following terms:

(a) "Director" for:

(i) "Commission" in 10 CFR 71.0(c), 71.17(a), 71.20(a), 71.21(a), 71.22(a), 71.23(a), and 71.101(c)(1);

(ii) "Director, Division of Nuclear Safety, Office of Nuclear Security and Incident Response" in 10 CFR 71.97(c)(1), and 71.97(f)(1);

(iii) "Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001" in 10 CFR 71.97(c)(3)(iii);

(iv) "NRC" in 10 CFR 71.101(f);

(b) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for "Commission" in 10 CFR 71.3;

(c) "The Governor of Utah" for:

(i) "the governor of a State" in 71.97(a);

(ii) "each appropriate governor" in 10 CFR 71.97(c)(1);

(iii) "the governor" in 10 CFR 71.97(c)(3);

(iv) "the governor of the state" in 10 CFR 71.97(e);

(v) "the governor of each state" in 10 CFR 71.97(f)(1);

(vi) "a governor" in 10 CFR 71.97(e);

(d) "State of Utah" for "State" in 71.97(a), 71.97(b)(2), and 71.97(d)(4);

(e) "the Governor of Utah's" for:

(i) "the governor's" in 10 CFR 71.97(a), 71.97(c)(3), 71.97(c)(3)(iii), 71.97(e), and 71.97(f)(1);

(ii) "governor's" in 10 CFR 71.97(c)(1), and 71.97(e);

(f) "Specific or general" for "NRC" in 10 CFR 71.0(c);

(g) "The Director at the address specified in R313-12-110" for reference to "ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards" in 10 CFR 71.101(c)(1);

(h) "Each" for "Using an appropriate method listed in Sec. 71.1(a), each" in 10 CFR 71.101(c)(1);

(i) "The material must be contained in a Type A package meeting the requirements of 49 CFR 173.417(a)." for "The fissile material need not be contained in a package which meets the standards of subparts E and F of this part; however, the material must be contained in a Type A package. The Type A package must also meet the DOT requirements of 49 CFR 173.417(a)." as found in 10 CFR 71.22(a) and 71.23(a);

(j) "Licensee" for "licensee, certificate holder, and applicant for a COC"; and

(k) "Licensee is" for reference to "licensee, certificate holder, and applicant for a COC are."

(5) Transportation of licensed material

(a) Each licensee who transports licensed material outside the site of usage, as specified in the license issued by the Director, the U.S. Nuclear Regulatory Commission or an Agreement State, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation regulations in 49 CFR parts 107, 171 through 180, and 390 through 397 (2009), appropriate to the mode of transport.

(i) The licensee shall particularly note DOT regulations in the following areas:

(A) Packaging--49 CFR part 173: subparts A (49 CFR 173.1 through 49 CFR 173.13), B (49 CFR 173.21 through 49 CFR 173.40), and I (49 CFR 173.401 through 49 CFR 173.477).

(B) Marking and labeling--49 CFR part 172: subpart D (49 CFR 172.300 through 49 CFR 172.338); and 49 CFR 172.400 through 49 CFR 172.407 and 49 CFR 172.436 through 49 CFR 172.441 of subpart E.

(C) Placarding--49 CFR part 172: subpart F (49 CFR 172.500 through 49 CFR 172.560), especially 49 CFR 172.500 through 49 CFR 172.519 and 49 CFR 172.556; and appendices B and C.

(D) Accident reporting--49 CFR part 171: 49 CFR 171.15 and 171.16.

(E) Shipping papers and emergency information--49 CFR part 172: subparts C (49 CFR 172.200 through 49 CFR 172.205) and G (49 CFR 172.600 through 49 CFR 172.606).

(F) Hazardous material employee training--49 CFR part 172: subpart H (49 CFR 172.700 through 49 CFR 172.704).

(G) Security plans--49 CFR part 172: subpart I (49 CFR

172.800 through 49 CFR 172.804).

(H) Hazardous material shipper/carrier registration--49 CFR part 107: subpart G (49 CFR 107.600 through 49 CFR 107.606).

(ii) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(A) Rail--49 CFR part 174: subparts A through D (49 CFR 174.1 through 49 CFR 174.86) and K (49 CFR 174.700 through 49 CFR 174.750).

(B) Air--49 CFR part 175.

(C) Vessel--49 CFR part 176: subparts A through F (49 CFR 176.1 through 49 CFR 176.99) and M (49 CFR 176.700 through 49 CFR 107.720).

(D) Public Highway--49 CFR part 177 and parts 390 through 397.

(b) If DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, must be filed with, or made to, the Director, P.O. Box 144850, Salt Lake City, Utah 84114-4850.

KEY: license, reciprocity, transportation, exemptions
February 17, 2015 19-3-104
Notice of Continuation September 23, 2011 19-3-108

R317. Environmental Quality, Water Quality.
R317-4. Onsite Wastewater Systems.
R317-4-1. Authority, Purpose, Scope, and Administrative Requirements.

1.1 Authorization.

These rules are administered by the division authorized by Title 19 Chapter 5.

1.2. Purpose.

The purpose of this rule is to protect the public health and environment from potential adverse effects from onsite wastewater disposal within the boundaries of Utah.

1.3. Scope.

This rule shall apply to onsite wastewater systems.

1.4. Jurisdiction.

Local health departments have jurisdiction to administer this rule. Nothing contained in this rule shall be construed to prevent local health departments from:

A. adopting stricter requirements than those contained herein;

B. issuing an operating permit at a frequency not exceeding once every five years with an inspection showing a satisfactory performance of the permitted system by the department's staff before renewal;

C. taking necessary steps for ground water quality protection:

1. through adoption of a ground water quality protection management policy based on a ground water management study; or

2. by an onsite wastewater systems management planning policy and land use planning through the county's agency;

D. prohibiting any alternative system within its jurisdiction;

E. assessing fees for administration of this rule;

F. requiring the onsite systems within its jurisdiction be placed under an umbrella of a:

1. responsible management entity overseen by the local health department;

2. contract service provider overseen by the local health department; or

3. management district body politic created by the county for the purpose of operation, maintenance, repairs and monitoring of alternative or all onsite wastewater systems;

G. requiring conventional and alternative systems to be serviced; and

H. receiving a request for a variance, conducting a review, and granting either an approval or denial.

1.5. Alternative System Administration.

Local health departments shall administer an alternative systems program.

A. The local board of health may restrict its administration of these systems by notifying the division that it is exempt from this requirement by:

1. adopting a resolution or regulation; or

2. presenting an ordinance.

B. An alternative systems program shall:

1. advise the owner of the:

a. type of alternative system;

b. information concerning risk of failure;

c. level of maintenance required;

d. financial liability for repair, modification or replacement of a failed system; and

e. periodic monitoring requirements;

2. ensure that a Notice of the existence of the alternative system is recorded in the chain of title for that property;

3. provide oversight of installed alternative systems;

4. inspect all installed alternative systems at frequency specified in this rule, through:

a. the department's staff;

b. contracted service providers;

c. responsible management entities;

d. a management district body politic created by the county for the purpose of managing onsite wastewater systems; or

e. any combination of the above options;

5. maintain records of all installed alternative systems, failures, modifications, repairs and all inspections, recording the condition of the system at the time of inspection, such as overflow, surfacing, ponding, and nuisance;

6. submit an annual report to the division on or before September 1 for the previous state of Utah fiscal year's activities showing:

a. the type and number of alternative systems approved, installed, modified, repaired, failed, and inspected;

b. a summary of enforcement actions taken, pending and resolved; and

c. a summary of performance of water quality data collected;

7. require all alternative systems to be inspected and serviced as detailed in Section R317-4-13 Table 7 and Section R317-4-11.

1.6. Variance Administration Authority.

The Water Quality Board delegates the authority to grant or deny variances to the design requirements provided for in this rule to the local health departments. The board may amend, suspend, or rescind this delegation of authority to a local health department if it is determined that the local health department is not accepting or conducting reviews as described in Section R317-4-12.

A. The local health department having jurisdiction shall accept applications for variance requests on lots that are deemed not feasible for permitting an onsite wastewater system. Upon completion of a review, the local health department will grant or deny a variance to this rule as outlined in Section R317-4-12. The local health department also will submit an annual report of completed variance determinations to the division.

B. If a local health department fails to evaluate variance requests according to Section R317-4-12, the director shall notify the local health department. The director on behalf of the board may thereafter amend, suspend, or rescind the delegation of variance authority to the local health department. The variance authority would then revert to the division, and requests will be reviewed as follows.

1. The director may appoint a variance advisory committee to consider variance requests and make recommendations to the director. Any such advisory committee shall include at least one representative from a local health department. The director may refer any variance request to the variance advisory committee.

2. Upon review of the recommendation submitted by the variance advisory committee, the director shall render a written determination of the requested variance. If no committee was appointed by the director, the director shall render a written determination. Written determinations must be given within 180 days of the receipt of a complete and technically adequate variance request.

3. The director's final written determination will be forwarded to the local health department that has jurisdiction. The local health department is not required to approve or deny an operating or construction permit based on the director's determination of a variance request.

R317-4-2. Definitions.

"Absorption area" means the entire area used for the subsurface treatment and dispersion of effluent by an absorption system.

"Absorption bed" means an absorption system consisting of large excavated areas utilizing drain media or chambers.

"Absorption system" means a covered system constructed to receive and to disperse effluent, from gravity or a pump, in

such a manner that the effluent is effectively filtered and retained below the ground surface.

"Absorption trench" means an absorption system consisting of a series of narrow excavated trenches utilizing drain media, chambers, or bundled synthetic aggregate units.

"Alternative onsite wastewater system" means an onsite wastewater system that is not a conventional onsite wastewater system.

"At-grade system" means an alternative onsite wastewater system where the bottom of the absorption system is placed at or below the elevation of the existing site grade, and the top of the distribution pipe is above the elevation of existing site grade, and the absorption system is contained within fill that extends above that grade.

"Barrier material" means an effective, pervious material such as an acceptable synthetic filter fabric, or a two-inch layer of compacted straw.

"Bedrock" means the rock, usually solid, that underlies soil or other unconsolidated, superficial material.

"Bedroom" means any portion of a dwelling that is so designed as to furnish the minimum isolation necessary for use as a sleeping area. It may include a den, study, sewing room, or sleeping loft. Unfinished basements shall be counted as a minimum of one additional bedroom.

"Board" means the Utah Water Quality Board.

"Body politic" means the state or its agencies or any political subdivision of the state to include a county, city, town, improvement district, taxing district or other governmental subdivision or public corporation of the state.

"Building sewer" means the pipe that carries wastewater from the building to a public sewer, an onsite wastewater system or other point of dispersal. It is synonymous with "house sewer".

"Bundled synthetic aggregate trench" means an absorption trench utilizing bundled synthetic aggregate units.

"Bundled synthetic aggregate unit" means a cylindrically shaped manufactured unit of synthetic aggregate enclosed in polyolefin netting, which may contain a perforated pipe.

"Chamber" means an open bottom, chambered structure of an approved material and design.

"Chambered trench" means an absorption trench utilizing chambers.

"Cleanout" means a device designed to provide access for removal of deposited or accumulated materials, generally from a pipe.

"Closed loop distribution" means a distribution method where the absorption system layout has the inlet and outlet ends of each lateral connected creating a complete and continuous pathway for effluent flow.

"Coarse drain media" means drain media ranging from 3/4 to 12 inches in diameter.

"Condominium" means the ownership of a single unit in a multi-unit project together with an undivided interest in common, in the common areas and facilities of the property.

"Connecting trench" means an absorption trench that is used to connect other absorption trenches, is less than 20 feet in length, and may be used to calculate total required absorption area.

"Construction permit" means the permit that authorizes an onsite wastewater system to be installed according to an approved design. An additional construction permit may also authorize activities associated with the repair or alteration of a malfunctioning or failing system.

"Conventional onsite wastewater system" means an onsite wastewater system typically consisting of a building sewer, a septic tank, and an absorption system utilizing absorption trenches, absorption beds, deep wall trenches, or seepage pits.

"Cover" means soils used to overlay the absorption area that is free of large stones 10 inches diameter or larger, frozen clumps of earth, masonry, stumps, or waste construction material, or other materials that could damage the system.

"Curtain drain" means any ground water interceptor or drainage system that is backfilled with gravel or other suitable material and is intended to interrupt or divert the course of shallow ground water or surface water away from the onsite wastewater system.

"Designer" means a person who fulfills the requirements of Rule R317-11.

"Deep wall trench" means an absorption system consisting of deep excavated trenches utilizing coarse drain media, with a minimum sidewall absorption depth of 24 inches of suitable soil formation below the distribution pipe.

"Director" means the director of the Division of Water Quality or, for purposes of groundwater quality at a facility licensed by and under the Division of Radiation Control, the director of the Division of Radiation Control.

"Distribution box" means a watertight structure that receives effluent and distributes it concurrently, in essentially equal portions, into two or more pipes leading to an absorption system.

"Distribution pipe" means an approved pipe, solid or perforated, used in the dispersion of effluent in an absorption system.

"Diversion valve" means a watertight structure that receives effluent through one inlet and distributes it to two or more outlets, only one of which is used at a time.

"Division" means the Utah Division of Water Quality.

"Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, excluding non-domestic wastewater. It is synonymous with the term "sewage".

"Drain media" means media used in an absorption system. It shall consist of stone, crushed stone, or gravel, ranging from 3/4 to 2-1/2 inches in diameter. It shall be free from fines, dust, sand or organic material and shall be durable and inert so that it will maintain its integrity, will not collapse or disintegrate with time. The maximum fines in the media shall be 2% by weight passing through a US Standard #10 mesh or 2 millimeter sieve. It shall be protected by a barrier material.

"Drainage system" means all the piping within public or private premises that conveys sewage or other liquid wastes to a legal point of treatment and dispersal, but does not include the mains of a public sewer system or a public sewage treatment or disposal plant.

"Drop box" means a watertight structure that receives septic tank effluent and distributes it into one or more distribution pipes, and into an overflow leading to another drop box and absorption system located at a lower elevation.

"Dry wash" means the dry bed of an ephemeral stream that flows only after heavy rains and is often found at the bottom of a canyon.

"Dwelling" means any structure, building, or any portion thereof that is used, intended, or designed to be occupied for human living purposes including houses, mobile homes, hotels, motels, and apartments.

"Effluent" means the liquid discharge from any treatment unit including a septic tank.

"Effluent pump" means a pump used to lift effluent.

"Effluent sewer" means solid pipe that carries effluent to the absorption system.

"Ejector pump" means a device to elevate or pump sewage to a septic tank, public sewer, or other means of disposal.

"Ephemeral stream" means a stream that flows for a small period of time, a week or less, after a precipitation event.

"Excessively permeable soil" means soils having an excessively high permeability, such as cobbles or gravels with little fines and large voids, and having a percolation rate faster than 1 minute per inch.

"Experimental onsite wastewater system" means an onsite wastewater treatment and absorption system that is still in experimental use and requires further testing in order to provide sufficient information to determine its acceptance.

"Filter fabric" means a synthetic, non-degradable woven or spun-bonded sheet material that has adequate tensile strength to prevent ripping during installation and backfilling, adequate permeability to allow free passage of water and gases; and adequate particle retention to prevent downward migration of soil particles into the absorption system. The minimum physical properties for the fabric shall be 4.0 ounces per square yard or equivalent.

"Ground water" means that portion of subsurface water that is in the zone of soil saturation.

"Ground water table" means the surface of a body of unconfined ground water in which the pressure is equal to that of the atmosphere.

"Ground water table, perched" means unconfined ground water separated from an underlying body of ground water by an unsaturated zone. Its water table is a perched water table. It is underlain by a restrictive strata or impervious layer. Perched ground water may be either permanent, where recharge is frequent enough to maintain a saturated zone above the perching bed, or temporary, where intermittent recharge is not great or frequent enough to prevent the perched water from disappearing from time to time as a result of drainage over the edge of or through the perching bed.

"Gulch" means a small rocky ravine or a narrow gorge, especially one with an ephemeral stream running through it.

"Gully" means a channel or small valley, especially one carved out by persistent heavy rainfall or an ephemeral stream.

"Impervious strata" means a layer that prevents water or root penetration. In addition, it shall be defined as unsuitable soils or soils having a percolation rate slower than 60 minutes per inch for conventional systems.

"Installer" means a qualified person with an appropriate contractor's license and knowledgeable in the installation or repair of an onsite wastewater system or its components.

"Intermittent stream" means a stream that flows for a period longer than an ephemeral stream on a seasonal basis or after a precipitation event.

"Invert" means the lowest portion of the internal cross section of a pipe or fitting.

"Lateral" means a length of distribution pipe or chambered trenches in the absorption system.

"Local health department" means a county or multi-county local health department established under Title 26A.

"Lot" means a portion of a subdivision, or any other parcel of land intended as a unit for transfer of ownership or for development or both and may not include any part of the right-of-way of a street or road.

"Malfunctioning or failing system" means an onsite wastewater system that is not functioning in compliance with the requirements of this regulation and may include:

A. absorption systems that seep or flow to the surface of the ground or into waters of the state;

B. systems that overflow from any of their components;

C. systems that, due to failure to operate in accordance with their designed operation, cause backflow into any portion of a building drainage system;

D. systems discharging effluent that does not comply with applicable effluent discharge standards;

E. leaking septic tanks; or

F. noncompliance with standards stipulated on or by the construction permit, operating permit, or both.

"Maximum ground water table" means the highest elevation that the top of the "ground water table" or "ground water table, perched" is expected to reach for any reason over the full operating life of the onsite wastewater system at that site.

"May" means discretionary, permissive, or allowed.

"Mound system" means an alternative onsite wastewater system where the bottom of the absorption system is placed above the elevation of the original site, and the absorption system is contained in a mounded fill body above that grade.

"Non-closed loop distribution" means a distribution method where the absorption system layout has lateral ends that are not connected.

"Non-domestic effluent" means the liquid discharge from any treatment unit including a septic tank that has a BOD5 equal or greater than 250 mg/L; or TSS equal to or greater than 145 mg/L; or fats, oils, and grease equal to or greater than 25 mg/L.

"Non-domestic wastewater" means process wastewater originating from the manufacture of specific products. Such wastewater is usually more concentrated, more variable in content and rate, and requires more extensive or different treatment than domestic wastewater.

"Non-public water source" means a culinary water source that is not defined as a public water source.

"Non-residential" means a building that produces domestic wastewater, and is not a single family dwelling.

"Onsite wastewater system" means an underground wastewater dispersal system that is designed for a capacity of 5,000 gallons per day or less, and is not designed to serve multiple dwelling units that are owned by separate owners except condominiums. It usually consists of a building sewer, a septic tank and an absorption system.

"Operating permit" means the permit that authorizes the operation and maintenance of an onsite wastewater system or wastewater holding tank. It may have a fee component that requires periodic renewal.

"Packed bed media system" means an alternative onsite wastewater system that uses natural or synthetic media to treat wastewater. Biological treatment is facilitated via microbial growth on the surface of the media. The system may include a pump tank, a recirculation tank, or both.

"Percolation rate" means the time expressed in minutes per inch required for water to seep into saturated soil at a constant rate during a percolation test.

"Percolation test" means the method used to measure the permeability of the soil by measuring the percolation rate as described in these rules. This is sometimes referred to as a "perc test".

"Permeability" means the rate at which a soil transmits water when saturated.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state as defined in Section 19-1-103.

"Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for public health and safety as defined in Section 19-5-102.

"Pressure distribution" means a method designed to uniformly distribute effluent under pressure within an absorption system.

"Public health hazard" means, for the purpose of this rule, a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents relating to water or sewage that are likely to cause human illness, disorders or disability. These may include pathogenic viruses and bacteria, parasites, toxic chemicals and radioactive isotopes. A malfunctioning onsite wastewater system constitutes a public health hazard.

"Public water source" means a culinary water source, either publicly or privately owned, providing water for human consumption and other domestic uses, as defined in Title R309.

"Pump tank" means a watertight receptacle equipped with a pump and placed after a septic tank or other treatment component.

"Pump vault" means a device installed in a septic or pump tank that houses a pump and screens effluent with 1/8 inch openings or smaller before it enters the pump.

"Recirculation tank" means the tank that receives, stores, and recycles partially treated effluent and recycles that effluent back through the treatment process or to the absorption area.

"Regulatory authority" means either the Utah Division of Water Quality or the local health department having jurisdiction.

"Replacement area" means sufficient land with suitable soil, excluding streets, roads, easements and permanent structures that complies with the setback requirements of these rules, and is intended for the 100% replacement of absorption systems.

"Rotary tilling" means a tillage operation. Working land by plowing and harrowing in order to make land ready for cultivation, or employing power driven rotary motion of the tillage tool to loosen, shatter and mix soil.

"Sand lined trench system" means an alternative onsite wastewater system consisting of a series of narrow excavated trenches utilizing sand media and pressure distribution.

"Sand media" means sand fill meeting the ASTM C33/C33M - 11A Standard Specification for Concrete Aggregates.

"Saprolite" means weathered material underlying the soil that grades from soft thoroughly decomposed rock to rock that has been weathered sufficiently so that it can be broken in the hands, cut with a knife or easily dug with a backhoe and is devoid of expansive clay. It has rock structure instead of soil structure and does not include hard bedrock or hard fractured bedrock.

"Scarification" means loosening and breaking up of soil compaction in a manner that prevents smearing and maintains soil structure.

"Scum" means a mass of sewage solids, which is buoyed up by entrained gas, grease, or other substances, floating on the surface of wastes in a septic tank.

"Seepage pit" means an absorption system consisting of one or more deep excavated pits, either hollow-lined or filled, utilizing coarse drain media, with a minimum sidewall absorption depth of 48 inches of suitable soil formation below the distribution pipe.

"Septage" means the semi-liquid material that is pumped out of a septic or pump tank, generally consisting of the sludge, liquid, and scum layer.

"Septic tank" means a watertight receptacle that receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through an absorption system.

"Sequential distribution" means a distribution method in which effluent does not pass through an absorption area before it enters the succeeding areas through a distribution box or relief line allowing for portions of the absorption area to be isolated.

"Serial distribution" means a distribution method in which effluent passes through an absorption area before entering the succeeding areas through a distribution box or relief line creating a single uninterrupted flow path.

"Shall" means a mandatory requirement.

"Should" means recommended or preferred and is intended to mean a desirable standard.

"Single-family dwelling" means a building designed to be used as a home by the owner or lessee of such building.

"Sludge" means the accumulation of solids that have settled in a septic tank or a wastewater holding tank.

"Slope" means the ratio of the rise divided by the run between two points, typically described as a percentage (rise divided by run multiplied by 100).

"Soil exploration pit" means an open pit dug to permit examination of the soil to evaluate its suitability for absorption systems. This is also referred to as a "test pit".

"Soil log" means a detailed description of soil characteristics and properties.

"Soil structure" means the way in which the individual particles, sand, silt, and clay, are arranged into larger distinct aggregates called peds. The main types of soil structure are granular, platy, blocky, prismatic, and columnar. Soil may not have a visible structure because it is either single grain or massive.

"Soil texture" means the percent of sand, silt, and clay in a soil mixture. Field methods for judging the texture of a soil are found in Section R317-4-14 Appendix C.

"Standard trench" means an absorption trench utilizing drain media into which effluent is discharged through specially designed distribution pipes.

"Suitable soil" means undisturbed soil that through textural and structural analysis or percolation rate meets the requirements for placement of an absorption system.

"Test pit" see "soil exploration pit".

"Unapproved system" means any onsite wastewater system that is deemed by the regulatory authority to be any:

A. installation without the required regulatory oversight, permits, or inspections;

B. repairs to an existing system without the required regulatory oversight, permits, or inspections; or

C. alteration to an existing system without the required regulatory oversight, permits, or inspections.

"USDA system of classification" means the system of classifying soil texture used by the United States Department of Agriculture.

"Waste" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water as defined in Section 19-5-102.

"Wastewater" means sewage, industrial waste or other liquid substances that might cause pollution of waters of the state. Intercepted ground water that is uncontaminated by wastes is not included.

"Wastewater holding tank" means a watertight receptacle designed to receive and store wastewater to facilitate treatment at another location.

"Waters of the state":

A. means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this state or any portion of the state; and

B. does not include bodies of water confined to and retained within the limits of private property, and that do not develop into or constitute a nuisance, or public health hazard, or a menace to fish or wildlife.

"Wind-blown sand" means sand that is formed by the weathering and erosion of sandstone typically found in sand-dune or sand-sheet deposits and is capable of producing sand and dust storms when disturbed.

R317-4-3. General Standards, Prohibitions, Requirements, and Enforcement.

3.1. Failure to Comply With Rules.

Any person failing to comply with this rule shall be subject to enforcement action as specified in Sections 19-5-115 and 26A-1-123.

3.2. Feasibility.

Onsite wastewater systems are not feasible in some areas and situations. If property characteristics indicate conditions that may fail in any way to meet the requirements specified herein, the use of onsite wastewater systems shall be prohibited.

3.3. Onsite Wastewater System Required.

The drainage system of each dwelling, building or premises covered herein shall receive all wastewater, including bathroom, kitchen, and laundry wastes, and shall have a connection to a public sewer except when such sewer is not available or practicable for use, in which case connection shall be made:

A. to an onsite wastewater system found to be adequate and constructed in accordance with this rule; or

B. to any other type of wastewater system acceptable under Rules R317-1, R317-3, R317-5, R317-401, or R317-560.

3.4. Flows Prohibited From Entering Onsite Wastewater Systems.

No ground water drainage, drainage from roofs, roads, yards, or other similar sources shall discharge into any portion of an onsite wastewater system, but shall be disposed of so they will in no way affect the system. Non-domestic wastes such as chemicals, paints, or other substances that are detrimental to the proper functioning of an onsite wastewater system may not be disposed of in such systems.

3.5. Increased Flows Prohibited.

A person may not connect or expand the use of a single-family dwelling or nonresidential facility connected to an existing onsite wastewater system if the projected wastewater flows would be greater than the original design flow. When the design flow is exceeded, expansion may occur if the onsite wastewater system is modified, permitted, and approved by the regulatory authority for the increased flow.

3.6. Material Standards.

All materials used in onsite wastewater systems shall comply with the standards in this rule.

3.7. Property Lines Crossed.

Systems, including replacement areas, shall be located on the same lot as the building served unless, when approved by the regulatory authority, a perpetual utility easement and right-of-way is established on an adjacent or nearby lot for the construction, operation, and continued maintenance, repair, alteration, inspection, relocation, and replacement of an onsite wastewater system, including all rights to ingress and egress necessary or convenient for the full or complete use, occupation, and enjoyment of the granted easement. The easement shall be large enough to accommodate the proposed onsite wastewater system and replacement area. The easement shall meet the setbacks specified in Section R317-4-13 Table 2.

3.8. Initial Absorption Area and Replacement Area.

A. All properties that utilize onsite wastewater systems shall be required to have a replacement area.

B. The absorption area, including installed system and replacement area, may not be subject to activity that is likely to adversely affect the soil or the functioning of the system. This may include vehicular traffic, covering the area with asphalt, concrete, or structures, filling, cutting or other soil modifications.

3.9. Operation and Maintenance.

Owners of onsite wastewater systems shall operate, maintain, and service their systems according to the standards of this rule.

3.10. No Discharge to Surface Waters or Ground Surface.

Effluent from any onsite wastewater system may not be discharged to surface waters or upon the surface of the ground. Wastewater may not be discharged into any abandoned or unused well, or into any crevice, sinkhole, or similar opening, either natural or artificial.

3.11. Repair of a Malfunctioning or Unapproved System.

Upon determination by the regulatory authority that a malfunctioning or unapproved onsite wastewater system creates or contributes to any dangerous or unsanitary condition that may involve a public health hazard, or noncompliance with this rule, the regulatory authority shall order the owner to take the necessary action to cause the condition to be corrected, eliminated or otherwise come into compliance.

A. For malfunctioning systems, the local health department shall require and order:

1. all necessary steps, such as maintenance, servicing, repairs, and replacement of system components to correct the malfunctioning system, to meet all rule requirements to the extent possible and may not create any new risk to the environment or public health;

2. effluent quality testing as required by Subsection R317-4-11.4;

3. evaluation of the system design including non-approved changes to the system, the wastewater flow, and biological and chemical loading to the system;

4. additional tests or samples to troubleshoot the system malfunction.

B. The regulatory authority may require fees for additional inspections, reviews, and testing.

3.12. Procedure for Wastewater System Abandonment.

A. When a dwelling served by an onsite wastewater system is connected to a public sewer, the septic tank shall be abandoned and shall be disconnected from and bypassed with the building sewer unless otherwise approved by the regulatory authority.

B. Whenever the use of an onsite wastewater system has been abandoned or discontinued, the owner of the real property on which such wastewater system is located shall render it safe by having the septic tank, any other tanks, hollow seepage pit, or cesspool wastes pumped out or otherwise disposed of in an approved manner. Within 30 days the tanks shall be:

1. crushed in place and the void filled;

2. completely filled with earth, sand, or gravel; or

3. removed.

C. The regulatory authority may require oversight, permit, or inspection of the abandonment process.

3.13. Septage Management.

A person shall only dispose of septage, or sewage contaminated materials in a location or manner in accordance with the regulations of the division and the local health department having jurisdiction.

3.14. Multiple Dwelling Units.

Multiple dwelling units under individual ownership, except condominiums, may not be served by a single onsite wastewater system except where that system is under the sponsorship of a body politic. Plans and specifications for such systems shall be submitted to and approved by the division. Issuance of a construction permit by the board shall constitute approval of plans and authorization for construction. Before the permit is issued, the division shall review plans with the local health department having jurisdiction over the proposed onsite wastewater system.

R317-4-4. Feasibility Determination.

4.1. General Criteria for Determining Onsite Wastewater System Feasibility.

The regulatory authority shall determine the feasibility of using an onsite wastewater system. The regulatory authority will review required information for any existing or proposed lot to determine onsite wastewater system feasibility. The required information shall be prepared at the owner's expense by, or under the supervision of, a qualified person approved by the regulatory authority.

A. General Information.

The required information shall include:

1. the county recorder's plat and parcel ID and situs address if available;

2. name and address of the property owner and person requesting feasibility; and

3. the location, type, and depth of all existing and proposed non-public water supply sources within 200 feet of the proposed onsite wastewater systems, and of all existing or proposed public water supply sources within 1,500 feet of the proposed onsite wastewater systems.

a. If the lot is located in aquifer recharge areas or areas of other particular geologic concern, the regulatory authority may require such additional information relative to ground water movement, or possible subsurface wastewater flow.

b. If the proposed onsite wastewater system is located within any drinking water source protection zone two, this zone shall be shown.

4. The location and distance to nearest sewer, owner of sewer, whether property is located within service boundary, and size of sewer.

5. Statement of proposed use if other than a single-family dwelling.

B. Soil and Site Evaluation.

1. Soil Exploration Pit and Percolation Test.

a. A minimum of one soil exploration pit shall be excavated to allow the evaluation of the soil. The soil exploration pit shall be constructed and soil log recorded as detailed in Section R317-4-14 Appendix C.

b. The regulatory authority shall have the option of requiring a percolation test in addition to the soil exploration pit.

c. The regulatory authority:

i. shall require additional soil exploration pits, percolation tests, or both where flows are greater than 1,000 gallons per day; and

ii. may require additional pits, tests, or both where:

(1) soil structure varies;

(2) limiting geologic conditions are encountered; or

(3) the regulatory authority deems it necessary.

d. The percolation test shall be conducted as detailed in Section R317-4-14 Appendix D.

e. Soil exploration pits and percolation tests shall be conducted as closely as possible to the proposed absorption system site. The regulatory authority shall have the option of inspecting the open soil exploration pits and monitoring the percolation test procedure. All soil logs and percolation test results shall be submitted to the regulatory authority.

f. When there is a substantial discrepancy between the percolation rate and the soil classification, it shall be resolved through additional soil exploration pits, percolation tests, or both.

g. Absorption system feasibility shall be based on Section R317-4-13 Table 5 or 6.

2. Wind-Blown Sand.

The extremely fine grained wind-blown sand found in some parts of Utah shall be deemed not feasible for absorption systems. This does not apply to lots that have received final local health department approval prior to the effective date of this rule.

a. Percolation test results in wind-blown sand will generally be rapid, but experience has shown that this soil has a tendency to become sealed with minute organic particles within a short period of time. For lots that have received final local health department approval prior to the effective date of this rule, systems may be constructed in such material provided it is found to be within the required range of percolation rates specified in these rules, and provided further that the required area shall be calculated on the assumption of minimum acceptable percolation rate of 60 minutes per inch for standard trenches, deep wall trenches, and seepage pits, and 40 minutes per inch for absorption beds.

3. Suitable Soil Depth.

For conventional systems, effective suitable soil depth shall extend at least 48 inches or more below the bottom of the dispersal system to bedrock formations, impervious strata, or excessively permeable soil. Some alternative onsite wastewater systems may have other requirements.

4. Ground Water Requirements.

The elevation of the anticipated maximum ground water table shall meet the separation requirements of the anticipated absorption systems. Local health departments and other local government entities may impose stricter separation requirements between absorption systems and the maximum ground water table when deemed necessary. Building lots recorded or having received final local health department approval prior to May 21, 1984 shall be subject to the ground water table separation requirements of the then Part IV of the Code of Waste Disposal Regulations dated June 21, 1967, that states "high ground water elevation shall be at least 1 foot below the bottom of absorption systems and at least 4 feet below finished grade". Notwithstanding this grandfather provision for recorded or other approved lots, the depth to ground water requirements are applicable if compelling or countervailing public health interests would necessitate application of the more stringent requirements of this regulation.

a. Maximum Ground Water.

Maximum ground water table shall be determined where the anticipated maximum ground water table, including irrigation induced water table, might be expected to rise closer than 48 inches to the elevation of the bottom of the onsite wastewater system. Maximum ground water table shall be determined where alternative onsite wastewater systems may be considered based on groundwater elevations. The maximum ground water table shall be determined by the following.

i. Regular monitoring of the ground water table, or ground water table, perched, in an observation well for a period of one year, or for the period of the maximum groundwater table.

(1) Previous ground water records and climatological or other information may be consulted for each site proposed for an onsite wastewater system and may be used to adjust the observed maximum ground water table elevation.

ii. Direct visual observation of the maximum ground water table in a soil exploration pit for:

(1) evidence of crystals of salt left by the maximum ground water table; or

(2) chemically reduced iron in the soil, reflected by redoxmorphoric features, i.e. a mottled coloring.

(3) Previous ground water records and climatological or other information may be consulted for each site proposed for an onsite wastewater system and may be used to adjust the observed maximum ground water table elevation in determining the anticipated maximum ground water table elevation.

iii. In cases where the anticipated maximum ground water table is expected to rise to closer than 34 inches from the original ground surface and an alternative or experimental onsite wastewater system would be considered, previous ground water records and climatological or other information shall be used to adjust the observed maximum ground water table in determining the anticipated maximum ground water table.

b. Curtain Drains.

A curtain drain or other effective ground water interceptor may be allowed as an attempt to lower the groundwater table to meet the requirements of this rule. The regulatory authority shall require that the effectiveness of such devices in lowering the ground water table be demonstrated during the season of maximum ground water table.

4. Ground Slope.

Absorption systems may not be placed on slopes where the addition of fluids is judged to create an unstable slope.

a. Absorption systems may be placed on slopes between 0% and 25%, inclusive.

b. Absorption systems may be placed on slopes greater than 25% but not exceeding 35% if:

i. all other requirements of this rule can be met;

ii. effluent from the proposed system will not contaminate ground water or surface water, and will not surface or move off site before it is adequately treated to protect public health and the environment;

iii. no slope will fail, and there will be no other landslide or structural failure if the system is constructed and operated adequately, even if all properties in the vicinity are developed with onsite wastewater systems; and

iv. a report is submitted by a professional engineer or professional geologist that is licensed to practice in Utah. The report shall be imprinted with the engineer's or geologist's registration seal and signature and shall include the following.

(1) Predictions and supporting information of ground water transport from the proposed system and of expected areas of ground water mounding.

(2) A slope stability analysis that shall include information about the geology of the site and surrounding area, soil exploration and testing, and the effects of adding effluent.

(3) The cumulative effect on slope stability of added effluent if all properties in the vicinity were developed with onsite wastewater systems.

c. Absorption systems may not be placed on slopes greater than 35%.

5. Other Factors Affecting Onsite Wastewater System Feasibility.

a. The locations of all rivers, streams, creeks, dry or ephemeral washes, lakes, canals, marshes, subsurface drains, natural storm water drains, lagoons, artificial impoundments, either existing or proposed, that will affect building sites, shall be provided.

b. Areas proposed for onsite wastewater systems shall comply with the setbacks in Section R317-4-13 Table 2.

c. If any part of a property lies within or abuts a flood plain area, the flood plain shall be shown within a contour line and shall be clearly labeled on the plan with the words "flood plain area".

6. Unsuitable.

Where soil and other site conditions are clearly unsuitable for the placement of an onsite wastewater system, there is no need for conducting soil exploration pits or percolation tests.

C. Lot Size.

One of the following two methods shall be used for determining minimum lot size. Determination of minimum lot size by the regulatory authority would not preempt local governments from establishing larger minimum lot sizes.

1. Method 1.

The local health department having jurisdiction may determine minimum lot size. Under this method, local health departments may elect to involve other affected governmental entities and the division in making joint lot size determinations. The division will develop technical information, training programs, and provide engineering and geohydrologic assistance in making lot size determinations that will be available to local health departments upon their request. Individuals or developers requesting lot size determinations under this method will be required to submit to the local health department, at their own expense, a report that accurately takes into account at least the following factors:

a. soil type and depth;

b. area drainage, lot drainage, and potential for flooding;

c. protection of surface and ground waters;

d. setbacks from property lines, water supplies, etc.;

e. source of culinary water;

f. topography, geology, hydrology and ground cover;

g. availability of public sewers;

h. activity or land use, present and anticipated;

i. growth patterns;

j. individual and accumulated gross effects on water quality;

k. reserve areas for additional subsurface dispersal;

l. anticipated wastewater volume;

m. climatic conditions;

n. installation plans for wastewater system; and

o. area to be utilized by dwelling and other structures.

2. Method 2.

a. Whenever local health departments do not establish minimum lot sizes for single-family dwellings that will be served by onsite wastewater systems, the requirements of Section R317-4-13 Tables 1.1 and 1.2 shall be met.

b. For non-residential facilities, one-half of the buildable area of the lot must be available for the absorption system and replacement area.

i. The area required for the absorption system and replacement area may be adjusted during the permitting process.

4.2. Subdivision Onsite Wastewater System Feasibility Determination.

A. In addition to information in Subsection R317-4-4.1, the following information must be provided on a plat map:

1. the proposed street and lot layout with all lots consecutively numbered;

2. size and dimensions of each lot, with the minimum required area sufficient to permit the safe and effective use of an onsite wastewater system, including a replacement area for the absorption system;

3. location of all water lines;

4. location of any easements; and

5. areas proposed for wastewater dispersal, including replacement area.

B. Surface drainage systems shall be included on the plan, as naturally occurring, and as altered by roadways or any drainage, grading or improvement, installed or proposed by the developer. The details of the system shall show the surface drainage structures, whether ditches, pipes, or culverts, will in no way affect onsite wastewater systems on the property.

C. Each proposed lot shall have at least one soil exploration pit, percolation test, or both.

1. The regulatory authority may allow fewer tests based on the uniformity of prevailing soil and ground water characteristics and available percolation or soil log test data.

2. If soil conditions and surface topography indicate, a greater number of soil exploration pits or percolation tests may be required by the regulatory authority.

3. The location of all soil exploration pits and percolation test holes shall be clearly identified on the subdivision final plat and identified by a key number or letter designation.

4. The results of such soil tests, including stratified depths of soils and final percolation rates for each lot shall be recorded on or with the final plat.

5. Soil exploration pits and percolation tests shall be conducted as closely as possible to the dispersal system sites on the lots or parcels.

D. Whenever available, information from published soil studies of the area of the proposed subdivision shall be submitted for review.

E. If soil or site conditions exist in or near the project so as to complicate design and location of an onsite wastewater system, a detailed system layout shall be provided for those lots presenting the greatest design difficulty by meeting rules in Section R317-4-5.

4.3. Statement of Feasibility.

After review of all information, plans, and proposals, the regulatory authority shall make a written determination of feasibility stating the results of the review or the need for additional information.

A. An affirmative statement of feasibility for a subdivision

does not imply that it will be possible to install onsite wastewater systems on all of the proposed lots, but shall mean that such onsite wastewater systems may be installed on the majority of the proposed lots in accordance with minimum state requirements and any conditions that may be imposed.

B. The regulatory authority shall establish the expiration, if any, of the statement of feasibility.

R317-4-5. Plan Review and Permitting.

5.1. Plan Review and Permitting.

A. Designer Certification.

All plans and specifications shall be prepared by an individual certified in accordance with Rule R317-11.

B. Domestic Wastewater.

Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems that receive domestic wastewater shall be submitted to the regulatory authority.

C. Non-Domestic Wastewater.

Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems that receive non-domestic wastewater shall be submitted to and approved by the local health department having jurisdiction and the division.

D. Construction Permit Required.

The regulatory authority shall review said plans and specifications as to their adequacy of design for the intended purpose, and shall, if necessary, require such changes as are required by these rules. When the reviewing regulatory authority is satisfied that plans and specifications are adequate for the conditions under which a system is to be installed and used, a construction permit shall be issued to the individual making the submittal.

1. Construction may not commence until the construction permit has been issued by the regulatory authority.

E. Information Required.

Plans submitted for review shall be drawn to scale, 1" = 10', 20' or 30', or other scale as approved by the regulatory authority. Plans shall be prepared in such a manner that the contractor can read and follow them in order to install the system properly. Depending on the individual site and circumstances, or as determined by the regulatory authority, some or all of the following information may be required.

1. Applicant Information.

a. The name, current address, and telephone number of the applicant.

b. Complete address, legal description of the property, or both to be served by this onsite wastewater system.

2. Onsite Wastewater System Site Plan.

a. Submittal date of plan.

b. North arrow.

c. Lot size and dimensions.

d. Legal description of property.

e. Ground surface contours, preferably at 2 foot intervals, of both the original and proposed final grades of the property, or relative elevations using an established bench mark.

f. Location and explanation of type of dwelling or structure to be served by an onsite wastewater system.

i. Maximum number of bedrooms, including statement of whether a finished or unfinished basement will be provided, or if other than a single family dwelling, the number of occupants expected and the estimated gallons of wastewater generated per day.

g. Location and dimensions of paved and unpaved driveways, roadways and parking areas.

h. Location and dimensions of the essential components of the wastewater system including the replacement area for the absorption system.

i. Location of all soil exploration pits and all percolation test holes.

j. Location of building sewer and water service line to serve the building.

k. Location of easements or drainage right-of-ways affecting the property.

l. Location of all intermittent or year-round streams, ditches, watercourses, ponds, subsurface drains, etc. within 100 feet of proposed onsite wastewater system.

m. The location, type, and depth of all existing and proposed non-public water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems and associated source protection zones.

n. Distance to nearest public water main and size of main.

o. Distance to nearest public sewer, size of sewer, and whether accessible by gravity.

3. Statement with Site Plan.

Statement indicating the source of culinary water supply, whether a well, spring, non-public or public system, its location and distances from all onsite wastewater systems within 200 feet.

4. Site Assessment and Soil Evaluation.

Soil Logs, Percolation Test Certificates, or both.

a. Statement with supporting evidence indicating the maximum anticipated ground water table and the flooding potential for onsite wastewater system sites.

5. Relative Elevations.

Show relative elevations of the following, using an established bench mark.

a. Building drain outlet.

b. The inlet and outlet inverts of any septic tanks.

c. Septic tank access cover, including height and diameter of riser, if used.

d. Pump tank inlet, if used, including height and diameter of riser.

e. The outlet invert of the distribution box, if provided, and the ends or corners of each distribution pipe lateral in the absorption system.

f. The final ground surface over the absorption system.

6. System Design.

Details for said site, plans, and specifications are listed in Section R317-4-6.

a. Schedule or grade, material, diameter, and minimum slope of building sewer and effluent sewer.

b. Septic tank and pump tank capacity, design, cross sections, etc., materials, and dimensions. If tank is commercially manufactured, state the name and address of manufacturer.

c. Absorption system details, including the following:

i. details of drop boxes or distribution boxes, if provided;

ii. schedule or grade, material, and diameter of distribution pipes;

iii. length, slope, and spacing of each absorption system component;

iv. maximum slope across ground surface of absorption system area;

v. distance of absorption system from trees, cut banks, fills, or subsurface drains; and

vi. cross section of absorption system showing the:

(1) depth and width of absorption system excavation;

(2) depth of distribution pipe;

(3) depth of filter material;

(4) barrier material, i.e. synthetic filter fabric, straw, etc., used to separate filter material from cover; and

(5) depth of cover.

d. Pump, if provided, details as referenced in Section R317-4-14 Appendix B.

e. If an alternative system is designed, include all pertinent information to allow plan review and permitting for compliance

with this rule.

F. Plans Submitted.

1. All applicants requesting plan approval for an onsite wastewater system shall submit a sufficient number of copies of the above required information to enable the regulatory authority to retain one copy as a permanent record.

2. Applications may be rejected if proper information is not submitted.

R317-4-6. Design Requirements.

6.1. System Location.

A. Onsite wastewater systems are not suitable in some areas and situations. Location and installation of each system shall be such that with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance, public health hazard, or endanger the quality of any waters of the state.

B. In determining a suitable location for the system, due consideration shall be given to such factors as:

1. the minimum setbacks in Section R317-4-13 Table 2;
2. size and shape of the lot;
3. slope of natural and final grade;
4. location of existing and future water supplies;
5. depth of ground water and bedrock;
6. soil characteristics and depth;
7. potential flooding or storm catchment;
8. possible expansion of the system; and
9. future connection to a public sewer system.

6.2. Minimum Setback Distances.

All systems, including the replacement area, shall conform to the minimum setback distances in Section R317-4-13 Table 2.

6.3. Maximum Ground Slope.

All absorption systems, including the replacement area, shall conform to the ground slope requirements in Section R317-4-4.

6.4 Estimates of Wastewater Quantity.

A. Single Family Dwellings.

A minimum of 300 gallons per day, 1 or 2 bedroom, and 150 gallons per day for each additional bedroom shall be used.

B. Non-Residential Facilities.

The quantity of wastewater shall be determined accurately, preferably by actual measurement. Metered water supply figures for similar installations can usually be relied upon, providing the non-disposable consumption, if any, is subtracted. Where this data is not available, the minimum design flow figures in Section R317-4-13 Table 3 shall be used to make estimates of flow.

C. Design Capacity.

In no event shall the anticipated maximum daily wastewater flow exceed the capacity for which a system is designed.

6.5. Non-Domestic Effluent.

Effluent shall be treated to levels at or below the defined parameters of non-domestic effluent before being discharged into an absorption system.

6.6. Building Sewer.

A. The building sewer shall have a minimum inside diameter of 4 inches and shall comply with the minimum standards in Section R317-4-13 Table 4.

1. If the sewer leaving the house is three inches, the building sewer may be three inches.

B. Building sewers shall be laid on a uniform minimum slope of not less than 1/4 inch per foot or 2.08% slope.

C. The building sewer shall have a minimum of one cleanout and cleanouts every 100 feet.

1. A cleanout is also required for each aggregate horizontal change in direction exceeding 135 degrees.

2. Ninety degree ells are not recommended.

D. Building sewers shall be separated from water service pipes in separate trenches, and by at least 10 feet horizontally, except that they may be placed in the same trench when all of the following conditions are met.

1. The bottom of the water service pipe, at all points, shall be at least 18 inches above the top of the building sewer.

2. The water service pipe shall be placed on a solid shelf excavated at one side of the common trench with a minimum clear horizontal distance of at least 18 inches from the sewer or drain line.

3. The number of joints in the water service pipe should be kept to a minimum, and the materials and joints of both the sewer and water service pipes shall be of strength and durability to prevent leakage under adverse conditions.

4. If the water service pipe crosses the building sewer, it shall be at least 18 inches above the latter within 10 feet of the crossing. Joints in water service pipes should be located at least 10 feet from such crossings.

E. Building sewer placed under driveways or other areas subjected to heavy loads shall receive special design considerations to ensure against crushing or disruption of alignment.

6.7. Septic Tank.

All septic tanks shall meet the requirements of Section R317-4-14 Appendix A and be approved by the division. Septic tanks shall be constructed of sound, durable, watertight materials that are not subject to excessive corrosion, frost damage, or decay. They shall be designed to be watertight, and to withstand all expected physical forces.

A. Liquid capacity.

1. A septic tank that serves a non-residential facility shall have a liquid capacity of at least 1-1/2 times the designed daily wastewater flow. In all cases the capacity shall be at least 1,000 gallons.

2. The capacity of a septic tank that serves a single family dwelling shall be based on the number of bedrooms that can be anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms. Unfinished basements shall be counted as a minimum of one additional bedroom.

a. The minimum liquid capacity of the tank shall be 1,000 gallons for up to three bedroom homes.

b. The minimum liquid capacity of the tank shall be 1,250 gallons for four bedroom homes.

c. Two hundred fifty gallons per bedroom shall be added to the liquid capacity of the tank for each additional bedroom over four bedrooms.

3. The regulatory authority may require a larger capacity than specified in this subsection as needed for unique or unusual circumstances.

B. Tanks in Series.

1. No tank in the series shall be smaller than 1,000 gallons.

2. The capacity of the first tank shall be at least two-thirds of the required total septic tank volume. If compartmented tanks are used, the compartment of the first tank shall have this two-thirds capacity.

3. The connecting pipes between each successive tank shall meet the slope requirements of the building sewer and shall be unrestricted except for the inlet to the first tank and the outlet for the last tank.

C. Maximum Number of Tanks or Compartments.

The maximum number of tanks and compartments in series may not exceed three.

D. Inlets and Outlets.

Inlet or outlet devices shall conform to the following:

1. Approved tanks with offset inlets may be used where they are warranted by constraints on septic tank location.

2. Multiple outlets from septic tanks shall be prohibited unless preauthorized by the regulatory authority.

3. A gas deflector may be added at the outlet of the tank to

prevent solids from entering the outlet pipe of the tank.

E. Effluent Screens.

All septic tanks may have an effluent screen installed at the outlet of the terminal tank. The screen shall prevent the passage of solid particles larger than a nominal 1/8 inch diameter sphere. The screen shall be easily removable for routine servicing by installing a riser to the ground surface, with an approved cover. Effluent screens are required for non-domestic wastewater systems, unless screening is achieved by some other means acceptable to the regulatory authority.

F. Access to Tank Interior.

Adequate access to the tank shall be provided to facilitate inspection, pumping, servicing, and maintenance, and shall have no structure or other obstruction placed over it and shall conform to all of the following requirements.

1. Riser Heights.

Watertight risers are required, extending to within 6 inches of the surface of the ground when soil covering the septic tank is greater than 6 inches. Preferably, the riser should be brought up to the final grade to encourage periodic servicing and maintenance.

a. If a septic tank is located under paving or concrete, risers shall be extended up through the paving or concrete.

b. If non-domestic wastewater is generated, risers shall be extended to the final grade.

2. Riser Diameter.

The inside diameter of the riser shall be a minimum of 20 inches.

3. Riser Covers.

Riser covers shall be designed and constructed in such a manner that:

a. they cannot pass through the access openings;

b. when closed will be child-proof;

c. will prevent entrance of surface water, dirt, or other foreign materials; and

d. seal odorous gases in the tank.

4. Riser Construction.

The risers shall be constructed of durable, structurally sound materials that are approved by the regulatory authority and designed to withstand expected physical loads and corrosive forces.

5. Multiple Risers Required.

When the tank capacity exceeds 3,000 gallons, a minimum of two access risers shall be installed.

G. Other Requirements.

Tank installation shall conform to all of the following requirements.

1. Ground Water.

a. Septic tanks located in high groundwater areas shall be designed with the appropriate weighted or anti-buoyancy device to prevent flotation in accordance with the manufacturer's recommendations.

b. The building sewer inlet of the tank may not be installed at an elevation lower than the highest anticipated groundwater elevation.

i. If the tank serves a mound or packed bed alternative system and has an electronic control panel capable of detecting water intrusion the building sewer inlet of the tank may be installed below the maximum anticipated groundwater elevation.

(1) Any component below the anticipated maximum ground water elevation shall be water tightness tested.

2. Depth of Septic Tank.

The minimum depth of cover over the septic tank shall be at least 6 inches and a maximum of 48 inches at final grading. For unusual situations, the regulatory authority may allow deeper burial provided the following conditions are met.

a. The tank shall be approved by the division for the proposed depth and burial cover load.

b. Risers shall:

i. be installed over the access openings of the inlet and outlet baffles or sanitary tees; and

ii. conform to Subsection R317-4-6.7.F, except risers shall be at least 24 inches in diameter.

6.8. Grease Interceptor Tanks.

A grease interceptor tank or automatic grease removal device may be required by the regulatory authority to receive the drainage from fixtures and equipment with grease-laden waste. It shall be sized according to the current Plumbing Code.

A. Accessibility and Installation.

Tanks installed in the ground shall conform to Subsection R317-4-6.7.F for accessibility and installation, except risers are required and shall be brought to the surface of the ground. All interior compartments shall be accessible for inspecting, servicing, and pumping.

6.9. Pump and Recirculation Tanks.

A. Tanks shall be constructed of sound, durable, watertight materials that are not subject to excessive corrosion, frost damage, or decay. They shall be designed to be watertight, and to withstand all expected physical forces.

B. Pump tank volume shall have a liquid capacity adequate for the minimum operating volume that includes the dead space, dosing volume, and surge capacity, and shall have the emergency operation capacity of:

1. storage capacity for the system design daily wastewater flow;

2. at least two independent power sources with appropriate wiring installed; or

3. other design considerations approved by the regulatory authority that do not increase public health risks in the event of pump failure.

C. Accessibility and Installation.

Tanks shall conform to Subsection R317-4-6.7.F for accessibility and installation, except risers are required and shall be brought to the surface of the ground. All interior compartments shall be accessible for inspecting, servicing, and pumping.

D. Outlets of septic tanks upstream of pump tanks shall be fitted with an effluent screen, unless a pump vault is used in a pump tank.

6.10. Pump Vaults.

Pump vaults may be used when approved by the regulatory authority.

A. The vault shall be constructed of durable material and resistant to corrosion.

B. The vault shall have an easily accessible screen with 1/8 inch openings or smaller.

C. All components of the vault shall be accessible from the surface.

D. When a pump vault is used in a septic tank:

1. The tank size shall be increased by the larger of the following:

a. two hundred fifty gallons; or

b. ten percent of the required capacity of the tank.

2. At least two independent power sources with appropriate wiring shall be installed.

3. The maximum drawdown within the tank shall be no more than 3 inches per dose.

6.11. Pumps.

See Section R317-4-14 Appendix B for details.

6.12. Sampling Ports.

When a system is required to have effluent sampling or receives non-domestic wastewater, the system shall include a sampling port at an area approved by the regulatory authority capable of sampling effluent prior to the absorption system.

6.13. Effluent Sewer.

A. The effluent sewer shall have a minimum inside diameter of 4 inches and shall comply with the minimum standards in Section R317-4-13 Table 4.

B. The effluent sewer shall extend at least 5 feet beyond the septic tank before entering the absorption system.

C. Effluent sewers shall be laid on a uniform minimum slope of not less than 1/4 inch per foot or 2.08% slope. When it is impractical, due to structural features or the arrangement of any building, to obtain a slope of 1/4 inch per foot, a sewer pipe of 4 inches in diameter or larger may have a slope of not less than 1/8 inch per foot or 1.04% slope when approved by the regulatory authority.

D. The effluent sewer lines shall have cleanouts at least every 100 feet.

E. Effluent sewer placed under driveways or other areas subjected to heavy loads shall receive special design considerations to ensure against crushing or disruption of alignment.

6.14. Absorption Systems.

A. System Types.

1. Absorption Trenches.

a. Standard Trenches.

b. Chambered Trenches.

c. Bundled Synthetic Aggregate Trenches.

2. Absorption Beds.

3. Deep Wall Trenches.

4. Seepage Pits.

B. General Requirements.

1. Replacement Area for Absorption Systems.

Adequate and suitable land shall be reserved and kept free of permanent structures, traffic, or adverse soil modification for 100% replacement of each absorption system. If approved by the regulatory authority, the area between standard trenches or deep wall trenches may be regarded as replacement area.

a. In lieu of a replacement area, two complete absorption systems shall be installed with a diversion valve. The valve shall be accessible from the final grade. The valve should be switched at least annually.

2. Protection of Absorption Systems.

The site of the initial and replacement absorption system may not be covered by asphalt, concrete, or structures, or be subject to vehicular traffic, or other activity that would adversely affect the soil, such as construction material storage, soils storage, etc. This protection applies before and after construction of the onsite wastewater system.

3. Sizing Criteria for Absorption Systems.

Absorption systems shall be sized based on Section R317-4-13 Table 5 or 6.

4. Design Criteria for Absorption Systems.

Many different designs may be used in laying out absorption systems, the choice depending on the size and shape of the available areas, the capacity required, and the topography of the dispersal area.

a. Horizontal Setbacks.

Absorption systems shall comply with the setbacks in Section R317-4-13 Table 2.

b. Sloping Ground.

Absorption systems placed in 10% or greater sloping ground shall be designed so that there is a minimum of 10 feet of undisturbed earth measured horizontally from the bottom of the distribution line to the ground surface. This requirement does not apply to drip irrigation.

c. Undisturbed Natural Earth.

That portion of absorption systems below the top of distribution pipes shall be in undisturbed natural earth.

d. Tolerance.

All piping, chambers, and the bottoms of absorption system excavations shall be designed level.

e. Distribution Pipe.

Distribution pipe for gravity-flow absorption systems shall be 4 inches in diameter and shall comply with the minimum standards in Section R317-4-13 Table 4.

i. The pipe shall be penetrated by at least two rows of round holes, each 1/2 inch in diameter, and located at approximately 6 inch intervals. The perforations should be located at about the five o'clock and seven o'clock positions on the pipe.

ii. The open ends of the pipes shall be capped.

f. Absorption System Laterals.

Absorption system laterals should be designed to receive proportional flows of wastewater.

g. Drain Media Protection.

Drain media shall be covered with a barrier material before being covered with earth backfill.

h. Prohibitions.

i. In gravity-flow absorption systems with multiple distribution lines, the effluent sewer may not be in direct line with any one of the distribution pipes, except where drop boxes or distribution boxes are used.

ii. Any section of distribution pipe laid with non-perforated pipe may not be considered in determining the required absorption area.

iii. Perforated distribution pipe may not be placed under driveways or other areas subjected to heavy loads.

i. Exceptions.

Deep wall trenches and filled seepage pits may be allowed beneath unpaved driveways on a case-by-case basis by the regulatory authority, if the top of the distribution pipe is at least 3 feet below the final ground surface.

C. Effluent Distribution Devices.

1. Distribution Boxes.

Distribution boxes may be used on level or nearly level ground. They shall be watertight and constructed of durable, corrosion resistant material. They shall be designed to accommodate the inlet pipe and the necessary distribution lines.

a. The outlet inverts of the distribution box shall be not less than 1 inch below the inlet invert.

b. Distribution boxes shall have risers brought to final grade.

2. Drop Boxes.

Drop boxes shall be watertight and constructed of durable, corrosion resistant material and may be used to distribute effluent within the absorption system and shall meet the following requirements:

a. Drop boxes shall be designed to accommodate the inlet pipe, an outlet pipe leading to the next drop box, except for the last drop box, and one or two distribution pipes leading to the absorption system.

b. The inlet pipe to the drop box shall be at least 1 inch higher than the outlet pipe leading to the next drop box.

c. The invert of the distribution pipes shall be 1 through 6 inches below the outlet invert. If there is more than one distribution pipe, their inverts shall be at exactly the same elevation.

d. Drop boxes shall have risers brought to final grade.

3. Effluent Pump to Absorption System.

a. If a pump is used to lift effluent to an absorption system, the pump tank or pump vault shall meet the requirements of Subsection R317-4-6.9 or R317-4-6.10 and the pump and controls shall meet the requirements of Section R317-4-14 Appendix B.

b. Pumping to an absorption system may not warrant any reductions to the absorption area.

4. Other Devices.

Tees, wyes, ells, or other distributing devices may be used as needed to permit proportional flow to the branches of the absorption system.

D. Effluent Distribution Methods.

1. Closed Loop.

In locations where the slope of the ground over the absorption system area is relatively flat, the trenches should be

interconnected to produce a closed loop system and the trenches shall be installed at the same elevations.

2. Non-Closed Loop.

If a non-closed loop design is used, effluent shall be proportionally distributed to each lateral.

3. Serial or Sequential.

Serial or sequential distribution may be used in absorption systems designed for sloping areas, or where absorption system elevations are not equal.

a. Serial trenches shall be connected with a drop box or watertight overflow line in such a manner that a trench will be filled before the effluent flows to the next lower trench.

b. The overflow line shall be a 4-inch solid pipe with direct connections to the distribution pipes. It should be laid in a trench excavated to the exact depth required. Care must be exercised to ensure a block of undisturbed earth remains between trenches. Backfill should be carefully tamped.

4. Pressure Distribution.

a. General Requirements.

i. Conformance to Applicable Requirements.

All requirements stated elsewhere in this rule for design, setbacks, construction and installation details, performance, repairs, and abandonment shall apply.

ii. Design Criteria.

All systems that use this method shall be designed by a person certified at Level 3 in accordance with Rule R317-11.

(1) The designer shall submit details of all system components with the necessary calculations.

(2) The designer shall provide to the local health department and to the owner operation and maintenance instructions that include the minimum inspection levels in Section R317-4-13 Table 7 for the system.

iii. Record in the Chain of Title.

When a system utilizing pressure distribution exists on a property, notice of the existence of that system shall be recorded in the chain of title for that property.

b. Design.

i. Pressure distribution may be permitted on any site meeting the requirements for an onsite wastewater system if conditions in this rule can be met.

ii. Pressure distribution should be considered when:

(1) effluent pumps are used;

(2) the flow from the dwelling or structure exceeds 3,000 gallons per day;

(3) soils are a Type 1 or have a percolation rate faster than five minutes per inch; or

(4) soils are a Type 5 or have a percolation rate slower than 60 minutes per inch.

iii. The Utah Guidance for Performance, Application, Design, Operation and Maintenance: Pressure Distribution Systems document shall be used for design requirements, along with the following:

(1) Dosing pumps, controls and alarms shall comply with Section R317-4-14 Appendix B.

(2) Pressure distribution piping.

(a) All pressure transport, manifold, lateral piping, and fittings shall meet PVC Schedule 40 standards or equivalent.

(b) The ends of lateral piping shall be constructed with sweep elbows or an equivalent method to bring the end of the pipe to final grade. The ends of the pipe shall be provided with threaded plugs, caps, or other devices acceptable to the regulatory authority to allow for access and flushing of the lateral.

E. Design of Absorption Systems.

i. An absorption system shall be designed to approximately follow the ground surface contours so that variation in excavation depth will be minimized. The excavations could be installed at different elevations, but the bottom of each individual excavation shall be level throughout its length.

ii. Absorption systems should be constructed as shallow as is possible to promote treatment and evapotranspiration.

iii. Observation ports may be placed to observe the infiltrative surfaces of the trenches or beds.

1. Absorption Trenches.

a. Absorption trenches shall conform to the following:

i. The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6.

ii. The effective absorption area of absorption trenches shall be calculated as the total bottom area of the excavated trench system in square feet.

iii. Minimum number of absorption trenches: 2.

iv. Maximum length of absorption trenches, not including connecting trenches: 150 feet.

v. Minimum spacing of absorption trenches from wall to wall: 7 feet.

vi. Minimum width of absorption trench excavations: 24 inches.

vii. Maximum width of absorption trench excavations: 36 inches.

viii. Minimum depth of absorption trench excavations below original, natural grade: 10 inches.

ix. Minimum depth of soil cover over the absorption trenches: 6 inches.

x. Minimum separation from the bottom of the absorption trenches to:

(1) the anticipated maximum ground water table: 24 inches; and

(2) unsuitable soil or bedrock formations: 48 inches.

b. Standard Trenches.

Standard trenches shall conform to the following:

i. Top of distribution pipe may not be installed above original, natural grade.

ii. The distribution pipe shall be centered in the absorption trench and placed the entire length of the trench.

iii. Drain media shall extend the full width and length of the trenches to a depth of at least: 12 inches.

iv. Minimum depth of drain media under the distribution pipe: 6 inches.

v. Minimum depth of drain media over the distribution pipe: 2 inches.

vi. Minimum depth of cover over the barrier material: 6 inches.

c. Chambered Trenches.

Chambered trenches shall conform to the following:

i. All chambers shall meet International Association of Plumbing and Mechanical Officials (IAPMO) Standard PS 63-2005, which is hereby incorporated into this rule by reference.

ii. The minimum required effective absorption area of chambered trenches shall be calculated:

(1) for Type A Chambers as: 36 inches; and

(2) for Type B Chambers as: 24 inches;

(3) using Section R317-4-13 Table 5 or 6 and may be reduced by: 30%.

iii. The chambered trenches shall be designed and installed in conformance with manufacturer recommendations, as modified by these rules.

iv. Type A Chambers.

(1) Minimum width of chambers: 30 inches.

(2) Maximum width of trench excavations: 36 inches.

v. Type B Chambers.

(1) Minimum width of chambers: 22 inches.

(2) Maximum width of trench excavations: 24 inches.

vi. Minimum elevation of the inlet pipe invert from the bottom of the chamber: 6 inches.

vii. All chambers shall have a splash plate under the inlet pipe or another design feature to avoid unnecessary channeling into the trench bottom.

viii. Inlet and outlet effluent sewer pipes shall enter and

exit the chamber endplates.

ix. Minimum depth of cover over the chambers: 12 inches.

d. Bundled Synthetic Aggregate Trenches.

Bundled synthetic aggregate trenches shall conform to the following.

i. All synthetic aggregate bundles shall meet IAPMO Standards for the General, Testing and Marking and Identification of the guide criteria for Bundled Expanded Polystyrene Synthetic Aggregate Units.

ii. The effective absorption area of bundled synthetic aggregate trenches shall be calculated as the total bundle length times the total bundle width in square feet.

iii. The bundled synthetic aggregate trenches shall be designed and installed in conformance with manufacturer recommendations, as modified by these rules.

iv. Only 12-inch diameter bundles are approved in this rule.

(1) For bundles with perforated pipe the minimum depth of synthetic aggregate under pipe: 6 inches.

v. Width of trenches.

(1) When designed for a 3 foot wide trench, three bundles are laid parallel to each other with the middle bundle containing perforated pipe.

(2) When designed for a 2 foot wide trench, two bundles are placed on the bottom, with one bundle containing perforated pipe.

vi. Minimum depth of cover over the bundles: 12 inches.

2. Absorption Beds.

Absorption beds shall conform to the requirements applicable to absorption trenches, except for the following.

a. The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6.

b. The effective absorption area of absorption beds shall be considered as the total bottom area of the excavated bed system in square feet.

c. Absorption beds may be built over naturally existing soil types per Section R317-4-13 Table 5 or 6.

d. The bottom of the entire absorption bed shall be level.

e. The distribution pipes or chambers shall be interconnected to produce a closed loop distribution system.

f. Minimum number of laterals in an absorption bed: 2.

g. Maximum length of laterals in an absorption bed: 150 feet.

h. Maximum distance between laterals: 6 feet.

i. Minimum distance between laterals and sidewalls: 1 foot.

j. Maximum distance between laterals and sidewalls: 3 feet.

k. Minimum distance between absorption beds: 7 feet.

l. Minimum depth of an absorption bed excavation from original, natural grade: 10 inches.

m. Absorption beds with drain media:

i. Minimum depth of drain media under distribution pipe: 6 inches.

ii. Minimum depth of drain media over distribution pipe: 2 inches.

iii. Minimum depth of cover over the barrier material: 6 inches.

n. Absorption beds with chambers:

i. Chambers shall be installed with sides touching, no separation allowed.

ii. All chambers shall be connected in a closed loop distribution system.

iii. The outlet side of the chamber runs shall be connected through the bottom port of the end plates.

iv. No absorption area reduction factor shall be given for using chambers in absorption beds.

v. Minimum depth of cover over the chambers: 12 inches.

3. Deep Wall Trenches.

Deep wall trenches shall conform to the following:

a. The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6.

b. The effective absorption area of deep wall trenches shall be calculated using the total trench vertical sidewall area below the distribution pipe. The bottom area and any highly restrictive or impervious strata or bedrock formations may not be considered in determining the effective sidewall absorption area.

c. If percolation tests are used, they shall be conducted in accordance with Section R317-4-14 Appendix D and in the most restrictive soil horizon.

d. Maximum length of trenches: 150 feet.

i. Does not include connecting trenches.

e. Minimum spacing of trenches from wall to wall: 12 feet,

or three times the depth of the media under the distribution pipe, whichever is the larger distance.

f. Vertical depth of trenches.

i. Minimum effective sidewalls: 2 feet.

ii. Maximum effective sidewalls: 10 feet.

iii. Calculate using only suitable soil formation.

g. Minimum width of trench excavations: 24 inches.

h. Minimum separation from the bottom of deep wall trench to:

i. the anticipated maximum ground water table: 48 inches;

ii. unsuitable soil or bedrock formations: 48 inches.

i. Drain media shall cover the coarse drain media to permit leveling of the distribution pipe and shall extend the full width and length of the trenches.

i. Minimum depth of drain media: 12 inches.

ii. Minimum depth of drain media under the distribution pipe: 6 inches.

iii. Minimum depth of drain media over the distribution pipe: 2 inches.

j. Minimum depth of cover over the barrier material: 6 inches.

k. The distribution pipe shall be centered in the trench and placed the entire length of the trench.

4. Seepage Pits.

Seepage pits shall be considered as modified deep wall trenches and shall conform to the requirements applicable to deep wall trenches, except for the following:

a. The effective absorption area of seepage pits shall be calculated using the total pit vertical sidewall area below the distribution pipe. The bottom area and any highly restrictive or impervious strata or bedrock formations may not be considered in determining the effective sidewall absorption area.

b. Minimum diameter of pits: 3 feet.

c. Vertical depth of pits.

i. Minimum effective sidewalls: 4 feet.

ii. Maximum effective sidewalls: 10 feet.

iii. Calculate using only suitable soil formation.

d. Filled Seepage Pits.

i. In pits filled with coarse drain media, the perforated distribution pipe shall run across each pit. A layer of drain media shall be used for leveling the distribution pipe.

ii. The entire pit shall be completely filled with coarse drain media to at least the top of any permeable soil formation to be calculated as effective sidewall absorption area.

e. Hollow-Lined Seepage Pits.

i. For hollow-lined pits, the inlet pipe shall extend horizontally at least 1 foot into the pit.

ii. The annular space between the lining and excavation wall shall be filled with crushed rock or gravel ranging from 3/4 through 6 inches in diameter and free of fines, sand, clay or organic material. The maximum fines in the gravel shall be 2% by weight passing through a US Standard #10 mesh or 2.0 millimeter sieve.

iii. Minimum width of annular space between lining and

sidewall: 12 inches.

iv. Minimum thickness of reinforced perforated concrete liner: 2-1/2 inches.

v. Minimum thickness of reinforced concrete top: 6 inches.

vi. Minimum depth of drain media in pit bottom: 6 inches.

vii. Minimum depth of cover over seepage pit top: 6 inches.

viii. A reinforced concrete top shall be provided.

(1) When the cover over the seepage pit top exceeds 6 inches, risers shall conform to Subsection R317-4-6.7.F for accessibility.

6.15. Alternative Systems.

A. System Types.

1. At-Grade.

2. Mounds.

3. Packed Bed Media.

a. Intermittent Sand Filters.

b. Recirculating Sand Filters.

c. Recirculating Gravel Filters.

d. Textile Filters.

e. Peat Filters.

4. Sand Lined Trenches.

B. General Requirements.

1. Conformance to Applicable Requirements.

All requirements stated elsewhere in this rule for design, setbacks, construction and installation details, performance, repairs and abandonment shall apply unless stated differently for a given alternative system.

2. Sizing Criteria for Alternative Systems.

Absorption area shall be sized based on Section R317-4-13 Table 5 or 6 except as specified in this section.

3. Design Criteria for Alternative Systems.

All alternative systems shall be designed by a person certified at Level 3 in accordance with Rule R317-11.

a. The designer shall submit details of all system components with the necessary calculations.

b. The designer shall provide to the local health department and to the owner operation and maintenance instructions that include the minimum inspection levels in Section R317-4-13 Table 7 for the system.

4. Record in the Chain of Title.

When an alternative system exists on a property, notice of the existence of that system shall be recorded in the chain of title for that property.

C. Design of Alternative Systems.

1. At-Grade Systems.

Absorption trenches and absorption beds may be used in at-grade systems. At-grade systems shall conform to the requirements applicable to absorption trenches and absorption beds, except for the following:

a. Horizontal setbacks in Section R317-4-13 Table 2 are measured from edge of sidewall trench, with the exception of property lines, where the toe of the final cover shall be 5 feet or greater in separation distance to a property line.

b. Minimum number of observations ports provided within absorption area: 2.

i. The ports shall be installed to the depth of the trench or bed.

c. Depth of absorption excavations below natural grade: 0-10 inches.

d. Minimum cover over the absorption area: 6 inches.

e. Maximum slope of natural ground surface: 4%.

f. The maximum side slope for above ground fill shall be four horizontal to one vertical: 25% slope.

g. Where final contours are above the natural ground surface, the cover shall extend from the center of the wastewater system at the same general top elevation for a minimum of 10 feet in all directions beyond the limits of the absorption area perimeter, before beginning the side slope.

2. Mound Systems.

Mound systems shall conform to the following:

a. The design shall generally be based on the Wisconsin Mound Soil Absorption System: Siting, Design and Construction Manual, January 2000 published by the University of Wisconsin-Madison Small-Scale Waste Management Project, with the following exceptions.

i. The minimum separation distance between the natural ground surface and the anticipated maximum ground water table: 12 inches.

ii. Mound systems may be built over naturally existing soil types per Section R317-4-13 Table 5 or 6 provided the minimum depth of suitable soil is:

(1) between the natural ground surface and bedrock formations or unsuitable soils: 36 inches; or

(2) above soils that have a percolation rate faster than one minute per inch: 24 inches.

iii. The minimum depth of sand media over natural soil: 12 inches.

iv. The maximum slope of natural ground surface: 25 %.

v. The separation distances in Section R317-4-13 Table 2 are measured from the toe of the final cover.

vi. The effluent loading rate at the sand media to natural soil interface shall be calculated using Section R317-4-13 Table 5 or 6.

vii. The effluent entering a mound system shall be at levels at or below the defined parameters of non-domestic effluent.

viii. The minimum thickness of aggregate media around the distribution pipes of the absorption system shall be the sum of 6 inches below the distribution pipe, the diameter of the distribution pipe and 2 inches above the distribution pipe or 10 inches, whichever is larger.

ix. The cover may not be less than 6 inches in thickness, and shall provide protection against erosion, frost, storm water infiltration and support vegetative growth and aeration of distribution cell.

x. A minimum of three observation ports shall be located within the mound at each end and the center of the distribution cell.

(1) At least one port shall be installed at the gravel-sand interface, and one port at the sand-soil interface.

b. Mounds shall use pressure distribution.

i. The Utah Guidance for Performance, Application, Design, Operation and Maintenance: Pressure Distribution Systems document and Subsection R317-4-6.14.D.4 shall be used for design requirements.

(1) See Section R317-4-14 Appendix B for pump and control requirements.

3. Packed Bed Media Systems.

Packed bed media systems shall conform to the following:

a. System Design Criteria.

i. Wastewater Design Flows.

(1) For single-family dwellings the design shall be based on a minimum of 300 gallons per day for two bedrooms and 100 gallons per day for each additional bedroom.

(2) All other flow estimates shall be based on Subsection R317-4-6.4.

(3) Special design considerations shall be given for non-domestic effluent.

ii. Effluent Distribution.

Effluent shall be uniformly distributed over the filter media using pressure distribution.

b. Absorption System Requirements.

Absorption systems shall conform to the following:

i. Siting Conditions.

Packed bed media absorption systems may be sited under the following conditions:

(1) The minimum separation distance between the natural

ground surface and the anticipated maximum ground water table: 12 inches.

(2) Packed bed media absorption systems may be built over naturally existing soil types per Section R317-4-13 Table 5 or 6 provided the minimum depth of suitable soils:

(a) above soils that have a percolation rate faster than one minute per inch: 24 inches; and

(b) between the natural ground surface and bedrock formations or unsuitable soils: 36 inches; or

(c) between the natural ground surface and bedrock formations or unsuitable soils: 18 inches based on an evaluation of infiltration rate and hydrogeology from a professional geologist or engineer that is certified at the appropriate level to perform onsite wastewater system design and having sufficient experience in geotechnical engineering based on:

(i) type, extent of fractures, presence of bedding planes, angle of dip;

(ii) hydrogeology of surrounding area; and

(iii) cumulative effect of all existing and future systems within the area for any localized mounding or surfacing that may create a public health hazard or nuisance, description of methods used to determine infiltration rate and evaluations of surfacing or mounding conditions.

(3) A non-chemical disinfection unit, capable of meeting laboratory testing parameters in Table 7.3, and a maintenance schedule consistent to Section R317-4-13 Tables 7.1 and 7.3, shall be used in excessively permeable soils.

(4) Conformance with the minimum setback distances in Section R317-4-13 Table 2, except for the following that require a minimum of 50 feet of separation:

(a) watercourses, lakes, ponds, reservoirs;

(b) non-culinary springs or wells;

(c) foundation drains, curtain drains; or

(d) non-public culinary grouted wells, constructed as required by Title R309.

ii. Sizing Criteria.

The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6 and may be reduced by: 30%.

(1) The use of chambered trenches with a packed bed media system may not receive additional reductions as allowed in Subsection R317-4-6.14.E.1.c.

iii. Separation from Ground Water Table.

The bottom of the absorption system shall have a vertical separation distance of at least 12 inches from the anticipated maximum ground water table.

iv. Observation Ports.

A minimum of two observation ports shall be provided within the absorption area.

v. Drip Irrigation.

Drip irrigation absorption may be used for packed bed media absorption system effluent dispersal based on type of soil and drip irrigation manufacturer's recommendations.

(1) Materials shall be specifically designed and manufactured for onsite wastewater applications.

(2) Non-absorption components shall be installed per Section R317-4-6 and Section R317-4-13 Table 2.

c. Intermittent Sand Filter Systems.

i. Media.

Either sand media or sand fill as described below may be used.

(1) Minimum depth of sand media: 24 inches.

(2) Minimum depth of sand fill: 24 inches.

(a) Effective size: 0.35-0.5 millimeter.

(b) Uniformity coefficient: less than 4.0.

(c) Maximum fines passing through #200 sieve: 1%.

ii. Maximum application rate per day per square foot of media surface area:

(1) Sand media: 1.0 gallons.

(2) Sand fill: 1.2 gallons.

iii. Maximum dose volume through any given orifice for each dosing: 2 gallons.

iv. Effluent entering an intermittent sand filter shall be at levels at or below the defined parameters of non-domestic effluent.

c. Recirculating Sand Filter (RSF) Systems.

i. Media.

(1) Minimum depth of washed sand: 24 inches.

(2) Effective size: 1.5-2.5 millimeter.

(3) Uniformity coefficient: less than 3.0.

(4) Maximum fines passing through #50 sieve: 1%.

ii. Maximum application rate per day per square foot of media surface area: 5 gallons.

d. Recirculating Gravel Filter (RGF) Systems.

i. Media.

(1) Minimum depth of washed gravel: 36 inches.

(2) Effective size: 2.5-5.0 millimeter.

(3) Uniformity Coefficient: less than 2.0.

(4) Maximum fines passing through #16 sieve: 1%.

ii. Maximum application rate per day per square foot of media surface area: 15 gallons.

e. Textile Filter Systems.

i. Media shall be geotextile, AdvanTex, or an approved equal.

ii. Maximum application rate per day per square foot of media surface area: 30 gallons.

f. Peat Filter Systems.

i. Minimum depth of peat media: 24 inches.

ii. Maximum application rate per day per square foot of media surface area: 5 gallons.

4. Sand Lined Trench Systems.

Sand lined trench systems shall conform to the following:

a. Siting Conditions.

i. The minimum depth of suitable soil or saprolite between the sand media in trenches and the anticipated maximum ground water table: 12 inches.

ii. Sand lined trench systems may be built over naturally existing:

(1) soil types 1 through 4; or

(2) soils or saprolite with a percolation rate between 1 and 60 minutes per inch.

iii. The minimum depth of suitable soil or saprolite is:

(1) between the sand media in trenches and bedrock formations or unsuitable soils: 36 inches; or

(2) above soils or saprolite that have a percolation rate faster than one minute per inch: 24 inches.

c. Trench Requirements.

Sand lined trenches shall conform to the requirements applicable to absorption trenches except for the following:

i. Trenches in Suitable Soil.

The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6.

ii. Trenches in Saprolite.

The minimum required effective absorption area shall be based on percolation rate using Section R317-4-13 Table 5.

(1) This rate shall be determined by conducting percolation tests. The soil shall be allowed to swell not less than 24 hours or more than 30 hours.

iii. The use of chambered trenches with a sand media system may not receive additional reductions as allowed in Subsection R317-4-6.14.E.1.c.

iv. Width of absorption trench excavations: 36 inches.

v. The entire trench sidewall shall be installed in natural ground. At-Grade system designs are not allowed.

vi. Minimum depth of sand media: 24 inches.

vii. Sand lined trenches with drain media.

(1) Minimum depth of drain media under the pressure lateral distribution pipe: 6 inches.

(2) Minimum depth of drain media over pressure lateral distribution pipe: 2 inches.

(3) Minimum depth of soil cover or saprolite over drain media: 6 inches.

viii. Sand lined trenches with Type A chambers.

(1) Minimum depth of soil cover or saprolite over chambers: 12 inches.

ix. Minimum number of observation ports per trench: 1.

c. Effluent Distribution.

Effluent shall be uniformly distributed over the sand media using pressure distribution.

i. Design shall generally be based on the Utah Guidance for Performance, Application, Design, Operation and Maintenance: Pressure Distribution Systems document.

R317-4-7. Construction and Installation.

7.1. System Installation.

A. Approved Plans.

The installer may not deviate from the approved plans or conditions of the construction permit without the approval of the designer and the reviewing regulatory authority.

B. Installation Restrictions.

A regulatory authority may limit the time period or area in which a system can be installed to ensure that soil conditions, weather, groundwater, or other conditions do not adversely affect the reliability of the system.

C. General Requirements.

1. Prior to installation, all minimum setback distances shall be field verified.

2. All absorption areas shall be protected prior to and during site construction.

3. The regulatory authority may require a temporary barrier around the absorption area, including the replacement area for additional protection prior to and during any site construction. If necessary, a more permanent barrier may be required following construction.

4. All absorption excavations and piping shall be level within a tolerance of plus or minus 1 inch. The overall slope from effluent entry to terminus shall be no more than 4 inches per hundred feet.

5. Absorption system excavations shall be made such that the soil in the bottom and sides of the excavation is not compacted. Strict attention shall be given to the protection of the natural absorption properties of the soil.

6. Absorption systems may not be excavated when the soil is wet enough to smear or compact easily.

7. All smeared or compacted surfaces should be raked to a depth of 1 inch, and loose material removed before the absorption system components are placed in the excavation.

8. Open absorption system excavations shall be protected from surface runoff to prevent the entrance of silt and debris.

9. Absorption systems shall be backfilled with earth that is free from stones 10 inches or more in diameter.

10. Distribution pipes may not be crushed or misaligned during backfilling. When backfilling, the earth shall be mounded slightly above the surface of the ground to allow for settlement and prevent depressions for surface ponding of water.

11. Final grading shall prevent ponding throughout the entire system area and promote surface water runoff.

12. Heavy wheeled equipment may not be driven in or over absorption systems prior to or during construction or backfilling.

D. Building and Effluent Sewer.

1. Pipe, pipe fittings, and similar materials comprising building and effluent sewers shall conform to the applicable standards as outlined in Section R317-4-13 Table 4.

2. Each length of pipe shall be stamped or marked as required by the International Plumbing Code.

3. Where two different sizes or types of pipe are connected, a proper type of fitting or conversion adapter shall be used.

4. All sewers:

a. shall have watertight, root-proof joints; and

b. may not receive any ground water or surface runoff.

5. Pipes shall be installed on a foundation of undisturbed earth, or stabilized earth that is not subject to settling.

E. Tanks.

Tank installation shall conform to the following requirements.

1. All tanks shall be installed on a level, stable base that will not settle.

2. The hole to receive the tank shall be large enough to permit the proper placement of the tank and backfill.

3. Where ground water, rock or other undesirable protruding obstructions are encountered, the bottom of the hole shall be excavated an additional 6 inches, and backfilled with sand, crushed stone, or gravel to the proper grade.

4. Backfill around and over the septic tank shall be placed in such a manner as to prevent undue strain or damage to the tank or connected pipes.

F. Absorption Systems.

1. Cover shall be evenly graded over the entire absorption area.

2. Distribution and Drop Boxes.

a. The inlet and outlet piping shall be sealed watertight to the sidewalls of the box.

b. The box shall be provided with a means of access. Access shall be brought to final grade.

c. The lid of the riser shall be adequate to prevent entrance of water, dirt or other foreign material, but made removable for observation and maintenance of the system.

d. The top of the box shall be at least 6 inches below final grade.

e. The box shall be installed on a level, stable base to ensure against tilting or settling, and to minimize movement from frost action.

f. Unused knock-out holes in boxes shall be sealed watertight.

3. The solid and distribution pipes shall be bedded true to line and grade, uniformly and continuously supported by firm, stable material.

4. No cracked, weakened, modified or otherwise damaged chamber or bundled synthetic aggregate units shall be used in any installation.

G. Pressure Distribution.

1. Installation practices shall follow the approved design.

G. Alternative Systems.

1. At-Grade and Mound Systems.

a. The site shall be cleared of surface vegetation, without removing soil, and scarified to an approximate depth of 6 inches. Any furrows resulting from the scarification shall be perpendicular to any slope on the site.

i. Rotary tilling is prohibited for scarification.

b. The system may not be installed in wet or moist soil conditions.

c. No equipment shall be driven over the scarified area.

d. The site shall be graded such that surface water drains away from the system and adjoining area.

2. Packed Bed Media and Sand Lined Trench Systems.

Installation practices shall follow the approved design.

R317-4-8. Final Inspections.

8.1. Final Inspections.

The regulatory authority shall inspect the entire installation before backfilling to determine compliance with this rule. Some components or system types require additional testing or inspection methods as outlined in the following.

A. Tank Water Tightness Testing.

Each tank shall be tested for water tightness prior to backfill.

1. The tanks shall be filled 24 hours before the inspection to allow stabilization of the water level. Considering water absorption by the concrete, there may not be a change in the water level nor any water moving visibly into or out of the tank. Testing shall be supervised by the regulatory authority. Tanks exhibiting obvious defects or leaks may not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

a. The regulatory authority may allow two piece tanks, with the joint below the water level, to be backfilled up to 3 inches below the joint to provide adequate support to the seam of the tank.

b. Polyethylene or fiber glass tanks may be backfilled as per manufacturers' recommendations.

2. If ground water elevations inhibit the ability to visibly inspect the exterior of the tank, the tanks may be tested by their ability to exclude water.

B. Distribution and Drop Boxes.

1. Distribution and drop boxes should be installed level and the flow distribution lines shall be checked by filling the boxes with water up to the outlets.

C. Pressure Distribution, Effluent Pumps.

1. Verify the correct operation of the pump, controls, and alarm.

D. Deep Wall Trenches, Seepage Pits.

1. Verify the depth of the trench excavation.

E. At Grade and Mound Systems.

1. Verify the preparation of the original ground before the placement of fill.

2. Verify that the final cover meets requirements.

E. Alternative and Experimental Systems.

1. All additional inspections will be dictated by the complexity of the system and absorption system type as identified by the regulatory authority.

G. Final Approval.

Final approval shall be issued by the regulatory authority prior to operation of the system, and shall include an as-built drawing of the completed system.

R317-4-9. Experimental Systems.

9.1. Administrative Requirements.

A. Where unusual conditions exist, experimental methods of onsite wastewater treatment and dispersal may be employed provided they are acceptable to the division and to the local health department having jurisdiction.

B. When considering proposals for experimental onsite wastewater systems, the division or the local health departments may not be restricted by this rule provided that:

1. the experimental system proposed is attempting to resolve an existing pollution or public health hazard, or when the experimental system proposal is for new construction, it has been predetermined that an acceptable back-up wastewater system will be installed in event of failure of the experiment;

2. the proposal for an experimental onsite wastewater system shall be in the name of and bear the signature of the person who will own the system; and

3. the person proposing to utilize an experimental system has the responsibility to maintain, correct, or replace the system in event of failure of the experiment.

C. When sufficient, successful experience is established with experimental onsite wastewater systems, the division may designate them as approved alternative onsite wastewater systems.

D. Following this approval of alternative onsite wastewater systems, the division may initiate rulemaking.

9.2 General Requirements.

A. All experimental systems shall be designed, installed and operated under the following conditions:

1. The ground water requirements shall be determined as described in Subsection R317-4-4.1.B.3.

2. The local health department shall advise the owner of the system of the experimental status of that type of system. The advisory shall contain information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements that are all specific to the type of system to be installed.

3. The local health department and the owner shall be provided with sufficient design, installation and operating information to produce a successful, properly operating installation.

4. The local health department is responsible for provision of, or oversight of an approved installation, inspection and maintenance and monitoring program for the systems. Such programs shall include approved procedures for complete periodic maintenance and monitoring of the systems.

5. The local health department may impose more stringent design, installation, operating and monitoring conditions than those required by the division.

6. All failures, repairs or alterations shall be reported to the local health department. All repairs or alterations shall be approved by the local health department.

B. When an experimental wastewater system exists on a property, notification of the existence of that system shall be recorded in the chain of title for that property.

R317-4-10. Wastewater Holding Tanks Administrative, Design, and Installation.

10.1. Administrative Requirements.

A. Requests for the use of wastewater holding tanks shall receive the written approval of the local health department prior to the installation of the holding tank and be administered under an annual operating permit.

B. Wastewater holding tanks are only permitted:

1. where an absorption system for an existing dwelling has failed and installation of a replacement absorption system is not practicable;

2. as a temporary, not to exceed one year, wastewater system for a new dwelling until a connection is made to an approved sewage collection system;

3. as a temporary, not to exceed one year, wastewater system that may include construction sites, labor camps, temporary mass gatherings, or emergency refuge sheltering; or

4. for other essential and unusual situations where both the division and the local health department having jurisdiction concur that the proposed holding tank will be designed, installed and maintained in a manner that provides long term protection of the waters of the state.

a. Requests for the use of wastewater holding tanks in this instance shall receive the written approval of both agencies prior to the installation of such devices.

C. Except on those lots recorded and approved for wastewater holding tanks prior to May 21, 1984, wastewater holding tanks are not permitted for use in new housing subdivisions, or commercial, institutional, and recreational developments except in those instances where these devices are part of a specific watershed protection program acceptable to the division and the local health department having jurisdiction.

10.2. General Requirements.

The design, site placement, installation, and maintenance of all wastewater holding tanks shall comply with the following:

A. No wastewater holding tank shall be installed and used unless plans and specifications covering its design and construction have been submitted to and approved by the appropriate regulatory authority.

B. A statement accompanying the application, that a

contract with an approved pumper per Rule R317-550 will be obtained stating that the tank will be pumped out periodically at regular intervals or as needed, and contents will be disposed in an approved manner.

C. If authorization is necessary for disposal of wastewater at certain facilities, evidence of such authorization must be submitted for review.

10.3. Basic Plan Information Required.

Depending on the individual site and circumstances, or as determined by the regulatory authority, some or all of the following plan information may be required.

A. Applicant Information.

1. The name, current address, and telephone number of the applicant.

2. Complete address, legal description of the property, or both, to be served by this onsite wastewater system.

B. A plot or site plan showing:

1. direction of North;

2. daily wastewater flow;

3. location and liquid capacity of wastewater holding tank;

4. source and location of water supply;

5. location of water service line and building sewer; and

6. location of streams, ditches, watercourses, ponds, etc., near property.

C. Plan detail of wastewater holding tank and high wastewater level warning device.

D. Relative elevations of:

1. building floor drain;

2. building sewer;

3. invert of inlet for tank;

4. lowest plumbing fixture or drain in building served; and

5. the maximum liquid level of the tank.

E. Statement indicating the maximum anticipated ground water table.

10.4. Construction.

A. The tank shall be constructed of sound and durable material not subject to excessive corrosion and decay and designed to withstand hydrostatic and external loads. All wastewater holding tanks shall comply with the manufacturing materials and construction requirements specified for septic tanks.

B. Construction of the tank shall be such as to assure water tightness and to prevent the entrance of rainwater, surface drainage or ground water.

C. Tanks shall be provided with a maintenance access manhole at the ground surface or above and of at least 18 inches in diameter. Access covers shall have adequate handles and shall be designed and constructed in such a manner that they cannot pass through the access opening, and when closed will be child-proof and prevent entrance of surface water, dirt, or other foreign material, and seal the odorous gases in the tank.

D. A high water warning device shall be installed on each tank to indicate when it is within 75% of being full.

1. This device shall be either an audible or a visual alarm.

a. If the latter, it shall be conspicuously mounted.

2. All wiring and mechanical parts of such devices shall be corrosion resistant.

3. All conduit passage ways through the tank top or walls shall be water and vapor tight.

E. No overflow, vent, or other opening shall be provided in the tank other than those described above.

F. The regulatory authority may require that wastewater holding tanks be filled with water and allowed to stand overnight to check for leaks. Tanks exhibiting obvious defects or leaks may not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

G. The building sewer shall comply with this rule.

H. Above ground holding tanks shall be clearly labeled as "Sewage".

10.5. Capacity.

The liquid capacity of the wastewater holding tank shall be based on wastewater flows for the type of dwelling or facility being served as identified in Section R317-4-13 Table 3 and on the desired time period between each pumping.

A. The minimum capacity of underground wastewater holding tanks shall be 1,000 gallons.

10.6. Location.

Any wastewater holding tank must be located:

A. in an area readily accessible to the pump truck in any type of weather that is likely to occur during the period of use;

B. in accordance with the requirements for septic tanks as specified in Section R317-4-13 Table 2; and

C. where it will not tend to float out of the ground due to a high ground water table or a saturated soil condition, since it will be empty or only partially full most of the time. In areas where the ground water table may be high enough to float the tank out of the ground when empty or partially full, adequate ground anchoring procedures shall be provided.

10.7. Management.

A. Wastewater holding tanks shall be pumped periodically, at regular intervals or as needed, and the wastewater contents shall be disposed of in a manner and at a facility meeting the approval of the appropriate regulatory authority.

B. Wastewater holding tanks for seasonal dwellings should be pumped out before each winter season to prevent freezing and possible rupture of the tank.

C. A record of the liquid waste hauler, pumping dates, and amounts pumped shall be maintained and made available to the appropriate regulatory authorities upon request.

D. Wastewater holding tanks shall be checked at frequent intervals by the owner or occupant and if leakage is detected it shall be immediately reported to the regulatory authority.

E. Repairs or replacements shall be conducted under the direction of the regulatory authority.

F. Improper location, construction, operation, or maintenance of a particular holding tank may result in appropriate legal action against the owner by the regulatory authority having jurisdiction.

G. Each holding tank installed under this rule, shall be inspected upon renewal of the operating permit.

R317-4-11. Operation and Maintenance of Systems.

11.1. Purpose.

The purpose of this section is to diminish the possibility of onsite wastewater system failures by informing the owners of required periodic maintenance, servicing, and monitoring. More complex systems will require a higher level of operation and maintenance.

11.2. Conventional Systems.

All conventional systems should be assessed after the first year of operation, and thereafter at the following minimum frequency.

A. Systems with daily flows between 1 and 3,000 gallons: every three years.

B. Systems with daily flows between 3,001 and 5,000 gallons: every two years.

C. Systems with non-domestic wastewater flows: yearly.

11.3. Pressure Distribution.

A. Each system utilizing pressure distribution shall be inspected as outlined in Section R317-4-13 Tables 7.1 and 7.2.

11.4. Alternative Systems.

A. Each alternative system shall be inspected as outlined in Section R317-4-13 Tables 7.1 and 7.2.

B. Each packed bed media system shall be sampled a minimum of every six months as outlined in Section R317-4-13 Table 7.3.

1. The grab sample shall be taken before discharge to an

absorption system.

2. Effluent not meeting the standards of Section R317-4-13 Table 7.3 shall be followed with two successive weekly tests of the same type within a 30-day period from the first exceedance.

3. If two successive samples exceed the minimum standards, the system shall be deemed to be malfunctioning, and shall require further evaluation and a corrective action plan, see Subsection R317-4-3.11.

a. Effluent quality testing shall continue every two weeks until three successive samples are found to be in compliance.

11.4. Tank Servicing.

For recommended tank servicing see Section R317-4-14 Appendix E.

11.5. Distribution and Drop Box Maintenance.

Distribution and drop boxes, if provided, should be inspected and cleaned periodically.

11.6. Repair of a Malfunctioning System.

If corrective action is required see Subsection R317-4-3.11.

R317-4-12. Variance to Design Requirements.

12.1. Reasons for a Variance.

An applicant may request a variance from requirements of this rule only when a property has been deemed not feasible for the design or construction of an onsite wastewater system. A variance may not be granted for separation distances from public culinary water sources.

12.2. Conditions for a Variance.

A variance will not be approved unless the applicant demonstrates that all of the following conditions are met:

A. An onsite wastewater system consistent with this rule and local health department requirements cannot be constructed and a connection to a public or community-based sewerage system is not available or practicable. This determination will be made by the local health department.

B. Wastewater from the proposed onsite wastewater system will not:

1. contaminate ground water or surface water; and

2. surface or move off site before it is adequately treated to protect public health and the environment.

C. The proposed system will result in equal or greater protection of public health and the environment than is required by meeting the minimum standards and intent of this rule.

D. Adjacent properties, including the current and reasonably anticipated uses of adjacent properties, will not be jeopardized if the proposed system is constructed, operated, and maintained.

12.3. Procedure for Requesting a Variance.

A. A variance request shall include the information and documentation described in Subsection R317-4-12.5.

B. The local health department shall review the variance request and prepare a written determination outlining the conditions of approval or denial of the request. The review shall identify the factors considered in the process and specify the basis for the determination.

12.4. Variance Approvals.

A. A variance will not be approved unless the applicant demonstrates that all of the conditions in Subsection R317-4-12.2 are met.

B. A local health department may not issue an approval or an operating permit for an onsite wastewater system that does not comply with this rule unless a variance has been approved.

C. Notice of the conditions shall be recorded in the chain of title for the property in the office of the county recorder. The notice shall include:

1. the description of the system and variance conditions;

2. operation and maintenance requirements;

3. permission for the regulatory authority to access the property for the purpose of inspection and monitoring of the system; and

4. owner responsibilities to correct, repair, or replace the system at the direction of the regulatory agency.

12.5. Application Requirements.

The variance application shall include all information and documentation necessary to ensure that the standards in Subsection R317-4-12.2 will be met.

A. As appropriate, the information required under this section shall be submitted in a report by a professional engineer or a professional geologist that is certified at the appropriate level to perform onsite wastewater system design. An engineer or geologist who submits a report shall be licensed to practice in Utah and shall have sufficient experience and expertise to make the determinations in the report. Any such report shall include the engineer's or geologist's name and registration number, and a summary of qualifications. The report shall be imprinted with the engineer's or geologist's registration seal and signature. Information shall include at least the following.

1. Information demonstrating that connection to a public or community-based sewerage system is not available or practicable.

2. Technical justification and appropriate engineering, geotechnical, hydrogeologic, and reliability information justifying the request for a variance and how the conditions in 12.2 will be met.

3. A detailed description of the proposed system, including a detailed explanation of wastewater treatment technologies allowed by this rule that have been considered for use, and that will provide the best available treatment.

4. A statement of alternatives considered in lieu of a variance.

5. An operation, maintenance, and troubleshooting plan to keep the installed system operating as described in the application.

6. Documentation provided by the local health department that the adjoining land owners have been notified and provided opportunity for comment on the proposed variance.

R317-4-13. Tables.

TABLE 1.1

Minimum Lot Size (a) by Soil Type and Culinary Water Source

Soil Type	Public Water Supply	Non-public Water Supply (b)
1	12,000 sq. ft.	1 Acre
2	15,000 sq. ft.	1.25 Acres
3	18,000 sq. ft.	1.5 Acres
4	20,000 sq. ft.	1.75 Acres
5 (c)	20,000 sq. ft. (c)	1.75 Acres (c)

TABLE 1.2

Soil Type Key (d)

Soil Type	Soil Texture (e)	Soil Structure	Percolation Rate (minutes per inch)
1	Coarse Sand, Sand, Loamy Coarse Sand, Loamy Sand	Single Grain	1-10
2	Fine Sand, Very Fine Sand, Loamy Fine Sand, Loamy Very Fine Sand	Single Grain	11-20
3	Coarse Sandy Loam, Sandy Loam	Prismatic, Blocky, Granular	21-40
4	Coarse Sandy Loam, Sandy Loam	Massive, Platy	41-60
	Fine Sandy Loam,	Prismatic,	

	Very Fine Sandy Loam, Loam, Silt Loam	Blocky, Granular	
5	Fine Sandy Loam, Very Fine Sandy Loam, Loam, Silt Loam,	Massive, Platy	61-120
	Sandy Clay Loam, Clay Loam, Silty Clay Loam	Massive	
	Sandy Clay Loam, Clay Loam, Silty Clay Loam, Sandy Clay, Clay, Silty Clay, Silt	Prismatic, Blocky, Granular	
6 (f)	Sandy Clay Loam, Clay Loam, Silty Clay Loam	Platy	>120
	Sandy Clay, Clay, Silty Clay, Silt	Massive, Platy	

NOTES
(a) Excluding public streets and alleys or other public rights-of-way, lands or any portion thereof abutting on, running through or within a building lot for a single-family dwelling. These minimum lot size requirements do not apply to building lots that have received final local health department approval prior to the adoption of this rule.
Lots that are part of subdivisions that have received final local health department approval prior to the adoption of this rule are only exempt from the minimum lot size requirements if the developer has and is proceeding with reasonable diligence. Notwithstanding this grandfather provision for approved lots, the minimum lot size requirements are applicable if compelling or countervailing public health interests would necessitate application of these more stringent requirements. The shape of the lot shall also be acceptable to the regulatory authority.
(b) See the separation requirements in Section R317-4-13 Table 2.
(c) Packed bed media systems are required for this soil type.
(d) When there is a substantial discrepancy between the percolation rate and the soil classification, it shall be resolved to the satisfaction of the regulatory authority, or the soil type requiring the largest lot shall be used.
(e) See the USDA soil classification system for a more detailed description.
(f) These soils are unsuitable for any absorption system.

TABLE 2

Minimum Separation Distances in Feet (a)

Item Requiring Setback	From Building Sewers and Effluent Sewers	From Septic, Pump, and Other Tanks	From Absorption Area and Replacement Area
Absorption and Replacement Areas		5	(b)
Public Culinary Water Sources	(c)	100 (c)	100 (c)
Individual or Non-public Culinary Water Sources (d)	25	50	100 (e)
Culinary Water Supply Line	(f)	10 (f)	10 (f)
Non-culinary Well or Spring	10	25	100
Lake, Pond, Reservoir (a)	10	25	100
Watercourse (live or ephemeral stream, river, subsurface drain, canal, storm water drainage systems, etc.)		25	100 (g)
Building Foundation			
Without foundation drain		5	5 (h)
With foundation drain		10	100 (i)
Curtain drains	10	10	100 (i)
Dry washes, gulches, and gullies		25	50
Swimming pool, below ground	3	10	25
Dry wells, catch basins		5	25
Down slopes that exceed 35%. This includes all natural slopes or escarpments and any manmade cuts, retaining walls, or embankments.		10	50 (j)
Property line	5	5	5

NOTES
(a) All distances are from edge to edge. Where surface waters are involved, the distance shall be measured from the high water line.
(b) See Subsection R317-4-6.14 for setback requirements.
(c) All distances shall be consistent with Rule R309-600.
(d) Compliance with separation requirements does not guarantee acceptable water quality in every instance. Where geological or other conditions warrant, greater distances may be required by the regulatory authority.
(e) For ungrouted wells and springs the distance shall be 200 feet. Although this distance shall be generally adhered to as the minimum required separation distance, exceptions maybe approved by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, consideration of the drinking water source protection requirements, protection of public health and potential for pollution of water source. Any person proposing to locate an absorption system closer than 200 feet to an individual or nonpublic ungrouted well or spring must submit a report to the regulatory authority that considers the above items. In no case shall the regulatory authority grant approval for an onsite wastewater system to be closer than 100 feet from an ungrouted well or a spring.
(f) If the water supply line is for a public water supply, the separation distance shall comply with the requirements of Rule R309-550. No culinary water service line shall pass through any portion of an absorption area.
(g) Lining or enclosing watercourses with an acceptable impervious material may permit a reduction in the separation requirement. In situations where the bottom of a canal or watercourse is at a higher elevation than the ground in which the absorption system is to be installed, a reduction in the distance requirement may be justified, but each case shall be decided on its own merits by the regulatory authority.
(h) Horizontal setback between a deep wall trench or seepage pit and a foundation of any building is at least 20 feet.
(i) The regulatory authority may reduce the separation distance, if it can be shown that the effluent will not enter the drain, but each case must be decided on its own merits by the regulatory authority. In no case shall the regulatory authority grant approval for an absorption area to be closer than 20 feet.
(j) This setback may be reduced if a reference line originating at the bottom of the distribution pipe, sloped at 35% below horizontal, will not daylight or intersect the ground surface.

TABLE 3

Estimated Flow Rates of Wastewater (a)

Type of Establishment	Gallons per Day
Airports	
a. per passenger	3
b. per employee	15
Boarding and Rooming Houses	
a. for each resident boarder and employee	50 per person
b. additional for each nonresident boarder	10 per person
Bowling Alleys, not including food service	85 per alley
Camps	
a. developed with flush toilets and showers	30 per person
b. developed with flush toilets	20 per person
c. developed with no flush toilets	5 per person
Churches, per person	5
Condominiums, Multiple Family Dwellings, or Apartments	150 per bedroom
Dentist's Office	
a. per chair	200
b. per staff member	35
Doctor's Office	
a. per patient	10
b. per staff member	35
Fairgrounds	1 per person
Fire Stations	
a. with full-time employees and food preparation	70 per person
b. with no full-time employees and no food preparation	5 per person
Food Service Establishment (b)	
a. ordinary restaurants, not 24 hour service	35 per seat
b. 24 hour service	50 per seat
c. single service customer utensils only	2 per customer
d. or, per customer served, includes toilet and Kitchen wastes	10
Gyms	
a. participant and staff member	25 per person
b. spectator	4 per person
Hairdresser, per chair	65
Highway Rest Stops, improved with restroom facilities	5 per vehicle
Hospitals	250 per bed space
Hotels, Motels, and Resorts	125 per unit
Industrial Buildings, exclusive of industrial waste	
a. with showers, per 8 hour shift	35 per person
b. with no showers, per 8 hour shift	15 per person
Labor or Construction Camps	50 per person
Launderette	580 per washer
Mobile Home Parks	400 per unit
Movie Theaters	
a. auditorium	5 per seat
b. drive-in	10 per car space
Nursing Homes	200 per bed space
Office Buildings and Business Establishments, not including food service, per eight hour shift	15 per employee
Picnic Parks, toilet wastes only	5 per person
Recreational Vehicle Parks	
a. temporary or transient with no sewer connections	50 per space
b. temporary or transient with sewer connections	125 per space
Recreational Vehicle Dump Station, per self-contained vehicle	50
Schools	
a. boarding	75 per person
b. day, without cafeteria, gymnasiums or showers	15 per person
c. day, with cafeteria, but no gymnasiums and showers	20 per person
d. day, with cafeteria, gymnasium and showers	25 per person
Service Stations, per day, per pump	250
Skating Rink, Dance Halls, Ski Areas, etc.	10 per person
Stores, including Convenience Stores	
a. per public toilet room	500
b. per employee	11
Swimming Pools and Bathhouses, Using Maximum Bather Load	10 per person
Taverns, Bars, Cocktail lounges with No Food Service	20 per seat
Visitor Centers	5 per visitor

NOTES
(a) When more than one use will occur, the multiple use shall be considered in determining total flow. Small industrial plants maintaining a cafeteria or showers and club houses or motels maintaining swimming pools or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established flows from known or similar installations.
(b) No commercial food waste disposal unit shall be connected to an onsite wastewater system unless first approved by the regulatory authority.

TABLE 4

Minimum Standards for Building Sewer, Effluent Sewer, and Distribution Pipe Materials (a)

Acceptable Building Sewer and Effluent Sewer Materials

Type of Pipe	Minimum Standard
Acrylonitrile-Butadiene Styrene (ABS) Schedule 40	ASTM (b) D-2680 (c), D-2751, F-628
Polyvinyl Chloride (PVC) Schedule 40	ASTM D-2665, D-3033, D-3034

Acceptable Distribution Pipe Materials

Type of Pipe	Minimum Standard
ABS Schedule 40	ASTM D-2661, D-2751
Polyethylene (PE), Smooth Wall	ASTM D-3350
PVC Schedule 40	ASTM D-2665, D-3033, D-3034
PVC	ASTM D-2729 (d)

NOTES
(a) Each length of building sewer, effluent sewer, and distribution pipe shall be stamped or marked.
(b) American Society for Testing and Materials.
(c) For domestic wastewater only, free from industrial wastes.
(d) Although perforated PVC, ASTM D-2729 is approved for absorption system application, the solid-wall version of this pipe is not approved for any application.

TABLE 5

Minimum Hydraulic Loading Rates for Percolation Testing

Percolation Rate (Minutes per Inch)	Absorption Systems Hydraulic Loading Rates (a) (gal/day/ft2) (c)(d)(e)	Absorption Beds and Mound Systems Hydraulic Loading Rates (b) (gal/day/ft2) (c)(d)(f)
0-10 (g)	0.90	0.45
11-20	0.70	0.35
21-30	0.60	0.3

31-40	0.55	0.27
41-50	0.50	0.25 (h)
51-60	0.45	0.22 (h)
61-90 (i)	0.40	(j)
91-120 (i)	0.35	(j)

NOTES
(a) The following formula may be used in place of the values in this table: q=2.35 divided by the square root of the percolation rate and then add 0.15 where q is the hydraulic loading rate. For percolation rates faster than 1 minute per inch, 1 minute per inch shall be used in the formula.
(b) The following formula may be used in place of the values in this table: q=1.2 divided by the square root of the percolation rate and then add 0.08 where q is the hydraulic loading rate. For percolation rates faster than 1 minute per inch, 1 minute per inch shall be used in the formula.
(c) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day shown in Section R317-4-13 Table 3, divided by the hydraulic loading rate within the applicable percolation rate category.
(d) For non-residential facilities, if a garbage grinder is not used, the absorption area may be reduced by 10% (0.9 multiplier). If any automatic sequence washer is not used, the absorption area may be reduced by 30% (0.7 multiplier). If both of these appliances are not used, the absorption area may be reduced by 40% (0.6 multiplier).
(e) For non-residential facilities, a minimum of 150 square feet of trench bottom or sidewall absorption area shall be provided.
(f) For non-residential facilities, a minimum of 300 square feet of absorption area shall be provided.
(g) Soils with a percolation rate faster than 1 minute per inch are only acceptable with the use of an alternative packed bed media system with a disinfection unit.
(h) Not suitable for absorption beds.
(i) Acceptable for alternative packed bed media systems only.
(j) Not suitable for absorption beds or mounds.

TABLE 6

Minimum Hydraulic Loading Rates for Soil Classification

Texture	Structure	Absorption Systems Hydraulic Loading Rate (gal/ft2/day) (a)(b)(c)	Absorption Beds and Mound Systems Hydraulic Loading Rate (gal/ft2/day) (a)(b)(d)
Coarse sand, sand, loamy coarse sand, loamy sand	Single grain	0.9 (e)	0.45 (e
Fine sand, very fine sand, loamy fine sand, loamy very fine sand	Single grain	0.7	0.35
Coarse sandy loam, sandy loam	Massive	0.45	0.22 (f)
	Platy	0.5	0.25 (f)
	Prismatic, blocky, granular	0.65	0.32
Fine sandy loam, very fine sandy loam	Massive	0.4	(g)
	Platy	0.35	(g)
	Prismatic, blocky, granular	0.5	0.25 (f)
Loam	Massive	0.4	(g)
	Platy	(e)	(g)
	Prismatic, blocky, granular	0.5	0.25 (f)
Silt loam	Massive	(e)	(g)
	Platy	(e)	(g)
	Prismatic, blocky, granular	0.45	0.22 (f)
Sandy clay loam, clay loam, silty clay loam	Massive	(e)(h)	(g)
	Platy	(i)	(i)
	Prismatic, blocky, granular	0.4 (e)(h)	(g)
Silt, silty clay, sandy clay, clay	Massive	(i)	(i)
	Platy	(i)	(i)
	Prismatic, blocky, granular	0.35 (e)(h)	(g)

NOTES
(a) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day, using Section R317-4-13 Table 3, divided by the hydraulic loading rate within the applicable soil texture and structure category.
(b) For non-residential facilities, if a garbage grinder is not used, the absorption area may be reduced by 10% (0.9 multiplier). If any automatic sequence washer is not used, the absorption area may be reduced by 30% (0.7 multiplier). If both of these appliances are not used, the absorption area may be reduced by 40% (0.6 multiplier).
(c) For non-residential facilities, a minimum of 150 square feet of trench bottom or sidewall absorption area shall be provided.
(d) For non-residential facilities, a minimum of 300 square feet of absorption area shall be provided.(e) These soils are usually considered unsuitable for absorption systems, but may be suitable, depending upon the percentage and type of fines in coarse grained porous soils, and the percentage of sand and structure in fine grained soils. Percolation testing shall be used for further evaluation.
(f) Not suitable for absorption beds.
(g) Not suitable for absorption beds or mounds.
(h) These soils may be permissible for packed bed media absorption systems only.
(i) These soils are unsuitable for any absorption system.

TABLE 7: Minimum Inspection Frequency, Components, and Effluent Sampling Parameters

TABLE 7.1

Minimum Inspection Frequency (a)

Type of System	Annual	Semi-annual
Pressure Distribution	X	
At-Grade (first 5 years only)	X	
Mound	X	
Packed Bed Media		X
Sand Lined Trench	X	
Holding Tank	X	
Experimental System		X

NOTES (a) Or more frequently as directed by the regulatory authority.

TABLE 7.2

Components (a)

Type of System	Septic Tank and Other Tanks	Distribution or Drop Boxes (if accessible)	Pumps, Float Settings, Control Panel	Pressure Laterals, Absorption Area	Disinfection Unit (c)
Pressure Distribution	X		X	X	
At-Grade	X	X	X	X	
Mound	X		X	X	
Packed Bed Media	X	X	X	X	X
Sand Lined Trench	X		X	X	
Holding Tank (b)	X		X		
Experimental	X	X	X	X	

NOTES
(a) Inspect other components as directed by the regulatory

authority.
(b) Including pumping records.
(c) Required for absorption systems installed in excessively permeable soils, or as directed by the regulatory authority.

TABLE 7.3

Effluent Sampling Parameters
Packed Bed Media System Routine Sampling Parameters
Must sample Turbidity, or BOD5 and TSS.

Field Testing	Laboratory Testing			
Turbidity	BOD5	TSS	COD (a)	E. coli
=<20 NTU	=<25 mg/l	=<25 mg/l	=<75 mg/l	<126/100 ml (b)

NOTES
(a) Chemical oxygen demand (COD) may be used in place of BOD5.(b) E. coli testing required when a disinfection unit is installed.

R317-4-14. Appendices.

Appendix A. Septic Tank Construction.

1.1. Plans for Tanks Required.

Plans for all septic tanks and underground holding tanks shall be submitted to the division for approval. Such plans shall show all dimensions, capacities, reinforcing, maximum depth of soil cover, and such other pertinent data as may be required. All tanks shall conform to the design drawing and shall be constructed under strict, controlled supervision by the manufacturer.

A. Precast Reinforced Concrete Tanks.

1. The walls and base of precast tanks shall be securely bonded together and the walls shall be of monolithic or keyed construction.

2. The sidewalls and bottom of such tanks shall be at least 3 inches in thickness.

3. The top shall have a minimum thickness of 4 inches.

4. Such tanks shall have reinforcing of at least 6 inch x 6 inch No. 6, welded wire fabric, or equivalent. Exceptions to this reinforcing requirement may be considered by the division based on an evaluation of acceptable structural engineering data submitted by the manufacturer.

5. All concrete used in precast tanks shall be Class A, at least 4,000 pounds per square inch, and shall be vibrated or well-rodded to minimize honeycombing and to assure water tightness.

6. Precast sections shall be set evenly in a full bed of sealant. If grout is used it shall consist of two parts plaster sand to one part cement with sufficient water added to make the grout flow under its own weight.

7. Excessively mortared joints should be trimmed flush.

8. The inside and outside of each mortar joint shall be sealed with a waterproof bituminous sealing compound.

9. For the purpose of early reuse of forms, the concrete may be steam cured. Other curing by means of water spraying or a membrane curing compound may be used and shall comply to best acceptable methods as outlined in Guide to Curing Concrete, ACI308R-01, by American Concrete Institute, Farmington Hills, Michigan.

B. Poured-In-Place Concrete Septic Tanks.

1. The top of poured-in-place septic tanks with a liquid capacity of 1,000 to 1,250 gallons shall be a minimum of 4 inches thick, and reinforced with 3/8 inch reinforcing rods 12 inches on center both ways, or equivalent.

2. The top of tanks with a liquid capacity of greater than 1,250 gallons shall be a minimum of 6 inches thick, and reinforced with 3/8 inch reinforcing rods 8 inches on center both ways, or equivalent.

3. The walls and floor shall be a minimum of 6 inches thick. The walls shall be reinforced with 3/8 inch reinforcing rods 8 inches on center both ways, or equivalent. Inspections by the regulatory authority may be required of the tank reinforcing steel before any concrete is poured.

4. A 6 inch water stop shall be used at the wall-floor juncture to ensure water tightness.

5. All concrete used in poured-in-place tanks shall be Class A, at least 4,000 pounds per square inch, and shall be vibrated or well-rodded to minimize honeycombing and to ensure water tightness.

6. Curing of concrete shall comply with the requirements in Subsection R317-4-14 Appendix A.1.2.

C. Fiberglass Tanks.

1. Fiberglass tanks shall comply with one of the following criteria for acceptance.

a. The Interim Guide Criteria for Glass-Fiber-Reinforced Polyester Septic Tanks, International Association of Plumbing and Mechanical Officials Z1000-2007. The identifying seal of the International Association of Plumbing and Mechanical Officials shall be permanently embossed in the fiberglass as evidence of compliance.

b. Manufactured to meet the structural requirements of Underwriters Laboratories (UL) Standard 1316.

c. Professionally engineered plans demonstrating compliance to tank configuration requirements of this rule including acceptable structural calculations or other pertinent data as may be required.

2. Inlet and outlet tees shall be attached to the tank by a rubber or synthetic rubber ring seal and compression plate, or in some other manner approved by the division.

3. The tank shall be installed in accordance with the manufacturer's recommendations.

D. Polyethylene Tanks.

1. Polyethylene tanks shall comply with the criteria for acceptance established in Prefabricated Septic Tanks and Wastewater Holding Tanks, Can3-B66-10 by the Canadian Standards Association, Ontario, Canada.

2. Inlet and outlet tees shall be attached to the tank by a rubber or synthetic rubber ring seal and compression plate, or in some other manner approved by the division.

3. The tank shall be installed in accordance with the manufacturer's recommendations.

1.2. Identifying Marks.

A. All prefabricated or precast tanks that are commercially manufactured shall be plainly, legibly, and permanently marked or stamped with:

1. the manufacturer's name and address, or nationally registered trademark;

2. the liquid capacity of the tank in gallons on the exterior at the outlet end within 6 inches of the top of the wall; and

3. the inlet and outlet of all such tanks shall be plainly marked as "IN" or "OUT" respectively.

1.3. Inlets and Outlets.

Inlets and outlets of tanks or compartments thereof shall meet the minimum diameter requirements for building sewers.

A. Only one inlet or outlet is allowed, unless preauthorized by the regulatory authority.

B. Inlets and outlets shall be located on opposite ends of the tank.

1. The invert of flow line of the inlet shall be located at least 2 inches, above the invert of the outlet to allow for momentary rise in liquid level during discharge to the tank.

2. Approved tanks with offset inlets may be used when approved by the regulatory authority.

C. All inlets and outlets shall have a baffle or sanitary tee.

1. An inlet baffle or sanitary tee of wide sweep design shall be provided to divert the incoming wastewater downward. This baffle or tee is to penetrate at least 6 inches below the liquid level, but the penetration is not to be greater than that allowed for the outlet device.

2. For tanks with vertical sides, outlet baffles or sanitary tees shall extend below the liquid surface a distance equal to

approximately 40% of the liquid depth. For horizontal cylindrical tanks and tanks of other shapes, that distance shall be reduced to approximately 35% of the liquid depth.

3. All baffles shall be constructed from sidewall to sidewall or shall be designed as a conduit.

4. All sanitary tees shall be permanently fastened in a vertical, rigid position.

D. Inlet and outlet pipe connections to the septic tank shall be sealed and adhere to the tank and pipes to form watertight connections with a bonding compound or sealing rings.

E. Inlet and outlet devices may not include any design features preventing free venting of gases generated in the tank or absorption system back through the roof vent in the building plumbing system. The top of the baffles or sanitary tees shall extend at least 6 inches above the liquid level in order to provide scum storage, but no closer than 1 inch to the inside top of the tank.

1.4. Liquid Depth of Tanks.

Liquid depth of tanks shall be at least 30 inches. Depth in excess of 72 inches may only be considered in calculating liquid volume required in Subsection R317-4-6.6 if the tank length is at least two times the liquid depth.

1.5. Burial Depth.

The maximum burial depth shall be stated on the plans submitted.

1.6. Tank Compartments.

Septic tanks may be divided into compartments provided they meet the following:

A. The volume of the first compartment shall equal or exceed two-thirds of the total required septic tank volume;

B. No compartment shall have an inside horizontal dimension less than 24 inches;

C. Inlets and outlets shall be designed as specified for tanks, except that when a partition wall is used to form a multi-compartment tank, an opening in the partition may serve for flow between compartments provided the minimum dimension of the opening is 4 inches, the cross-sectional area is not less than that of a 6 inch diameter pipe (28.3 square inches), and the mid-point is below the liquid surface a distance approximately equal to 40% of the liquid depth of the tank.

1.7. Scum Storage.

Scum storage volume shall consist of 15% or more of the required liquid capacity of the tank and shall be provided in the space between the liquid surface and the top of inlet and outlet devices.

1.8. Access to Tank Interior.

Adequate access to the tank shall be provided to facilitate inspection, servicing and maintenance, and shall have no structure or other obstruction placed over it and shall conform to the following requirements:

A. Access to each compartment of the tank shall be provided through properly placed manhole openings not less than 18 inches in diameter, in minimum horizontal dimension or by means of an easily removable lid section.

B. All access covers shall be designed and constructed in such a manner that they cannot pass through the access openings, and when closed will be child-proof and prevent entrance of surface water, dirt, or other foreign material, and seal the odorous gases in the tank. Concrete access covers for manhole openings shall have adequate handles.

C. Access to inlet and outlet devices shall be provided through properly spaced openings not less than 12 inches in minimum horizontal dimension or by means of an easily removable lid section.

Appendix B. Pressure Distribution, Pumps, Controls, and Alarms.

1.1. Design.

The design shall generally be based on the Utah Guidance for Performance, Application, Design, Operation and Maintenance: Pressure Distribution Systems document with the following exceptions:

A. Design and equipment shall emphasize ease of maintenance, longevity, and reliability of components and shall be proven suitable by operational experience, test, or analysis, acceptable to the regulatory authority.

B. Electrical disconnects shall be provided that are appropriate for the installation and shall have gas-tight junction boxes or splices. Electrical components used in onsite wastewater systems shall comply with applicable requirements of the State of Utah Electrical Code.

C. All components shall be constructed and installed to facilitate ease of service without having to alter any other part.

1.2. Pumps, Controls, and Alarms.

Prior to final approval for operation, all pumps, controls and related apparatus shall be field tested and found to operate as designed.

A. When duplex pump system is designed, controls shall be provided that an alarm will signal when one of the pumps malfunctions.

B. Where multiple pumps are operated in series, controls shall be installed to prevent the operation of a pump or pumps preceding a station that experiences a high level alarm event.

C. Controls shall be capable of controlling all functions incorporated or required in the design of the system.

1. The control panel for all pressure distribution systems shall include a pump run-time hour meter and a pump event counter or other acceptable flow measurement method.

2. The control panel shall be installed within sight of the access risers.

a. Other locations may be approved by the regulatory authority.

3. Supporting hydraulic calculations and pump curve analysis shall be submitted to the regulatory authority with the design.

Appendix C. Soil Exploration Pits, Soil Logs, Soil Evaluations.

1.1. Soil Exploration Pit Construction.

Soil conditions shall be obtained from soil exploration pit(s) dug to a depth of 10 feet in the absorption area, or to the ground water table if it is shallower than 10 feet below ground surface. In the event that absorption system excavations will be deeper than 6 feet, soil exploration pits shall extend to a depth of at least 4 feet below the bottom of the proposed absorption system excavation.

A. Soil exploration pits shall be constructed in a manner to reduce potential for physical injury. One end of each pit should be sloped gently or "stair-stepped" to permit easy entry if necessary.

1.2. Soil Logs.

A. The soil log shall contain the following information.

1. A signed statement certifying that the logs were evaluated and recorded in accordance with this rule.

2. The names of all qualified individuals per Rule R317-11 conducting the tests.

3. The location of the property.

4. The location of the soil exploration pit on the property.

5. The date of the log.

6. A description and depths of the soil horizons throughout the soil exploration pit to include:

a. soil texture and structure using the USDA system of classification;

b. estimated volume percentage of coarse fragments defined as:

i. "Gravel" means a rock fragment from 0.1 inches to 3 inches in diameter;

ii. "Cobble" means rock fragment from 3 inches to 10 inches in diameter;

iii. "Stone" means a rock fragment greater than 10 inches

in diameter;

c. the presence and abundance of mottling defined as:

i. "Few" when less than 2% of the exposed surface is occupied by mottles;

ii. "Common" when from 2% to 20% of the exposed surface is occupied by mottles; and

iii. "Many" when more than 20% of the exposed surface is occupied by mottles;

d. depth to groundwater or bedrock, if encountered, and maximum anticipated groundwater table; and

e. other pertinent information.

1.3. Soil Evaluation.

Soils shall be evaluated using the USDA Soil Texture Classification method.

A. The soil horizon with the lowest loading rate shall be used in calculating the required absorption area.

Appendix D. Percolation Method.

1.1. Percolation Test Requirements.

Percolation tests shall be completed by an individual certified per Rule R317-11 and shall be conducted in accordance with the instructions in this appendix.

A. Typical Areas.

When percolation tests are conducted, such tests shall be conducted at points and elevations selected as typical of the area in which the absorption system will be located.

B. Percolation Test Certificate.

Percolation test results shall be submitted on a signed "Percolation Test Certificate". The test certificate shall contain the following:

1. A signed statement certifying that the tests were conducted in accordance with this rule.

2. The names of all individuals per Rule R317-11 conducting the tests.

3. The location of the property.

4. The location of the percolation tests on the property.

5. The depth to the bottom of the percolation test hole from the existing grade.

6. The final stabilized percolation rate of each test in minutes per inch.

7. The date of the tests.

8. Other pertinent information.

C. Specific Requirements.

Percolation tests shall be conducted at the owner's expense and in accordance with the following:

1. Conditions Prohibited for Test Holes.

Percolation tests may not be conducted in test holes that extend into ground water, bedrock, or frozen ground. Where shrink-swell clays, fissured soil formations, or saprolite is encountered, tests shall be made under the direction of the regulatory authority.

2. Soil Exploration Pit Prerequisite to Percolation Tests.

Since the appropriate percolation test depth depends on the soil conditions at a specific site, the percolation test shall be conducted only after the soil exploration pit has been dug and examined for suitable and porous strata and ground water table information. Percolation test results should be related to the soil conditions found.

3. Test Holes to Commence in Specially Prepared Excavations.

All percolation test holes should commence in specially prepared larger excavations, preferably made with a backhoe, of sufficient size that extend to a depth approximately 6 inches above the strata to be tested.

4. Type, Depth, and Dimensions of Test Holes.

Test holes shall be dug or bored, preferably with hand tools such as shovels or augers, etc., and shall have horizontal dimensions ranging from 4 to 18 inches, preferably 8 to 12 inches. The vertical sides shall be at least 12 inches deep, terminating in the soil at an elevation 6 inches below the bottom of the proposed onsite wastewater system. In testing individual soil strata for deep wall trenches and seepage pits, the percolation test hole shall be located entirely within the strata to be tested, if possible.

5. Preparation of Percolation Test Hole.

Carefully remove any smeared soil surfaces to provide an open, natural soil interface into that water may percolate. Remove all loose soil from the bottom of the hole. Add 2 to 3 inches of clean pea gravel to protect the bottom from scouring or sealing with sediment when water is added. Caving or sloughing in some test holes can be prevented by placing in the test hole a wire cylinder or perforated pipe surrounded by clean pea gravel.

6. Saturation and Swelling of the Soil.

It is important to distinguish between saturation and swelling. Saturation means that the void spaces between soil particles are full of water. This can be accomplished in a relatively short period of time. Swelling is a soil volume increase caused by intrusion of water into the individual soil particles. This is a slow process, especially in clay-type soil, and is the reason for requiring a prolonged swelling period.

7. Placing Water in Test Holes.

Water should be placed carefully into the test holes by means of a small diameter siphon hose or other suitable method to prevent washing down the side of the hole.

8. Percolation Rate Measurement, General.

Necessary equipment should consist of a tape measure with at least 1/16 inch calibration or float gauge, and a time piece or other suitable equipment. All measurements shall be made from a fixed reference point near the top of the test hole to the surface of the water.

9. Percolation Test Procedure.

The hole shall be carefully filled with clear water and a minimum depth of 12 inches shall be maintained above the gravel for at least a four hour period by refilling whenever necessary. Water remaining in the hole after four hours may not be removed. Immediately following the saturation period, the soil shall be allowed to swell not less than 16 hours or more than 30 hours. Immediately following the soil swelling period, the percolation rate measurements shall be made as follows:

a. Any soil that has sloughed into the hole shall be removed and water shall be adjusted to 6 inches over the gravel.

b. Thereupon, from the fixed reference point, the water level shall be measured and recorded at approximately 30 minute intervals for a period of four hours, unless two successive water level drops do not vary more than 1/16 of an inch and indicate that an approximate stabilized rate has been obtained.

i. If 6 inches of water seeps away in less than 15 minutes, a shorter time interval of 5 minutes between measurements may be used.

ii. If 6 inches of water seeps away in less than 30 minutes, a shorter time interval of 15 minutes between measurements may be used.

c. The hole shall be filled with 6 inches of clear water above the gravel after each time interval.

d. In no case shall the water depth exceed 6 inches above the gravel.

e. The final water level drop shall be used to calculate the percolation rate.

i. If no stabilized rate is achieved, the smallest drop shall be used to make this calculation.

f. Precautions shall be taken to prohibit water or soil from freezing during the test procedure.

10. Test Procedure for Type 1 and Type 2 Soils.

The hole shall be carefully filled with clear water to a minimum depth of 12 inches over the gravel and the time for this amount of water to seep away shall be determined. The procedure shall be repeated and if the water from the second

filling of the hole at least 12 inches above the gravel seeps away in 10 minutes or less, the test may proceed immediately as follows:

a. Water shall be added to a point not more than 6 inches above the gravel.

b. Thereupon, from the fixed reference point, water levels shall be measured at 10 minute intervals for a period of one hour.

i. If 6 inches of water seeps away in less than 10 minutes, a shorter time interval of 5 minutes between measurements may be used.

c. The hole shall be filled with 6 inches of clear water above the gravel after each time interval.

d. In no case shall the water depth exceed 6 inches above the gravel.

e. The final water level drop shall be used to calculate the percolation rate.

i. If no stabilized rate is achieved, the smallest drop shall be used to make this calculation.

11. Calculation of Percolation Rate.

The percolation rate is equal to the time elapsed in minutes for the water column to drop, divided by the distance the water dropped in inches and fractions thereof.

12. Using Percolation Rate to Determine Absorption Area.

The minimum or slowest percolation rate shall be used in calculating the required absorption area.

Appendix E. Tank Operation and Maintenance.

1.1. Maintenance of Septic Tanks.

A. Septic tanks shall be emptied before too much sludge or scum is allowed to accumulate and seriously reduce the tank volume settling depth. If either the settled solids or floating scum layer accumulate too close to the bottom of the outlet baffle or bottom of the sanitary tee pipe in the tank, solid particles will overflow into the absorption system and eventually clog the soil and ruin its absorption capacity.

B. A septic tank that receives normal loading should be inspected as indicated in Section R317-4-11 to determine if it needs emptying. Although there are wide differences in the rate that sludge and scum accumulate in tanks, a septic tank for a private residence will generally require emptying every three to five years. Actual measurement of scum and sludge accumulation is the only sure way to determine when a tank needs to be emptied. Experience for a particular system may indicate the desirability of longer or shorter intervals between inspections.

C. The tank should be completely emptied if either the bottom of the floating scum mat is within 3 inches of the bottom of the outlet baffle or tee or the sludge level has built up to approximately 12 inches from the bottom of the outlet baffle or tee, or the scum and sludge layers together equal 40% or more of the tank volume. All scum and solids should be washed out and removed from the tank.

D. If multiple tanks or tanks with multiple compartments are provided, care should be taken to ensure that each tank or compartment is inspected and emptied.

E. Septic tank wastes contain disease causing organisms and shall be disposed of only in areas and in a manner that is acceptable to local health authorities and consistent with state rules.

F. Immediate replacement of damaged inlet or outlet fittings in the septic tank is essential for effective operation of the system.

G. Effluent screens or filters.

Remove the filter in a manner that prevents solids from passing to the absorption system. Wash the filter over the inlet side of septic tank. Replace the cleaned filter back into the outlet tee.

H. When the tank is empty, the interior surfaces of the tank should be inspected for leaks or cracks using a strong light.

I. A written record of all maintenance of the septic tank and absorption system should be kept by the owner of that system.

J. The functional operation of septic tanks is not improved by the addition of yeasts, disinfectants, additives or other chemicals; therefore, use of these materials is not recommended.

K. The advice of your regulatory authority should be sought before chemicals arising from a hobby or home industry or other unusual activities are discharged into a septic tank system.

L. Economy in the use of water helps prevent overloading of a septic tank system that could shorten its life and necessitate expensive repairs. The plumbing fixtures in the building should be checked regularly to repair any leaks that can add substantial amounts of water to the system. Industrial wastes and other liquids that may adversely affect the operation of the onsite wastewater system should not be discharged into such a system. Paper towels, facial tissue, disinfectant wipes, newspaper, wrapping paper, disposable diapers, sanitary napkins, coffee grounds, rags, sticks, and similar materials should also be excluded from the septic tank since they do not readily decompose and can lead to clogging of both the plumbing and the absorption system.

1.2. Maintenance of Other Tanks.

A. Other Tanks.

Any measurable amount of sludge or scum present in other tanks should be removed.

B. If a screen is present, it should be rinsed and cleaned over the opening of the septic tank.

KEY: waste water, onsite wastewater systems, alternative onsite wastewater systems, septic tanks
September 1, 2013 19-5-104
Notice of Continuation February 3, 2015

R386. Health, Disease Control and Prevention, Epidemiology.
R386-800. Immunization Coordination.
R386-800-1. Authority and Purpose.

(1) This rule is authorized by Title 26, Chapter 6, Communicable Disease Control, and Title 26, Chapter 3, Health Statistics.

(2) It establishes a system to coordinate immunizations among health care providers to assure adequate immunization and to avoid unnecessary immunizations. It provides for the sharing of immunization information among authorized health care providers, health insurers, schools, day care centers, and publicly funded programs to meet statutory immunization requirements and to control disease outbreaks.

(3) It establishes a requirement allowing individuals to withdraw from the system.

(4) It establishes confidentiality requirements and lists penalties for violations.

R386-800-2. Participation by Individuals.

(1) Individual participation in the immunization coordination system is voluntary. Immunization records of individuals in Utah may be included in the system unless the individual or parent or guardian withdraws. An individual or his or her parent or guardian may withdraw from the system at any time.

(2) An individual who has given prior affirmative consent to participate in the system will be included until such time as he or she withdraws from the system.

R386-800-3. Participation by Organizations.

(1) Health care providers, health insurers, schools, day care centers, and publicly funded programs can apply to participate in the system. An authorized organizational participant must sign a participation agreement and abide by its requirements.

(2) No person or individual is required to access the system to coordinate immunizations.

R386-800-4. Notification.

Organizations that participate in the program shall inform individuals or parents or guardians about the system and provide information about the right to withdraw from of the system as required in the participation agreement. This notice must be provided directly to parents or guardians when issuing birth certificates.

R386-800-5. Withdrawal.

(1) The Department of Health shall provide withdrawal forms and contact information to individuals, parents or guardians, and organizational participants.

(2) Organizational participants shall make the forms and contact information available to individuals or their parents or guardians as required by the participation agreement, but are not responsible to assure that the individual is withdrawn from the system.

R386-800-6. Access and Confidentiality.

(1) Organizational participants may access identifiable patient information in the system only as required to assure adequate immunization of a patient, to avoid unnecessary immunizations, to confirm compliance with mandatory immunization requirements, and to control disease outbreaks.

(2) All other access is restricted by Title 26, Chapter 6, Communicable Disease Control, and Title 26, Chapter 3, Health Statistics.

R386-800-7. Liability.

(1) Organizational participants report immunization records to the system under the authority of the Communicable Disease Control Act.

(2) An organizational participant who reports information in good faith pursuant to this rule is not liable for reporting the immunization information to the Department of Health for use in the system.

R386-800-8. Penalties for Violation.

As required by Section 63-46a-3(5): Any person who violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: immunization data reporting, consent
March 15, 2010 26-3
Notice of Continuation February 5, 2015 26-6

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-19A. Coverage for Dialysis Services by a Free-Standing State-Licensed Dialysis Facility.
R414-19A-0. Policy Statement.

Dialysis services are provided under the Medicaid State Plan to cover Medicaid recipients principally for the 90-day period between the first dialysis service and commencement of Medicare End-Stage Renal Disease (ESRD) benefits. The State Plan also covers dialysis services for Medicaid recipients who do not qualify for Medicare coverage.

R414-19A-1. Authority.

The provision of clinic services for outpatient dialysis is authorized under the authority of 42 CFR 440.20, 440.90, and the Medicaid State Plan under Clinic Services.

R414-19A-2. Definition.

(1) "Approved dialysis facility" means any free-standing state-licensed facility that is Medicare-certified to provide dialysis services.

R414-19A-3. Eligibility Requirements.

Dialysis services are available to both categorically and medically needy Medicaid recipients.

R414-19A-4. Program Access Requirements.

Dialysis services are available to Medicaid recipients when performed through a state-licensed Medicare-approved dialysis facility.

R414-19A-5. Service Coverage.

(1) Dialysis services, which include hemodialysis and peritoneal dialysis treatments, may be provided. Providers may bill the Division of Medicaid and Health Financing for these services only on a fee-for-service basis.

(a) Hemodialysis and peritoneal dialysis services and supplies are covered if they are furnished in approved dialysis facilities. The composite rate for hemodialysis and peritoneal dialysis includes all services, items, supplies, and equipment necessary to perform dialysis. The rate includes physician evaluation as part of the dialysis service and routine laboratory tests.

(b) Self-dialysis is covered when performed by an ESRD patient who has completed an appropriate course of training.

(c) Hemodialysis treatments performed at home are covered when they are supervised by an approved dialysis facility, and performed by an appropriately trained patient. Treatments performed at home are covered only if the facility provides the supplies, equipment, and supervisory services necessary for home dialysis. Medicaid pays the same amount for each home dialysis treatment as it does for an in-facility treatment.

(d) Monthly supervision of hemodialysis and peritoneal dialysis, including home hemodialysis, is a covered benefit.

(e) Routine diagnostic and dialysis monitoring tests, e.g. hematocrit and clotting time, used by the facility to monitor the patient's fluid incident to each dialysis treatment, are covered when performed by qualified staff of the facility under the direction of a physician, as provided in the plan of care.

(f) Erythropoietins are covered for the treatment of anemia for ESRD patients when:

(i) administered by the renal dialysis facility, or

(ii) administered "incident to" a physician's service outside the dialysis facility; and

(iii) hematocrit is less than 30 percent.

(g) Erythropoietins are not covered when self-administered.

(2) Medically necessary renal dialysis services are covered for the first three months of dialysis pending the establishment of Medicare eligibility. If a Medicaid client is denied Medicare eligibility, the client may continue to receive medically necessary dialysis services under Medicaid.

(3) Medicare becomes the primary reimbursement source for individuals who meet Medicare eligibility criteria. Dialysis providers must assist patients in applying for and pursuing final Medicare eligibility.

R414-19A-6. Standards of Care.

Dialysis facilities must comply with the Medicare conditions of participation set forth in 42 CFR 405.

R414-19A-7. Limitations.

Dialysis for ESRD is limited to medically accepted dialysis procedures for outpatients receiving services through free-standing state-licensed facilities, which are Medicare-certified.

R414-19A-8. Prior Authorization.

Prior authorization is not required.

R414-19A-9. Reimbursement for Services.

Payment for renal dialysis is based on the established fee schedule unless a lower amount is billed. The amount billed cannot exceed usual and customary charges. Fees are based on the Medicare payment for dialysis in Salt Lake County.

KEY: Medicaid
February 18, 2015 26-1-5
Notice of Continuation May 27, 2010 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-309. Medicare Drug Benefit Low-Income Subsidy Determination.
R414-309-1. Authority and Purpose.

(1) This rule is authorized by Title 26, Chapter18, UCA.

(2) The Medicare Modernization Act requires the state to have the ability, upon request, to determine eligibility for the Medicare drug benefit low-income subsidies as set forth in 42 CFR 423.904. This rule sets forth the requirements for completing eligibility determinations for the Medicare Part D low-income subsidies.

R414-309-2. General Provisions.

(1) The Utah Department of Health shall make Medicare Part D Subsidy applications from the Social Security Administration available at State Medical Assistance Offices to individuals who want to apply for the Medicare drug benefit low-income subsidies, and may help individuals complete and send the form to the Social Security Administration.

(2) The Department shall apply the eligibility criteria for the Medicare drug benefit low-income subsidy programs as defined in 42 CFR 423.904 in making any determinations that the state is required to make and shall notify the applicant of that decision.

(3) If the Department determines that an applicant is not eligible for a Medicare drug benefit low-income subsidy, the applicant may appeal the Department's decision pursuant to the provisions of R410-14.

(4) As required by 42 CFR 423.904, the Department exchanges information on Medicare Part D subsidy applicants and eligible individuals with the Centers for Medicare and Medicaid Services and with the Social Security Administration.

KEY: Medicaid, eligibility
July 2, 2005 26-18
Notice of Continuation February 18, 2015

R432. Health, Family Health and Preparedness, Licensing.
R432-2. General Licensing Provisions.
R432-2-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-2-2. Purpose.

The purpose of this rule is to define the standards that health care facilities and agencies must follow in order to obtain a license. No person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a health facility in this state without first obtaining a license from the Department. Section 26-21-8.

R432-2-3. Exempt Facilities.

The provisions of Section 26-21-7 apply for exempt facilities.

R432-2-4. Distinct Part.

Licensed health care facilities that wish to offer services outside the scope of their license or services regulated by another licensing rule, with the exception of federally recognized Swing Bed Units, shall submit for Department review a program narrative defining the levels of service to be offered and the specific patient population to be served. If the program is determined to require a license, the facility must meet the definition of a distinct part entity and all applicable codes and standards and obtain a separate license.

R432-2-5. Requirements for a Satellite Service Operation.

(1) A "satellite operation" is a health care treatment service that:

(a) is administered by a parent facility within the scope of the parent facility's current license,

(b) is located further than 250 yards from the licensed facility or other areas determined by the department to be a part of the provider's campus,

(c) does not qualify for licensing under Section 26-21-2, and

(d) is approved by the Department for inclusion under the parent facility's license and identified as a remote service.

(2) A licensed health care facility that wishes to offer a satellite operation shall submit for Department review a program narrative and one set of construction drawings. The program narrative shall define at least the following:

(a) location of the remote facility (street address);

(b) capacity of the remote facility;

(c) license category of the parent facility;

(d) service to be provided at the remote facility (must be a service authorized under the parent facility license);

(e) ancillary administrative and support services to be provided at the remote facility; and

(f) International Building Code occupancy classification of the remote facility physical structure.

(3) Upon receipt of the satellite service program narrative and construction drawings, the Department shall make a determination of the applicable licensing requirements including the need for licensing the service. The Department shall verify at least the following items:

(a) There is only a single health care treatment service provided at the remote site and that it falls within the scope of the parent facility license;

(b) The remote facility physical structure complies with all construction codes appropriate for the service provided;

(c) All necessary administrative and support services for the specified treatment service are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.

(4) If a facility qualifies as a single satellite service treatment center the Department shall issue a separate license identifying the facility as a "satellite service" of the licensed parent facility. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

(5) A parent facility that wishes to offer more than one health care service at the same remote site shall either obtain a satellite service license for each service offered as described above or obtain a license for the remote complex as a free-standing health care facility.

(6) A satellite facility is not permitted within the confines of another licensed health care facility.

R432-2-6. Application.

(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) A satisfactory Food Services Sanitation Clearance report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) The applicant shall submit the following:

(a) a list of all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and

(c) a list, of all persons, of all health care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest;

(4) The applicant shall provide the following written assurances on all individuals listed in R432-2-6(3):

(a) None of the persons has been convicted of a felony;

(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

(5) The requirements contained in Utah Code Section 26-21-23(5)(a) shall be met if a nursing care facility filed a notice of intent or application with the Department and paid a fee relating to a proposed nursing care facility prior to March 1, 2007.

(6) The requirements contained in Utah Code Section 26-21-23(5)(b) shall be met if a nursing care facility complies with the requirements of R432-4-14(4) and R432-4-16 on or before July 1, 2008.

R432-2-7. License Fee.

In accordance with Subsection 26-21-5(1)(c), the applicant shall submit a license fee with the completed application form. A current fee schedule is available from the Bureau of Health Facility Licensing upon request. Any late fees is assessed according to the fee schedule.

R432-2-8. Additional Information.

The Department may require additional information or review other documents to determine compliance with licensing rules. These include:

(1) architectural plans and a description of the functional program.

(2) policies and procedures manuals.

(3) verification of individual licenses, registrations or certification required by the Utah Department of Commerce.

(4) data reports including the submission of the annual report at the Departments request.

(5) documentation that sufficient assets are available to provide services: staff, utilities, food supplies, and laundry for at least a two month period of time.

R432-2-9. Initial License Issuance or Denial.

(1) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application packet or within six months of the date the first component of an application packet is received; provided, in either case, a minimum of 45 days is allowed for the initial policy and procedure manual review.

(2) Upon verification of compliance with licensing requirements the Department shall issue a provisional license.

(3) The Department shall issue a written notice of agency decision under the procedures for adjudicative proceedings (R432-30) denying a license if the facility is not in compliance with the applicable laws, rules, or regulations. The notice shall state the reasons for denial.

(4) An applicant who is denied licensing may reapply for initial licensing as a new applicant and shall be required to initiate a new request for agency action as described in R432-2-6.

(5) The Department shall assess an administrative fee on all denied license applications. This fee shall be subtracted from any fees submitted as part of the application packet and a refund for the balance returned to the applicant.

R432-2-10. License Contents and Provisions.

(1) The license shall document the following:

(a) the name of the health facility,

(b) licensee,

(c) type of facility,

(d) approved licensed capacity including identification of operational and banked beds,

(e) street address of the facility,

(f) issue and expiration date of license,

(g) variance information, and

(h) license number.

(2) The license is not assignable or transferable.

(3) Each license is the property of the Department. The licensee shall return the license within five days following closure of a health care facility or upon the request of the Department.

(4) The licensee shall post the license on the licensed premises in a place readily visible and accessible to the public.

R432-2-11. Expiration and Renewal.

(1) Each standard license shall expire at midnight on the day designated on the license as the expiration date, unless the license is revoked or extended under subsection (2) or (4) by the Department.

(2) If a facility is operating under a conditional license for a period extending beyond the expiration date of the current license, the Department shall establish a new expiration date.

(3) The licensee shall submit a Request for Agency Action/License Application form, applicable fees, clearances, and the annual report for the previous calendar year (if required by the Department under R432-2-8) 15 days before the current license expires.

(4) A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the Department.

(5) The Department shall renew a standard license upon verification that the licensee and facility are in compliance with all applicable license rules.

(6) Facilities no longer providing patient care or client services may not have their license renewed.

R432-2-12. New License Required.

(1) A prospective licensee shall submit a Request for Agency Action/License Application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:

(a) occupancy of a new or replacement facility.

(b) change of ownership.

(2) Before the Department may issue a new license, the prospective licensee shall provide documentation that:

(a) all patient care records, personnel records, staffing schedules, quality assurance committee minutes, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee.

(b) the existing policy and procedures manual or a new manual has been approved by the Department and adopted by the facility governing body before change of ownership occurs.

(c) new contracts for professional or other services not provided directly by the facility have been secured.

(d) new transfer agreements have been drafted and signed.

(e) written documentation exists of clear ownership or lease of the facility by the new owner.

(3) Upon sale or other transfer of ownership, the licensee shall provide the new owner with a written accounting, prepared by an independent certified public accountant, of all patient funds being transferred, and obtain a written receipt for those funds from the new owner.

(4) A prospective licensee is responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless a revised plan of correction, approved by the Department, is submitted by the prospective licensee before the change of ownership becomes effective.

(5) If a license is issued to the new owner the previous licensee shall return his license to the Department within five days of the new owners receipt of the license.

(6) Upon verification that the facility is in compliance with all applicable licensing rules, the Department shall issue a new license effective the date compliance is determined as required by R432-2-9.

R432-2-13. Change in Licensing Status.

(1) A licensee shall submit a Request for Agency Action/License Application to amend or modify the license status at least 30 days before any of the following proposed or anticipated changes:

(a) increase or decrease of licensed capacity.

(b) change in name of facility.
(c) change in license category.
(d) change of license classification.
(e) change in administrator.
(2) An increase of licensed capacity may incur an additional license fee if the increase exceeds the maximum number of units in the fee category division of the existing license. This fee shall be the difference in license fee for the existing and proposed capacity according to the license fee schedule.
(3) Upon verification that the licensee and facility are in compliance with all applicable licensing rules, the Department shall issue an amended or modified license effective the date that the Department determines that the licensee is in compliance.

R432-2-14. Facility Ceases Operation.
(1) A licensee that voluntarily ceases operation shall complete the following:
(a) notify the Department and the patients or their next of kin at least 30 days before the effective date of closure.
(b) make provision for the safe keeping of records.
(c) return all patients' monies and valuables at the time of discharge.
(d) The licensee must return the license to the Department within five days after the facility ceases operation.
(2) If the Department revokes a facility's license or if it issues an emergency closure order, the licensee shall document for Department review the following:
(a) the location and date of discharge for all residents,
(b) the date that notice was provided to all residents and responsible parties to ensure an orderly discharge and assistance with placement; and
(c) the date and time that the facility complied with the closure order.

R432-2-15. Provisional License.
(1) A provisional license is an initial license issued to an applicant for a probationary period of six months.
(a) In granting a provisional license, the Department shall determine that the facility has the potential to provide services and be in full compliance with licensing rules during the six month period.
(b) A provisional license is nonrenewable. The Department may issue a provisional license for no longer than six months. It may issue no more than one provisional license to any health facility in any 12-month period.
(2) If the licensee fails to meet terms and conditions of licensing before the expiration date of the provisional license, the license shall automatically expire.

R432-2-16. Conditional License.
(1) A conditional license is a remedial license issued to a licensee if there is a determination of substandard quality of care, immediate jeopardy or a pattern of violations which would result in a ban on admissions at the facility or if the licensee is found to have:
(a) a Class I violation or a Class II violation that remains uncorrected after the specified time for correction;
(b) more than three cited repeat Class I or II violations from the previous year; or
(c) fails to fully comply with administrative requirements for licensing.
(2) A standard license is revoked by the issuance of a conditional license.
(3) The Department may not issue a conditional license after the expiration of a provisional license.
(4) In granting a conditional license, the Department shall be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.
(5) The Department shall establish the period of time for the conditional license based on an assessment of the nature of the existing violations and facts available at the time of the decision.
(6) The Department shall set conditions whereby the licensee must comply with an accepted plan of correction.
(7) If the licensee fails to meet the conditions before the expiration date of the conditional license, the license shall automatically expire.

R432-2-17. Standard License.
A standard license is a license issued to a licensee if:
(1) the licensee meets the conditions attached to a provisional or conditional license;
(2) the licensee corrects the identified rule violations; or
(3) when the facility assures the Department that it complies with R432-2-11 to R432-2-12.

R432-2-18. Variances.
(1) A health facility may submit a request for agency action to obtain a variance from state rules at any time.
(a) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah Department of Health on forms furnished by the Department.
(b) The Department may require additional information from the facility before acting on the request.
(c) The Department shall act upon each request for variance in writing within 60 days of receipt of a completed request.
(2) If the Department grants a variance, it shall amend the license in writing to indicate that the facility has been granted a variance. The variance may be renewable or non-renewable. The licensee shall maintain a copy of the approved variance on file in the facility and make the copy available to all interested parties upon request.
(a) The Department shall file the request and variance with the license application.
(b) The terms of a requested variance may be modified upon agreement between the Department and the facility.
(c) The Department may impose conditions on the granting of a variance as it determines necessary to protect the health and safety of the residents or patients.
(d) The Department may limit the duration of any variance.
(3) The Department shall issue a written notice of agency decision denying a variance upon determination that the variance is not justified.
(4) The Department may revoke a variance if:
(a) The variance adversely affects the health, safety, or welfare of the residents.
(b) The facility fails to comply with the conditions of the variance as granted.
(c) The licensee notifies the Department in writing that it wishes to relinquish the variance and be subject to the rule previously varied.
(d) There is a change in the statute, regulations or rules.

R432-2-19. Change In Ownership.
(1) As used in this section, an "owner" is any person or entity:
(a) ultimately responsible for operating a health care facility; or
(b) legally responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.
(2) The owner of the health care facility does not need to own the real property or building where the facility operates.

(3) A property owner is also an owner of the facility if he:

(a) retains the right or participates in the operation or business decisions of the enterprise;

(b) has engaged the services of a management company to operate the facility; or

(c) takes over the operation of the facility.

(4) A licensed provider whose ownership or controlling ownership interest has changed must submit a Request for Agency Action/License Application and fees to the department 30 days prior to the proposed change

(5) Changes in ownership that require action under subsection (4) include any arrangement that:

(a) transfers the business enterprise or assets to another person or firm, with or without the transfer of any real property rights;

(b) removes, adds, or substitutes an owner or part owner; or

(c) in the case of an incorporated owner:

(i) is a merger with another corporation if the board of directors of the surviving corporation differs by 20 percent or more from the board of the original licensee; or

(ii) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 20 percent or more from the board of the original licensee.

(6) A person or entity that contracts with an owner to manage the enterprise, subject to the owner's general approval of operating decisions it makes is not an owner, unless the parties have agreed that the managing entity is also an owner.

(7) A transfer between departments of government agencies for management of a government-owned health care facility is not a change of ownership under this section.

KEY: health care facilities

February 6, 2015	**26-21-9**
Notice of Continuation August 12, 2013	**26-21-11**
	26-21-12
	26-21-13

R433. Health, Family Health and Preparedness, Maternal and Child Health.
R433-1. Very Low Birth Weight Infant Reporting.
R433-1-1. Purpose and Authority.

This rule establishes reporting and records access requirements for certain morbidities of Very Low Birth Weight infants. It establishes reporting of newborn care capabilities by Utah hospitals. Sections 26-1-30 (2)(b), (c), (d), (e), and (p) provide authority for this rule.

R433-1-2. Definitions.

As used in this rule:

(1) "Very Low Birth Weight" (VLBW) means the birth weight of an infant born weighing greater than 400 grams and less than 1500 grams.

(2) "Neonatal Intensive Care Unit" (NICU) is a designated unit within a hospital, which specializes in the care of ill or premature newborn infants.

(3) "Nursery" means a designated unit within a hospital, which unit specializes in the care of newborn infants.

(4) "Health care provider" means an individual or group of individuals who provide care for women and/or infants during the prenatal, perinatal and/or neonatal period.

(5) "Vermont Oxford Network" (VON) is a non-profit voluntary collaboration of health care professionals dedicated to improving the quality and safety of medical care for newborn infants and their families.

(6) "Hospital" is a general acute hospital licensed under Title 26, Chapter 21 that cares for a VLBW infant.

(7) "Department" means Utah Department of Health (UDOH), UDOH employed staff, or UDOH designated contractor.

(8) "Major morbidities" include: Chronic Lung Disease, Nosocomial Infection and organism and site, Grade III or IV Intraventricular Hemorrhage, Cystic Periventricular Leukomalacia, Grade III, IV or V Retinopathy of Prematurity (ROP), ROP surgery, Avastin following ROP surgery, Necrotizing Enterocolitis, Patent Ductus Arteriosis (PDA) surgery, PDA medication, Major Birth Defect and type, all as defined by the Vermont Oxford Network 2014 Manual of Operations: Part 2, Data Definitions and Infant Data Forms, Release 18.0, Published November 2013, which is adopted and incorporated by reference.

(9) "Maternal risk factors" include: Ethnicity of Mother, Race of Mother, Prenatal Care, Antenatal Steroids, Antenatal Magnesium Sulfate, Chorioamnionitis, Maternal Hypertension, Chronic or Pregnancy-Induced, Multiple Gestation, all as defined by the Vermont Oxford Network 2014 Manual of Operations: Part 2, Data Definitions and Infant Data Forms, Release 18.0, Published November 2013.

(10) "Guidelines for Perinatal Care" means the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists. Guidelines for Perinatal Care (7th ed.), October 2012 (ISBN-13: 9781581107340, ISBN: 158110734X), which are adopted and incorporated by reference.

R433-1-3. Reporting of VLBW Maternal and Infant Data by Hospital Facilities.

Each hospital that admits a VLBW infant shall report to the Department within 40 days of discharge or death, if the infant dies in the hospital, the following:

(1) child's name;
(2) child's date of birth;
(3) mother's name;
(4) mother's date of birth;
(5) mother's zip code
(6) delivery hospital;
(7) maternal risk factors;
(8) major morbidities for the child;
(9) age of infant at admission; in hours if the infant is less than 24 hours old and in days if the child is older than 24 hours;
(10) infant's discharge status (e.g., transported to other facility, discharged to home, death)
(11) age of child at discharge; in hours if the infant is less than 24 hours old and in days if the child is older than 24 hours;
(12) if transported to another hospital, the name of the hospital.

R433-1-4. Reporting of Capacity to Care for VLBW Infants, as Outlined by the 7th Edition of the Guidelines for Perinatal Care, to the Department.

Each hospital with a NICU or a Nursery that admits or cares for VLBW infants shall report as requested by the Department its capability to treat VLBW infants. The hospital shall submit its report within 30 days of the Department request. The Department's request shall be in the form of a survey based on the Guidelines for Perinatal Care and may be made no more than once in a calendar year. The medical director and nursing director of the NICU or nursery shall jointly complete the survey. Medical directors and nursing directors are encouraged to report significant changes in capability more frequently.

R433-1-5. Record Abstraction.

A hospital or health care provider that treats an infant born VLBW shall, as provided in Utah Code, Title 26, Chapter 25, allow personnel from the Department or its agents to abstract information from the hospital's or health care provider's files on the mother and infant regarding issues related to the care and treatment of the VLBW infant.

R433-1-6. Confidentiality.

(1) Information that the Department holds under this rule is confidential under the provisions of Title 26, Chapter 3. Because of the public interest needs to foster health care systems improvements, the Department exercises its discretion under Section 26-3-8 and shall not release information collected under this rule to any person pursuant to the provisions of Subsections 26-3-7(1) or (8).

(2) Information produced or collected by a facility is confidential and privileged under the provisions of Title 26, Chapter 25.

R433-1-8. Liability.

As provided in 26-25-1, facilities that report, and those individuals submitting the report, as required by this rule, information covered by this rule may not be held liable for reporting the information to the Department.

R433-1-9. Penalties.

Pursuant to Section 26-23-6, a person that willfully violates any provision of this rule may be assessed an administrative civil money penalty not to exceed $10,000 per violation.

KEY: very low birth weight infant, very low birth weight infant reporting, very low birth weight infant treatment capability
February 12, 2015 26-1-30(2)(c), (d), (e), and (p)
26-10-1(a) and (b)

R590. Insurance, Administration.
R590-140. Reference Filings of Rate Service Organization Prospective Loss Costs.
R590-140-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to the general authority granted under Subsections 31A-2-201(1) and 31A-2-201(3)(a) to adopt rules for the implementation of the Utah Insurance Code.

R590-140-2. Purpose.

Pursuant to 31A-19a-205, rate filings made by individual insurers in compliance with the requirements of Section 31A-19a-203 may include rates, pure premium rates and supplementary information prepared by a rate service organization. The purpose of this rule is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of Section 31A-19a-203 as to the rate and supplementary rate information filings of property and casualty insurers that refer to and incorporate, in whole or in part, prospective loss costs filings made by rate service organizations.

R590-140-3. Applicability and Scope.

This rule applies to the types of insurance described in Section 31A-19a-101 and to insurers making filings under Section 31A-19a-203 subject to any exemptions the commissioner may order pursuant to Section 31A-19a-103.

R590-140-4. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Section 31A-1-301, and Section 31A-19a-102 in addition to the following:

"Reference filing" means a filing of prospective loss costs, supporting information, or both, made by a licensed rate service organization. An insurer that subscribes to the rate service organization may refer to or incorporate elements of reference filings in its own filings.

R590-140-5. Filings of Advisory Prospective Loss Costs and Adjustment Factors.

(1) A rate service organization may develop and make reference filings containing advisory prospective loss costs. The reference filing must:

(a) contain the statistical data and supporting information for the calculations or assumptions underlying those prospective loss costs; and

(b) be filed and effective in the same manner as rates filed pursuant to Section 31A-19a-203.

(2) An insurer may make a filing of rates by:

(a) becoming a participating insurer of a licensed rate service organization that makes reference filings of advisory prospective loss costs;

(b) authorizing the commissioner to accept reference filings on its behalf; and

(c) filing with the commissioner the information required in Section R590-140-6.

(3) If an insurer chooses the procedure outlined in Subsection (2) above, the insurer's rates shall be:

(a) the prospective loss costs filed by the rate service organization pursuant to Subsection (1); and

(b) any adjustment to the prospective loss costs filed as required by Section R590-140-6 that are in effect for that insurer.

(4) The filing of an adjustment to the prospective loss costs by an insurer shall become effective in accordance with the provisions of Section 31A-19a-203 that apply to the filing of rates.

R590-140-6. Required Filing Documents.

A filing by an insurer that refers to a reference filing of prospective loss costs made by a rate service organization must include the UTAH Insurer Loss Costs Multiplier Filing Forms Pages one and two and the Expense Constant Supplement, if applicable. Samples of these forms are available from the Utah Insurance Department.

R590-140-7. Supplementary Rate Information.

(1) A rate service organization may develop and make filings of supplementary rate information. These filings shall be made in accordance with Sections 31A-19a-203 and 31A-19a-205.

(2) An insurer may make a filing of supplementary rate information by:

(a) becoming a participating insurer of a licensed rate service organization; and

(b) authorizing the commissioner to accept a filing by the organization on behalf of the insurer.

(3) Except for any modification filed by the insurer, the supplementary rate information of the insurer must be the same as that filed by the rate service organization.

R590-140-8. Filing of Rate and Manual Pages.

(1) If the final rates of an insurer are determined solely by applying its adjustment, as presented in the UTAH Insurer Loss Costs Multiplier Filing Forms Pages one and two and the Expense Constant Supplement, if applicable, to the prospective loss costs that are contained in the reference filing and printed in the rating manual of the rate service organization, the insurer is not required to develop or file its final rate pages with the commissioner.

(2) If an insurer prints and distributes final rate pages for its own use and the rates are based on the application of its filed adjustments to the prospective loss costs of a rate service organization, the insurer must file those pages with the commissioner.

(3) If a rate service organization does not print prospective loss costs in its rating manual, the insurer must submit its rates to the commissioner.

(4) If a rate service organization does not file certain premium elements, such as minimum premiums, these must be filed by the insurer.

R590-140-9. Existing Rates and Deviations.

(1) Nothing in these procedures shall be construed to require a rate service organization or its participating insurers to refile rates previously filed with the commissioner.

(2) A participating insurer of a rate service organization may continue to use all rates and deviations currently filed for its use until the insurer makes its own filing to change its rates by making an independent filing or by filing the UTAH Insurer Loss Costs Multiplier Filing Forms Pages one and two and the Expense Constant Supplement, if applicable that adopts the prospective loss costs of a rate service organization or an adjustment to the prospective loss costs by the insurer.

(3) In order that the commissioner may verify the rates being used, the insurer is required to maintain documentation demonstrating that the rates and deviations being used by the insurer have been filed with the commissioner. These documents must be produced at the request of the commissioner. Failure or refusal to do so may subject the insurer to sanctions pursuant to 31A-2-308.

R590-140-10. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, its invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are

declared to be severable.

KEY: insurance
June 8, 2000 **31A-2-201**
Notice of Continuation February 18, 2015

R616. Labor Commission, Boiler and Elevator Safety.
R616-4. Coal Mine Safety.
R616-4-1. Authority and Purpose.

This rule is established pursuant to authority granted the Commission by 40-2-104 and 40-2-301(2) for the purpose of improving coal mine safety, preventing coal mine accidents, and improving coal mine accident response consistent with the Coal Mine Safety Act.

R616-4-2. Definitions.

As used in this rule, the terms listed below shall have the same definition as set forth in the Coal Mine Safety Act, as follows.

(1) "Adverse action" means to take any of the following actions against a person in a manner that affects the person's employment or contractual relationships:

(a) discharge the person;

(b) threaten the person;

(c) coerce the person;

(d) intimidate the person; or

(e) discriminate against the person, including to discriminate in:

(i) compensation;

(ii) terms;

(iii) conditions;

(iv) location;

(v) rights;

(vi) immunities;

(vii) promotions; or

(viii) privileges.

(2) "Coal mine" means:

(a) the following used in extracting coal from its natural deposits in the earth by any means or method:

(i) the land;

(ii) a structure;

(iii) a facility;

(iv) machinery;

(v) a tool;

(vi) equipment;

(vii) a shaft;

(viii) a slope;

(ix) a tunnel;

(x) an excavation; and

(xi) other property; and

(b) the work of preparing extracted coal, including a coal preparation facility.

(3) "Commission" means the Labor Commission created in 34A-1-103.

(4) "Commissioner" means the commissioner appointed under 34A-1-201.

(5) "Council" means the Mine Safety Technical Advisory Council created in 40-2-203.

(6) "Director" means the Director of the Utah Office of Coal Mine Safety appointed under 40-2-202.

(7) "Major coal mine accident" means any of the following (but not limited too) at a coal mine located in Utah:

(a) a mine explosion;

(b) a mine fire;

(c) the flooding of a mine;

(d) a mine collapse; or

(e) the accidental death of an individual at a mine.

(8) "Mine Safety and Health Administration" and "MSHA" means the federal Mine Safety and Health Administration within the United States Department of Labor.

(9) "Office" means the Utah Office of Coal Mine Safety created in 40-2-201.

(10) "Unsafe condition" means a danger that reasonably could be expected to cause serious harm to a person or property.

R616-4-3. Examining Coal Mines.

(1) Pursuant to 34A-1-406 and other provisions of Utah Law, representatives of the Utah Labor Commission are authorized to enter places of employment, including coal mines, for purposes of "examining the provisions made for the health and safety of the employees in the place of employment."

(2) If the Director of the Office of Coal Mine Safety determines that the safety of an employee is or will be endangered by activities or conditions in a coal mine, the Director may:

(a) notify the employee and mine management of the danger and specify actions necessary to remedy the danger;

(b) notify the Mine Safety and Health Administration of the danger;

(c) notify other appropriate federal, state, and local government agencies; and

(d) take such other action as authorized by law to eliminate or mitigate the danger.

R616-4-4. Accident Notification Requirements.

(1) After the occurrence of any coal mine accident that is required by MSHA or regulations 30 CFR Part 50 to be immediately reported to MSHA, a coal mine operator shall first notify MSHA of the accident. Immediately after completing its report to MSHA, the coal mine operator shall then report the accident to the Office of Coal Mine Safety at telephone number 1-888-988-6463.

R616-4-5. Emergency Response Training.

(1) Beginning with the 2010 calendar year, each coal mine operator shall annually hold an in-person meeting with law enforcement, public safety and health care providers for the purpose of reviewing and refining coal mine emergency response plans. The Office of Coal Mine Safety shall be notified of and arrange to participate in each such meeting, but the inability of the Office or any local, state, and federal emergency response personnel to attend such a meeting shall not prevent the operator from proceeding with the meeting as scheduled.

KEY: coal mines, safety
March 11, 2010 40-2-104
Notice of Continuation February 12, 2015 40-2-301(2)

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-3. Drilling and Operating Practices.
R649-3-1. Bonding.

1. An owner or operator shall furnish a bond to the division prior to approval of a permit to drill a new well, reenter an abandoned well or assume responsibility as operator of existing wells.

1.1. An owner or operator shall furnish a bond to the division on Form 4, for wells located on lands with fee or privately owned minerals.

1.2. An owner or operator shall furnish evidence to the division that a bond has been filed in accordance with state, federal or Indian lease requirements and approved by the appropriate agency for all wells located on state, federal or Indian leases.

2. A bond furnished to the division shall be payable to the division and conditioned upon the faithful performance by the operator of the duty to plug each dry or abandoned well, repair each well causing waste or pollution, and maintain and restore the well site.

3. Bond liability shall be for the duration of the drilling, operating and plugging of the well and restoration of the well site.

3.1. The bond for drilling or operating wells shall remain in full force and effect until liability thereunder is released by the division.

3.2. Release of liability shall be conditioned upon compliance with the rules and orders of the Board.

4. For all drilling or operating wells, the bond amounts for individual wells and blanket bonds required in subsections 5. and 6. represent base amounts adjusted to year 2002 average costs for well plugging and site restoration. The base amounts are effective immediately upon adoption of this bonding rule, subject to division notification as described in subsection 4.1.

4.1. The division shall provide written notification to each operator of the need to revise or establish bonds in amounts required by this bonding rule.

4.2. Within 120 days of such notification by the division, the operator shall post a bond with the division in compliance with this bonding rule.

4.3. If the division finds that a well subject to this bonding rule is in violation of Rule R649-3-36., Shut-in and Temporarily Abandoned Wells, the division shall require a bond amount for the applicable well in the amount of actual plugging and site restoration costs.

4.4. The division shall provide written notification to an operator found in violation of Rule R649-3-36., and identify the need to establish increased bonding for shut-in wells.

4.4.1. Within 30 days of notification by the division, the operator shall submit to the division an estimate of plugging and site restoration costs for division review and approval.

4.4.2. Upon review and approval of the cost estimate, the division will provide a notice of approval back to the operator specifying the approved bond amount for shut-in wells.

4.4.3. Within 120 days of receiving such notice of approval, the operator shall post a bond with the division in compliance with this bonding rule.

5. The bond amount for drilling or operating wells located on lands with fee or privately owned minerals shall be one of the following:

5.1. For wells of less than 1,000 feet in depth, an individual well bond in the amount of at least $1,500, for each such well.

5.2. For wells of more than 1,000 feet in depth but less than 3,000 feet in depth, an individual well bond in the amount of at least $15,000 for each such well.

5.3. For wells of more than 3,000 feet in depth but less than 10,000 feet in depth, an individual well bond in the amount of at least $30,000 for each such well.

5.4. For wells of more than 10,000 feet in depth, an individual well bond in the amount of at least $60,000 for each such well.

6. If, prior to the July 1, 2003 revision of this bonding rule, an operator is drilling or operating more than one well on lands with fee or privately owned minerals, and a blanket bond was furnished and accepted by the division in lieu of individual well bonds, that operator shall remain qualified for a blanket bond with the division subject to the amounts described by this bonding rule.

6.1. A blanket bond shall be conditioned in a manner similar to individual well bonds and shall cover all wells that the operator may drill or operate on lands with fee or privately owned minerals within the state.

6.2. For wells of less than 1,000 feet in depth, a blanket bond in the amount of at least $15,000 shall be required.

6.3. For wells of more than 1,000 feet in depth, a blanket bond in the amount of at least $120,000 shall be required.

6.4. Subsequent to the July 1, 2003 revision of this rule, operators who desire to establish a new blanket bond that consists either fully or partially of a collateral bond as described in subsection 10.2. shall be qualified by the division for such blanket bond.

6.4.1. Operators who elect to establish a surety bond as a blanket bond shall not require qualification by the division.

6.4.2. In those cases where operator qualification for blanket bond is required, the division will review the following criteria and make a written finding of the operator's adequacy to meet the criteria before accepting a new blanket bond:

6.4.3. The ratio of current assets to current liabilities shall be 1.20 or greater, as evidenced by audited financial statements for the previous two years and the most current quarterly financial report.

6.4.4. The ratio of total liabilities to stockholder's equity shall be 2.50 or less, as evidenced by audited financial statements for the previous two years and the most current quarterly financial report.

7. If an operator desires bond coverage in a lesser amount than required by these rules, the operator may file a Request for Agency Action with the Board for a variance from the requirements of these rules.

7.1. Upon proper notice and hearing and for good cause shown, the Board may allow bond coverage in a lesser amount for specific wells.

8. If after reviewing an application to drill or reenter a well or when reviewing a change of operator for a well, the division determines that bond coverage in accordance with these rules will be insufficient to cover the costs of plugging the well and restoring the well site, the division may require a change in the form or the amount of bond coverage. In such cases, the division will support its case for a change of bond coverage in the form of written findings to the operator of record of the well and provide a schedule for completion of the requisite changes.

8.1 Appeals of mandated bond amount changes will follow procedures established by Rule R649-10., Administrative Procedures.

9. The bond shall provide a mechanism for the surety or other guarantor of the bond, to provide prompt notice to the division and the operator of any action alleging the insolvency or bankruptcy of the surety or guarantor, or alleging any violations that would result in suspension or revocation of the suretys or guarantor's charter or license to do business.

9.1. Upon the incapacity of the surety or guarantor to guarantee payment of the bond by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the operator shall be deemed to be without bond coverage.

9.2. Upon notification of insolvency or bankruptcy, the division shall notify the operator in writing and shall specify a

reasonable period, not to exceed 90 days, to provide bond coverage.

9.3. If an adequate bond is not furnished within the allowed period, the operator shall be required to cease operations immediately, and shall not resume operations until the division has received an acceptable bond.

10. The division shall accept a bond in the form of a surety bond, a collateral bond or a combination of these bonding methods.

10.1. A surety bond is an indemnity agreement in a sum certain payable to the division, executed by the operator as principal and which is supported by the performance guarantee of a corporation authorized to do business as a surety in Utah.

10.1.1. A surety bond shall be executed by the operator and a corporate surety authorized to do business in Utah that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 10.1.1. will have 120 days from the date of division notification after enactment of the changes to subsection 10.1.1., or face enforcement action. When the division in the course of examining surety bonds notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 10.1.1., the operator has 120 days after notice from the division by mail to correct the deficiency, or face enforcement action.

10.1.2. Surety bonds shall be noncancellable during their terms, except that surety bond coverage for wells not drilled may be canceled with the prior consent of the division.

10.1.3. The division shall advise the surety, within 30 days after receipt of a notice to cancel a bond, whether the bond may be canceled on an undrilled well.

10.2. A collateral bond is an indemnity agreement in a sum certain payable to the division, executed by the operator that is supported by one or more of the following:

10.2.1. A cash account.

10.2.1.1. The operator may deposit cash in one or more accounts at a federally insured bank authorized to do business in Utah, made payable upon demand only to the division.

10.2.1.2. The operator may deposit the required amount directly with the division.

10.2.1.3. Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the division has approved the payment of interest to the operator.

10.2.1.4. The division shall not accept an individual cash account in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.2. Negotiable bonds of the United States, a state, or a municipality.

10.2.2.1. The negotiable bond shall be endorsed only to the order of and placed in the possession of the division.

10.2.2.2. The division shall value the negotiable bond at its current market value, not at face value.

10.2.3. Negotiable certificates of deposit.

10.2.3.1. The certificates shall be issued by a federally insured bank authorized to do business in Utah.

10.2.3.2. The certificates shall be made payable or assigned only to the division both in writing and upon the records of the bank issuing the certificate.

10.2.3.3. The certificates shall be placed in the possession of the division or held by a federally insured bank authorized to do business in Utah.

10.2.3.4. If assigned, the division shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates.

10.2.3.5. The division shall not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.4. An irrevocable letter of credit.

10.2.4.1. Letters of credit shall be placed in the possession of and payable upon demand only to the division.

10.2.4.2. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah.

10.2.4.3. Letters of credit shall be irrevocable during their terms.

10.2.4.4. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least 30 days before their expiration date with other acceptable bond types or letters of credit.

11. The required bond amount specified in subsections 5. and 6. of all collateral posted as assurance under this section shall be subject to a margin determined by the division which is the ratio of the face value of the collateral to market value, as determined by the division.

11.1. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations that might affect the net cash available to the division to complete plugging and restoration.

12. The market value of collateral may be evaluated at any time, and in no case shall the market value of collateral be less than the required bond amount specified in subsections 5. and 6.

12.1. Upon evaluation of the market value of collateral by the division, the division will notify the operator of any required changes in the amount of the bond and shall allow a reasonable period, not to exceed 90 days, for the operator to establish acceptable bond coverage.

12.2. If an adequate bond is not furnished within the allowed period the operator shall be required to cease operations immediately and shall not resume operations until the division has received an acceptable bond.

13. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing from the division at the time collateral is offered.

14. The division may allow the operator to replace existing bonds with other bonds that provide sufficient coverage.

14.1. Replacement of a bond pursuant to this section shall not constitute a release of bond under subsection15.

14.2. The division shall not allow liability to cease under an existing bond until the operator has furnished, and the division has approved, an acceptable replacement bond.

14.3. When the operator of wells covered by a blanket bond changes, the division will review the financial eligibility of a new operator for blanket bonding as described in subsection 6.4., and the division will make a written finding concerning the applicability of blanket bonding to the prospective new operator.

14.4. Transfer of the ownership of property does not cancel liability under an existing bond until the division reviews and approves a change of operator for any wells affected by the transfer of ownership.

14.5. If a transfer of the ownership of property is made and an operator wishes to request a change to a new operator of record for the affected wells, then the following requirements shall be met:

14.5.1. The operator shall notify the division in writing when ownership of any well associated with the property has been transferred to a named transferee, and the operator shall request a change of operator for the affected wells.

14.5.2. The request shall describe each well by reference to

its well name and number, API number, and its location, as described by the section, township, range, and county, and shall also include a proposed effective date for the operator change.

14.5.3. The request shall contain the endorsement of the new operator accepting such change of operator.

14.5.4. The request shall contain evidence of the new operator's bond coverage.

14.5.5. The request may include a request to cancel liability for the well(s) included in the operator change that are listed under the existing operator's bond upon approval by the division of an adequate replacement bond in the name of the new operator.

14.6. Upon receipt of a request for change of operator, the division will review the proposed new operator's bond coverage, and if bond coverage is acceptable, the division will issue a notice of approval of the change of operator.

14.6.1. If the division determines that the new operator's bond coverage will be insufficient to cover the costs of plugging and site restoration for the applicable well(s), the division may deny the change of operator, or the division may require a change in the form and amount of the new operator's bond coverage in order to approve the change of operator. In such cases, the division will support its case for a change of the new operator's bond coverage in the form of written findings, and the division will provide a schedule for completion of the requisite changes in order to approve the operator change. The written findings and schedule for changes in bond coverage will be sent to both the operator of record of the applicable well(s) and the proposed new operator.

14.7. If the request for operator change included a request to cancel liability under the existing operator's bond in accordance with subsection 14.5.5., and the division approves the operator change, then the division will issue a notice of approval of termination of liability under the existing bond for the wells included in the operator change. When the division has approved the termination of liability under a bond, the original operator is relieved from the responsibility of plugging or repairing any wells and restoring any well site affected by the operator change.

14.8. If all of the wells covered by a bond are affected by an operator change, the bond may be released by the division in accordance with subsection 15.

15. Bond release procedures are as follows:

15.1. Requests for release of a bond held by the division may be submitted by the operator at any time after a subsequent notice of plugging of a well has been submitted to the division or the division has issued a notice of approval of termination of liability for all wells covered by an existing bond.

15.1.1. Within 30 days after a request for bond release has been filed with the division, the operator shall submit signed affidavits from the surface landowner of any previously plugged well site certifying that restoration has been performed as required by the mineral lease and surface agreements.

15.1.2. If such affidavits are not submitted, the division shall conduct an inspection of the well site in preparation for bond release as explained in subsection 15.2.

15.1.3. Within 30 days after a request for bond release has been filed with the division, the division shall publish notice of the request in a daily newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county in which the proposed well is located.

15.1.4. If a written objection to the request for bond release is not received by the division within 15 days after publication of the notice of request, the division may release liability under the bond as an administrative action.

15.1.5. If a written objection to the request for bond release is received by the division within 15 days after publication of the notice of request, the request shall be set for hearing and notice thereof given in accordance with the procedural rules of the Board.

15.2. If affidavits supporting the bond release application are not received by the division in accordance with subsection 15.1.1., the division shall within 30 days or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the well site to determine if restoration has been adequately performed.

15.2.1. The operator shall be given notice by the division of the date and time of the inspection, and if the operator is unable to attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

15.2.2. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner is unable to attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

15.2.3. The evaluation shall consider the adequacy of well site restoration, the degree of difficulty to complete any remaining restoration, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution.

15.2.4. Upon request of any person with an interest in bond release, the division may arrange with the operator to allow access to the well site or sites for the purpose of gathering information relevant to the bond release.

15.2.5. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the results.

15.3. Within 60 days from the filing of the bond release request, if a public hearing is not held pursuant to subsection 15.1.5., or within 30 days after such public hearing has been held, the division shall provide written notification of the decision to release or not release the bond to the following parties:

15.3.1. The operator.

15.3.2. The surety or other guarantor of the bond.

15.3.3. Other persons with an interest in bond collateral who have requested notification under R649-3-1.13.

15.3.4. The persons who filed objections to the notice of application for bond release.

15.4. If the decision is made to release the bond, the notification specified in subsection 15.3. shall also state the effective date of the bond release.

15.5. If the division disapproves the application for release of the bond or portion thereof, the notification specified in subsection 15.3. shall also state the reasons for disapproval, recommending corrective actions necessary to secure the release, and allowing an opportunity for a public hearing.

15.6. The division shall notify the municipality in which the well is located by certified mail at least 30 days prior to the release of the bond.

16. The following guidelines will govern the Forfeiture of Bonds.

16.1. The division shall take action to forfeit the bond if any of the following occur:

16.1.1. The operator refuses or is unable to conduct plugging and site restoration.

16.1.2. Noncompliance as to the conditions of a permit issued by the division.

16.1.3. The operator defaults on the conditions under which the bond was accepted.

16.2. In the event forfeiture of the bond is necessary, the matter will be considered by the Board.

16.3. For matters of bond forfeiture, the division shall send written notification to the parties identified in subsection

15.3., in addition to the notice requirements of the Board procedural rules.

16.4. After proper notice and hearing, the Board may order the division to do any of the following:

16.4.1. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts.

16.4.2. Use funds collected from bond forfeiture to complete the plugging and restoration of the well or wells to which bond coverage applies.

16.4.3. Enter into a written agreement with the operator or another party to perform plugging and restoration operations in accordance with a compliance schedule established by the division as long as such party has the ability to perform the necessary work.

16.4.4. Allow a surety to complete the plugging and restoration, if the surety can demonstrate an ability to complete the plugging and restoration.

16.4.5. Any other action the Board deems reasonable and appropriate.

16.5. In the event the amount forfeited is insufficient to pay for the full cost of the plugging and restoration, the division may complete or authorize completion of plugging and restoration and may recover from the operator all costs of plugging and restoration in excess of the amount forfeited.

16.6. In the event the amount of bond forfeited was more than the amount necessary to complete plugging and restoration, the unused funds shall be returned by the division to the party from whom they were collected.

16.7. In the event the bond is forfeited and there exists any unplugged well or wells previously covered under the forfeited bond, then the operator must establish new bond coverage in accordance with these rules.

16.8. If the operator requires new bond coverage under the provisions of subsection 16.7., then the division will notify the operator and specify a reasonable period, not to exceed 90 days, to establish new bond coverage.

R649-3-2. Location And Siting of Vertical Wells and Statewide Spacing for Horizontal Wells.

1. In the absence of special orders of the board establishing drilling units or authorizing different well density or location patterns for particular pools or parts thereof, each oil and gas well shall be located in the center of a 40 acre quarter-quarter section, or a substantially equivalent lot or tract or combination of lots or tracts as shown by the most recent governmental survey, with a tolerance of 200 feet in any direction from the center location, a "window" 400 feet square.

1.1.No oil or gas well shall be drilled less than 920 feet from any other well drilling to or capable of producing oil or gas from the same pool.

1.2. No oil or gas well shall be completed in a known pool unless it is located more than 920 feet from any other well completed in and capable of producing oil or gas from the same pool.

2. The division shall have the administrative authority to determine the pattern location and siting of wells adjacent to an area for which drilling units have been established or for which a request for agency action to establish drilling units has been filed with the board and adjacent to a unitized area, where there is sufficient evidence to indicate that the particular pool underlying the drilling unit or unitized area may extend beyond the boundary of the drilling unit or unitized area and the uniformity of location patterns is necessary to ensure orderly development of the pool.

3. In the absence of special orders of the Board, no portion of the horizontal interval within the potentially productive formation shall be closer than six hundred-sixty (660) feet to a drilling or spacing unit boundary, federally unitized area boundary, uncommitted tract within a unit, or boundary line of a lease not committed to the drilling of such horizontal well.

4. The surface location for a horizontal well may be anywhere on the lease.

5. Any horizontal interval shall not be closer than one thousand three hundred and twenty (1,320) feet to any vertical well completed in and producing from the same formation. Vertical wells drilled to and completed in the same formation as in a horizontal well are subject to applicable drilling unit orders of the board or the other conditions of this rule that do not specifically pertain to horizontal wells and may be drilled and produced as provided therein.

6. A temporary six hundred and forty (640) acre spacing unit, consisting of the governmental section in which the horizontal well is located, is established for the orderly development of the anticipated pool.

7. In addition to any other notice required by the statute or these rules, notice of the Application for Permit to Drill for a horizontal well shall be given by certified mail to all owners within the boundaries of the designated temporary spacing unit.

8. Horizontal wells to be located within federally supervised units are exempt from the above referenced conditions of 5, 6 and 7.

9. Exceptions to any of the above referenced conditions of 3 through 7 may be approved upon proper application pursuant to R649-3-3, Exception to Location and Siting of Wells, or R649-10, Administrative Procedures.

10. Additional horizontal wells may be approved by order of the Board after hearing brought upon by a Request for Agency Action (Petition) filed in accordance with the Board's Procedural Rules.

R649-3-3. Exception to Location and Siting of Wells.

1. Subject to the provisions of R649-3-11.1.2, the division shall have the administrative authority to grant an exception to the locating and siting requirements of R649-3-2 or an order of the board establishing oil or gas well drilling units after receipt from the operator of the proposed well of the following items:

1.1. Proper written application for the exception well location.

1.2. Written consent from all owners within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or;

1.3. Written consent from all owners of directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas well drilling units.

2. If for any reason the division shall fail or refuse to approve such an exception, the board may, after notice and hearing, grant an exception.

3. The application for an exception to R649-3-2 or board drilling unit order shall state fully the reasons why such an exception is necessary or desirable and shall be accompanied by a plat showing:

3.1. The location at which an oil or gas well could be drilled in compliance with R649-3-2 or Board drilling unit order.

3.2. The location at which the applicant requests permission to drill.

3.3. The location at which oil or gas wells have been drilled or could be drilled, in accordance with R649-3-2 or board drilling unit order, directly or diagonally offsetting the proposed exception.

3.4. The names of owners of all lands within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or

3.5. The names of owners of all directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas drilling units.

4. No exception shall prevent any owner from drilling an

oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by R649-3-2, or any applicable order of the board establishing oil or gas well drilling units for the pool involved.

5. Whenever an exception is granted, the board or the division may take such action as will offset any advantage that the person securing the exception may obtain over other producers by reason of the exception location.

R649-3-4. Permitting of Wells to be Drilled, Deepened or Plugged-Back.

1. Prior to the commencement of drilling, deepening or plugging back of any well, exploratory drilling such as core holes and stratigraphic test holes, or any surface disturbance associated with such activity, the operator shall submit Form 3, Application for Permit to Drill, Deepen, or Plug Back and obtain approval. Approval shall be given by the division if it appears that the contemplated location and operations are not in violation of any rule or order of the board for drilling a well.

2. The following information shall be included as part of the complete Application for Permit to Drill, Deepen, or Plug Back.

2.1. The telephone number of the person to contact if additional information is needed.

2.2. Proper identification of the lease as state, federal, Indian, or fee.

2.3. Proper identification of the unit, if the well is located within a unit.

2.4. A plat or map, preferably on a scale of one inch equals 1,000 feet, prepared by a licensed surveyor or engineer, that shows the proposed well location. For directional wells, both surface and bottomhole locations should be marked.

2.5. A copy of the Division of Water Rights approval or the identifying number of the approval for use of water at the drilling site.

2.6. A drilling program containing the following information shall also be submitted as part of a complete APD.

2.6.1. The estimated tops of important geologic markers.

2.6.2. The estimated depths at which the top and the bottom of anticipated water, oil, gas, or other mineral-bearing formations are expected to be encountered, and the owner's or operator's plans for protecting such resources.

2.6.3. The owner's or operator's minimum specifications for pressure control equipment to be used and a schematic diagram thereof showing sizes, pressure ratings or API series, proposed testing procedures and testing frequency.

2.6.4. Any supplementary information more completely describing the drilling equipment and casing program as required by Form 3, Application for Permit to Drill, Deepen, or Plug Back.

2.6.5. The type and characteristics of the proposed circulating medium or mediums to be employed in drilling, the quantities and types of mud and weighting material to be maintained, and the monitoring equipment to be used on the mud system.

2.6.6. The anticipated type and amount of testing, logging, and coring.

2.6.7. The expected bottomhole pressure and any anticipated abnormal pressures or temperatures or potential hazards, such as hydrogen sulfide, H_2S rules are found in R649-3-12 expected to be encountered, along with contingency plans for mitigating such identified hazards.

2.6.8. Any other facets of the proposed operation that the lessee or operator desires to point out for the division's consideration of the application.

2.6.9. If an Application for Permit to Drill, Deepen, or Plug Back is for a proposed horizontal well, a horizontal well diagram clearly showing the well bore path from the surface through the terminus of the lateral shall be submitted.

2.7. Form 5, Designation of Agent or Operator shall be filed when the operator is a person other than the owner.

2.8. If located on State or Fee surface, an APD will not be approved until an Onsite Predrill Evaluation is performed as outlined in R649-3-18.

3. Two legible copies, carbon or otherwise, of the APD filed with the appropriate federal agency may be used in lieu of the forms prescribed by the board.

4. Approval of the APD shall be valid for a period of 12 months from the date of such approval. Upon approval of an APD, a well will be assigned an API number by the division. The API number should be used to identify the permitted well in all future correspondence with the division.

5. If a change of location or drilling program is desired, an amended APD shall be filed with the division and its approval obtained. If the new location is at an authorized location in the approved drilling unit, or the change in drilling program complies with the rules for that area, the change may be approved verbally or by telegraph. Within five days after obtaining verbal or telegraphic authorization, the operator shall file a written change application with the division.

6. After a well has been completed or plugged and abandoned, it shall not be reentered without the operator first submitting a new APD and obtaining the division's approval. Approval shall be given if it appears that a bond has been furnished or waived, as required by R649-3-1, Bonding, and the contemplated work is not in violation of any rule or order of the board.

7. An operator or owner who applies for an APD in an area not subject to a special order of the board establishing drilling units, may contemporaneously or subsequently file a Request for Agency Action to establish drilling units for an area not to exceed the area reasonably projected by the operator or owner to be underlaid by the targeted reservoir.

8. An APD for a well within the area covered by a proper Request for Agency Action that has been filed by an interested person, or the division or the board on its own motion, for the establishment of drilling units or the revision of existing drilling units for the spacing of wells shall be held in abeyance by the division until such time as the matter has been noticed, fully heard and determined.

9. An exception to R649-3-4-8 shall be made and a permit shall be issued by the division if an owner or operator files a sworn statement demonstrating to the division's satisfaction that on and after the date the Request for Agency Action requesting the establishment of drilling units was filed, or the action of the division or board was taken; and

9.1. The owner or operator has the right or obligation under the terms of an existing contract to drill the requested well; or

9.2. The owner or operator has a leasehold estate or right to acquire a leasehold estate under a contract that will be terminated unless he is permitted to commence the drilling of the required well before the matter can be fully heard and determined by the board.

R649-3-5. Identification.

1. Every drilling and producible well shall be identified by a sign posted on the derrick or in a conspicuous place near the well.

2. The sign shall be of durable construction. The lettering on the sign shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of 25 feet.

3. The wells on each lease or property shall be numbered in nonrepetitive, logical, and distinctive sequence. Each sign shall show the number or name of the well, the name of the owner or operator, the lease name, and the location of the well by quarter section, township, and range.

R649-3-6. Drilling Operations.

1. Drilling operations shall be conducted according to the drilling program submitted on the original APD and as approved by the division. Any change of plans to the original drilling program shall be submitted to the division by using Form 9, Sundry Notices and Reports on Wells and shall receive division approval prior to implementation. A change of plans necessary because of emergency conditions may be implemented without division approval. The operator shall provide the division with verbal notice of the emergency change within 24 hours and written notice within five days.

2. An operator of a drilling well as designated in R649-2-4 shall comply with reporting requirements as follows:

2.1. The spudding in of a well shall be reported to the division within 24 hours. The report should include the well name and number, drilling contractor, rig number and type, spud date and time, the date that continuous drilling will commence, the name of the person reporting the spud, and a contact telephone number.

2.2. The operator shall file Form 6, Entity Action Form with the division within five working days of spudding in a well. The division will assign the well an entity number that will identify the well on the operator's monthly oil and gas production and disposition reports.

2.3. The operator shall notify the division 24 hours in advance of all testing to be performed on the blowout preventer equipment on a well.

2.4. The operator shall submit a monthly status report for each drilling well on Form 9, Sundry Notices and Reports on Wells. The report should include the well depth and a description of the operations conducted on the well during the month. The report shall be submitted no later than the fifth day of the following calendar month until such time as the well is completed and the well completion report is filed.

2.5. The operator shall notify the division 24 hours in advance of all casing tests performed in accordance with R649-3-13.

2.6. The operator shall report to the division all fresh water sand encountered during drilling on Form 7, Report of Water Encountered During Drilling. The report shall be filed with Form 8, Well Completion or Recompletion Report and Log.

R649-3-7. Well Control.

1. When drilling in wildcat territory, the owner or operator shall take all reasonably necessary precautions for keeping the well under control at all times and shall provide, at the time the well is started, proper high pressure fittings and equipment. All pressure control equipment shall be maintained in good working condition at all times.

2. In all proved areas, the use of blowout prevention equipment "BOPE" shall be in accordance with the established and approved practice in the area. All pressure control equipment shall be maintained in good working condition at all times.

3. Upon installation, all ram type BOPE and related equipment, including casing, shall be tested to the lesser of the full manufacturer's working pressure rating of the equipment, 70% of the minimum internal yield pressure of any casing subject to test, or one psi/ft of the last casing string depth. Annular type BOPE are to be tested in conformance with the manufacturer's published recommendations. The operator shall maintain records of such testing until the well is completed and will submit copies of such tests to the division if required.

4. In addition to the initial pressure tests, ram and annular type preventers shall be checked for physical operation each trip. All BOPE components, with the exception of an annular type blowout preventer, shall be tested monthly to the lesser of 50% of the manufacturer's rated pressure of the BOPE, the maximum anticipated pressure to be contained at the surface, one psi/ft of the last casing string depth, or 70% of the minimum internal yield pressure of any casing subject to test.

5. If a pressure seal in the assembly is disassembled, a test of that seal shall be conducted prior to the resumption of any drilling operation. A shell test of the affected seal shall be adequate. If the affected seal is integral with the BOP stack, either pipe or blind ram, necessitating a test plug to be set in order to test the seal, the division may grant approval to proceed without testing the seal if necessary for prudent operations.

6. All tests of BOPE shall be noted on the driller's log, IADC report book, or equivalent and shall be available for examination by the director or an authorized agent during routine inspections.

7. BOPE used in possible or probable hydrogen sulfide or sour gas formations shall be suitable for use in such areas.

R649-3-8. Casing Program.

1. The method of cementing casing in the hole shall be by pump and plug method, displacement method, or other method approved by the division.

2. When drilling in wildcat territory or in any field where high pressures are probable, the conductor and surface strings of casing must be cemented throughout their lengths, unless another procedure is authorized or prescribed by the division, and all subsequent strings of casing must be securely anchored.

3. In areas where the pressures and formations to be encountered during drilling are known, sufficient surface casing shall be run to:

3.1. Reach a depth below all known or reasonably estimated, utilizable, domestic, fresh water levels.

3.2. Prevent blowouts or uncontrolled flows.

4. The casing program adopted must be planned to protect any potential oil or gas horizons penetrated during drilling from infiltration of waters from other sources and to prevent the migration of oil, gas, or water from one horizon to another.

R649-3-9. Protection of Upper Productive Strata.

1. No well shall be deepened for the purpose of producing oil or gas from a lower stratum until all upper productive strata are protected, either permanently by casing and cementing or temporarily through the use of tubing and packer, to the satisfaction of the division.

2. In any well that appears to have defective, poorly cemented, or corroded casing that will permit or may create underground waste or may contaminate underground or surface fresh water, the operator shall proceed with diligence to use the appropriate method and means to eliminate such hazard of underground waste or contamination of fresh water. If such hazard cannot be eliminated, the well shall be properly plugged and abandoned.

3. Natural gas that is encountered in substantial quantities in any section of a drilled hole above the ultimate objective shall be shut off with reasonable diligence, either by mudding, casing or other approved method, and shall be confined to its original source to the satisfaction of the division.

R649-3-10. Tolerances for Vertical Drilling.

1. Deviation from the vertical for short distances is permitted in the drilling of a well without special approval to straighten the hole, sidetrack junk, or correct other mechanical difficulties.

2. All wells shall be drilled such that the surface location of the well and all points along the intended well bore shall be within the tolerances allowed by R649-3-2, Location and Siting of Vertical Wells and Statewide Spacing for Horizontal Wells, or the appropriate board order.

R649-3-11. Directional Drilling.

1. Except for the tolerances allowed under R649-3-10, no

well may be intentionally deviated unless the operator shall first file application and obtain approval from the division.

1.1. An application for directional drilling may be approved by the division without notice and hearing when the applicant is the owner of all the oil and gas within a radius of 460 feet from all points along the intended well bore, or the applicant has obtained the written consent of the owner to the proposed directional drilling program.

1.2. An application pertaining to a well with a surface location outside the tolerances allowed by R649-3-2 or the appropriate board order, but with the point of penetration of the targeted productive zone(s) and bottom hole location within said tolerances, may be approved by the division without notice and hearing conditioned upon the operator filing a certification included with the application that it will not perforate and complete the well in any other zone(s) outside of said tolerances without complying with the requirements of R649-3-11.1.1. Under these circumstances, no additional exception location approval under R649-3-3 is required.

1.3. An application for directional drilling may be included as part of the initial APD for a proposed well.

2. An application for directional drilling shall include the following information:

2.1. The name and address of the operator.

2.2. The lease name, well number, field name, reservoir name, and county where the proposed well is located.

2.3. A plat or sketch showing the distance from the surface location to section and lease lines, the target location within the intended producing interval, and any point along the intended well bore outside the 460 foot radius for which the consent of the owner has been obtained.

2.4. The reason for the intentional deviation.

2.5. The signature of designated agent or representative of operator.

3. Within 30 days following completion of a directionally drilled well, a complete angular deviation and directional survey of the well obtained by an approved well survey company shall be filed with the division, together with other regularly required reports.

R649-3-12. Drilling Practices for Hydrogen Sulfide H_2S Areas and Formations.

1. This rule shall apply to drilling, redrilling, deepening, or plugging back operations in areas where the formations to be penetrated are known to contain or are expected to contain H_2S in excess of 20 ppm and to areas where the presence or absence thereof is unknown.

2. A written contingency plan, providing details of actions to be taken to alert and protect operating personnel and members of the public in the event of an accidental release of H_2S gas shall be submitted to the division as part of the initial APD for a well or as a sundry notice.

3. All proposed drill site locations shall be planned to obtain the maximum safety benefits consistent with the rig configuration, terrain, prevailing winds, etc.

3.1. The drilling rig shall, where possible, be situated so that prevailing winds blow across the rig in a direction toward the reserve pit and away from escape routes.

3.2. On-site trailers shall be located to allow reasonably safe distances from both the well and the outlet of the flare line.

4. At least two cleared areas shall be designated as crew briefing or safety areas.

4.1. Both areas shall be located at least 200 feet from the well, with at least one area located generally upwind from the well.

5. Protective equipment shall be provided by the operator or its drilling contractor for operating personnel and shall include the following:

5.1. An adequate number of positive pressure type self-contained breathing apparatus to allow all personnel normally involved on a drilling location immediate access to such equipment, with a minimum of one working apparatus available for the immediate use of each rig hand in emergencies.

5.2. Chalk boards or note pads to be used for communication when wearing protective breathing apparatus.

5.3. First aid supplies.

5.4. One resuscitator complete with medical oxygen.

5.5. A litter or stretcher.

5.6. Harnesses and lifelines.

5.7. A telephone, radio, mobile phone, or other communication device that provides emergency two-way communication from a safe area near the well location.

6. Each drill site shall have an H_2S detection and monitoring system that activates audible and visible alarms when the concentration of H_2S reaches the threshold limit of 20 ppm in air. This equipment shall have a rapid response time and be capable of sensing a minimum of ten ppm H_2S in air, with at least three sensing points, located at the shale shaker, on the derrick floor, and in the cellar. Other sensing points shall be located at other critical areas where H_2S might accumulate. Portable H_2S detection equipment capable of sensing an H_2S concentration of 20 ppm shall be available for all working personnel and shall be equipped with an audible warning signal.

7. Equipment to indicate wind direction at all times shall be installed at prominent locations. At least two wind socks or streamers shall be located at separate elevations at the well location and shall be easily visible from all areas of the location. Windsocks or streamers shall be located in illuminated areas for night operations.

8. When H_2S is encountered during drilling, well marked, highly visible warning signs shall be displayed at the rig and along all access routes to the well location.

8.1. The signs shall warn of the presence of H_2S and shall prohibit approach to the well location when red flags are displayed.

8.2. Red flags shall be displayed when H_2S is present in concentrations greater than 20 ppm in air as measured on the equipment required under R649-3-12-6.

9. Unless adequate natural ventilation is present, portable fans or ventilation equipment shall be located in work areas to disperse H_2S when it is encountered.

10. A flare system shall be utilized to safely gather and burn H_2S bearing gas.

10.1. Flare lines shall be located as far from the operating site as feasible and shall be located in a manner to compensate for wind changes.

10.2. The outlets of all flare lines shall be located at least 150 feet from the well head unless otherwise approved by the division.

11. Sufficient quantities of additives shall be maintained on location to add to the mud system to scavenge or neutralize H_2S.

R649-3-13. Casing Tests.

1. In order to determine the integrity of the casing string set in the well, the operator shall, unless otherwise requested by the division, perform a pressure test of the casing to the pressures specified under R649-3-7.4 before drilling out of any casing string, suspending drilling operations, or completing the well.

R649-3-14. Fire Hazards on the Surface.

1. All rubbish or debris that might constitute a fire hazard shall be removed to a distance of a least 100 feet from the well location, tanks, separator, or any structure. All waste oil or gas shall be burned or disposed of in a manner to avert creation of a fire hazard.

2. Any gas other than poisonous gas escaping from the

well during drilling operations shall be, so far as practicable, conducted to a safe distance from the well site and burned in a suitable flare.

R649-3-15. Pollution and Surface Damage Control.

1. The operator shall take all reasonable precautions to avoid polluting lands, streams, reservoirs, natural drainage ways, and underground water.

1.1. The owner or operator shall carry on all operations and maintain the property at all times in a safe and workmanlike manner having due regard for the preservation and conservation of the property and for the health and safety of employees and people residing in close proximity to those operations.

1.2. At a minimum, the owner or operator shall:

1.2.1. Take reasonable steps to prevent and shall remove accumulations of oil or other materials deemed to be fire hazards from the vicinity of well locations, lease tanks and pits.

1.2.2. Remove from the property or store in an orderly manner, all scrap or other materials not in use.

1.2.3. Provide secure workmanlike storage for chemical containers, barrels, solvents, hydraulic fluid, and other non-exempt materials.

1.2.4. Maintain tanks in a workmanlike manner that will preclude leakage and provide for all applicable safety measures, and construct berms of sufficient height and width to contain the quantity of the largest tank at the storage facility.

1.2.4.1. The use of crude or produced water storage tanks without tops is strictly prohibited except during well testing operations.

1.2.5. Catch leaks and drips, contain spills, and cleanup promptly.

1.2.6. Waste reduction and recycling should be practiced in order to help reduce disposal volumes.

1.2.7. Produced water, tank bottoms and other miscellaneous waste should be disposed of in a manner that is in compliance with these rules and other state, federal, or local regulations or ordinances.

1.2.8. In general, good housekeeping practices should be used.

R649-3-16. Reserve Pits and Other On-site Pits.

1. Small onsite oil field pits including, but not limited to, reserve pits, emergency pits, workover and completion pits, storage pits, pipeline drip pits, and sumps shall be located and constructed in such a manner as to contain fluids and not cause pollution of waters and soils. They shall be located and constructed according to the Division guidelines for onsite pits. See Ranking Criteria for Reserve and Onsite Pit Liner Requirements, on the Oil, Gas and Mining web page.

2. Reserve pit location and construction requirements including liner requirements will be discussed at the predrill site evaluation. Special stipulations concerning the reserve pit will be included as part of the Division's approval to drill.

3. Following drilling and completion of the well the reserve pit shall be closed within one year, unless permission is granted by the Division for a longer period.

4. Pit contents shall meet the Division's Cleanup Levels (guidance document for numeric clean-up levels) or background levels prior to burial.

5. The contents may require treatment to reduce mobility and/or toxicity in order to meet cleanup levels.

6. The alternative to meeting cleanup levels would be transporting of material to an appropriate disposal facility.

R649-3-17. Inspection.

1. Inspection of wells shall be performed by the division to determine operator compliance with the rules and orders of the board.

2. The inspection shall not interfere with the mechanical operation of facilities or equipment used in drilling and production operations.

3. Inspections of operations involving a safety hazard shall not be conducted, nor shall an inspection be conducted that may cause a safety hazard.

R649-3-18. On-site Predrill Evaluation.

1. An on-site predrill evaluation of drilling operations located on state or private land shall be scheduled and conducted by the division prior to approval of an APD and no later than 30 days after receipt by the division of a complete APD.

1.1. An on-site predrill evaluation may be performed by the division prior to submittal of a complete APD at the written request of the operator.

1.2. The division, the operator, and other persons associated with the surface management or construction of the well site shall attend the predrill evaluation.

1.3. When appropriate, the operator's surveyor and archaeologist may also participate in the predrill evaluation.

1.4. When the surface of the land involved is privately owned, the operator shall include in the APD the name, address, and telephone number of the private surface owner as shown on the real property records of the county where the well is located.

1.5. The surface owner shall be invited by the division to attend the predrill evaluation.

1.6. The surface owner's inability to attend the predrill evaluation shall not delay the scheduled evaluation.

2. Special stipulations concerning surface use or justifications for well spacing exceptions may be addressed and developed at the predrill evaluations.

2.1. Special stipulations shall be incorporated as conditions of the approved APD, together with any additional conditions determined by the division to be necessary following a review of the complete application.

R649-3-19. Well Testing.

1. Each operator shall conduct a stabilized production test of at least 24 hours duration not later than 15 days following the completion or recompletion of any well for the production of oil or gas.

1.1. The results of the test shall be reported in writing to the division within 15 days after completion of the test.

1.2. Additional tests shall be made as requested by the division.

2. The division may request subsurface pressure measurements on a sufficient number of wells in any pool to provide adequate data to determine reservoir characteristics.

3. Upon written request, the division may waive or extend the time for conducting any test.

4. A gas-oil ratio "GOR" test shall be conducted not later than 15 days following the completion or recompletion of each well in a pool that contains both oil and gas.

4.1. The average daily oil production, the average daily gas production and the average GOR shall be recorded.

4.2. The results of the GOR test shall be reported in writing to the division within 15 days after completion of the test.

4.3. A GOR test of at least 24 hours duration shall satisfy the requirements of R649-3-19-1.

5. When the results of a multipoint test or other approved test for the determination of gas well potential have not been submitted to the division within 30 days after completion or recompletion of any producible gas well, the division may order this test to be made.

5.1. All data pertinent to the test shall be submitted to the division in legible, written form within 15 days after completion of the test.

5.2. The performance of a multipoint or other approved

test shall satisfy the requirements of R649-3-19-1.

6. All tests of any producible gas well will be taken in accordance with the Manual of Back-Pressure Testing of Gas Wells published by the Interstate Oil and Gas Compact Commission, with necessary modifications as approved by the division.

R649-3-20. Gas Flaring or Venting.

1. Produced gas from an oil well, also known as associated gas or casinghead gas, may be flared or vented only in the following amounts:

1.1. Up to 1,800 MCF of oil well gas may be vented or flared from an individual well on a monthly basis at any time without approval.

1.2. During the period of time allowed for conducting the stabilized production test or other approved test as required by R649-3-19, the operator may vent or flare all produced oil well gas as needed for conducting the test.

1.2.1. The operator shall not vent or flare gas that is not necessary for conducting the test or beyond the time allowed for conducting the test.

1.3. During the first calendar month immediately following the time allowed for conducting the initial stabilized production test as required by R649-3-19.1, the operator may vent or flare up to 3,000 MCF of oil well gas without approval.

1.4. Unavoidable or short-term oil well gas venting or flaring may occur without approval in accordance with R649-3-20.4, 4.1, 4.2, and 4.3.

2. Produced gas from a gas well may be vented or flared only in the following amounts:

2.1. During the period of time allowed for conducting the stabilized production test, the multipoint test, or other approved test as required by R649-3-19, the operator may vent or flare all produced gas well gas as needed for conducting the test.

2.2. The operator shall not vent or flare gas which is not necessary for conducting the tests or beyond the time allowed for conducting the tests.

2.3. Unavoidable or short-term gas well gas venting or flaring may occur without approval in accordance with R649-3-20.4, 4.1, 4.2, and 4.3.

3. If an operator desires to produce a well for the purpose of testing and evaluation beyond the time allowed by R649-3-19 and vent or flare gas in excess of the aforementioned limits of gas venting or flaring, the operator shall make written request for administrative action by the division to allow gas venting or flaring during such testing and evaluation.

3.1. The operator shall provide any information pertinent to a determination of whether marketing or otherwise conserving the produced gas is economically feasible.

3.2. Upon such request and based on the justification information presented, the division may authorize gas venting or flaring at unrestricted rates for up to 30 days of testing or no more than 50 MMCF of gas vented or flared, whichever is less.

4. Once a well is completed for production and gas is being transported or marketed, the operator is allowed unavoidable or short-term gas venting or flaring without approval only in the following cases:

4.1. Gas may be vented or released from oil storage tanks or other low pressure oil production vessels unless the division determines that the recovery of such vapors is warranted.

4.2. Gas may be vented or flared from a well during periods of line failures, equipment malfunctions, blowouts, fires, or other emergencies if shutting in or restricting production from the well would cause waste or create adverse impact on the well or producing reservoir.

4.3. The operator shall provide immediate notification to the division in all such cases in accordance with R649-3-32, Reporting of Undesirable Events.

4.4. Upon notification, the division shall determine if gas venting or flaring is justified and specify conditions of approval if necessary.

4.5. Gas may be vented or flared from a well during periods of well purging or evaluation tests not exceeding a period of 24 hours or a maximum of 144 hours per month.

4.6. The operator shall provide subsequent written notification to the division in all such cases.

5. If an operator wishes to flare or vent a greater amount of produced gas than allowed by this rule, the operator must submit a Request for Agency Action to the board to be considered as a formal board docket item. The request should include the following items:

5.1. A statement justifying the need to vent or flare more than the allowable amount.

5.2. A description of production test results.

5.3. A chemical analysis of the produced gas.

5.4. The estimated oil and gas reserves.

5.5. A description of the reinjection potential or other conservation oriented alternative for disposition of the produced gas.

5.6. A description of the amount of gas used in lease operations.

5.7. An economic evaluation supporting the operator's determination that conservation of the gas is not economically viable. The evaluation should utilize any engineering or geologic data available and should consider total well production, not just gas production, in presenting the profitability and costs for beneficial use of the gas.

5.8. Any other information pertinent to a determination of whether marketing or otherwise conserving the produced gas is economically feasible.

6. Upon review of the request for approval to vent or flare gas from a well, the board may elect to:

6.1. Allow the requested venting or flaring of gas.

6.2. Restrict production until the gas is marketed or otherwise beneficially utilized.

6.3. Take any other action the board deems appropriate in the circumstances.

7. When gas venting or flaring from a well has not been approved by the division or the magnitude and duration of venting or flaring exceeds the amounts specified in these rules or any division or board approval, then the board may issue a formal order to alleviate the noncompliance and/or require the operator to appear before the board to provide justification of such venting or flaring. The division shall notify the appropriate governmental taxing and royalty agencies of any unapproved venting or flaring and of any subsequent board action.

8. No extraction plant processing gas in Utah shall flare or vent such gas unless such venting or flaring is made necessary by mechanical difficulty of a very limited temporary nature or unless the gas vented or flared is of no commercial value.

9. In the event of a more prolonged mechanical difficulty or in the event of plant shut-downs or curtailment because of scheduled or nonscheduled maintenance or testing operations or other reasons, or in the event a plant is unable to accept, process, and market all of the casinghead gas produced by wells connected to its system, the plant operator shall notify the division as soon as possible of the full details of such shut-down or curtailment, following which the division shall take such action as is necessary.

R649-3-21. Well Completion and Filing of Well Logs.

1. For the purposes of this rule only, a well shall be determined to be completed when the well has been adequately worked to be capable of producing oil or gas or when well testing as required by the division is concluded.

2. Within 30 days after the completion of any well drilled or redrilled for the production of oil or gas, Form 8, Well Completion or Recompletion Report and Log, shall be filed

with the division, together with a copy of the electric and radioactivity logs, if run.

3. In addition, one copy of all drillstem test reports, formation water analyses, porosity, permeability or fluid saturation determinations, core analyses and lithologic logs or sample descriptions if compiled, shall be filed with the division.

4. As prescribed under R649-2-12, Test and Surveys, the directional, deviation and/or measurement-while-drilling (MWD) survey for a horizontal well shall be filed within 30 days of being run. Such directional, deviation and/or MWD survey specifically related to well location or well bore path shall not be held confidential. Other MWD survey data that presents well log, or other geological, geophysical, or engineering information may be held confidential as provided in R649-2-11, Confidentiality of Well Log Information.

R649-3-22. Completion Into Two or More Pools.

1. The completion of a single well into more than one pool may be permitted by submitting an application to the division and securing its approval.

1.1. The application shall be submitted on Form 9, Sundry Notice and Report and shall be accompanied by an exhibit showing the location of all wells on contiguous oil and gas leases or drilling units overlying the pool.

1.2. The application shall set forth all material facts involved and the manner and method of completion proposed.

2. If oil or gas is to be produced from two or more pools open to each other through the same string of casing so that commingling will take place, the application must also be accompanied by a description of the method used to account for and to allocate production from each pool so commingled.

3. The application shall include an affidavit showing that the operator has provided a copy of the application to the owners of all contiguous oil and gas leases or drilling units overlying the pool.

3.1. If none of these owners file a written objection to the application within 15 days after the date the application is filed with the division, the application may be considered and approved by the division without a hearing.

3.2. If a written objection is filed that cannot be resolved administratively, the application may be approved only after notice and hearing by the board.

R649-3-23. Well Workover and Recompletion.

1. Requests for approval of a notice of intention to perform a workover or recompletion shall be filed by an operator with the division on Form 9, Sundry Notices and Reports on Wells, or if the operation includes substantial redrilling, deepening, or plugging back of an existing well, on Form 3, Application for Permit to Drill, Deepen or Plug Back.

2. The division shall review the proposed workover or recompletion for conformance with the Oil and Gas Conservation General Rules and advise the operator of its decision and any necessary conditions of approval.

3. Recompletions shall be conducted in a manner to protect the original completion interval(s) and any other known productive intervals.

4. The same tests and reports are required for any well recompletion as are required following an original well completion.

5. The applicant shall file a subsequent report of workover on Form 9, Sundry Notices and Reports, or a subsequent report of recompletion on Form 8, Well Completion or Recompletion Report and Log, within 30 days after completing the workover or recompletion operations.

6. For the purpose of qualifying for a tax credit under Utah Code Ann. Section 59-5-102(6), the operator on his behalf and on behalf of each working interest owner must file a request with the division on Form 15, Designation of Workover or Recompletion. The request must be filed within 90 days after completing the workover or recompletion operations.

7. A workover which may qualify under Utah Code Ann. Section 59-5-102(6) shall be downhole operations conducted to maintain, restore or increase the producibility or serviceability of a well in the geologic interval(s) that the well is currently completed in, but shall not include:

7.1. Routine maintenance operations such as pump changes, artificial lift equipment or tubing repair, or other operations that do not involve changes to the wellbore configuration or the geologic interval(s) that it penetrates and that do not stimulate production beyond that which would be anticipated as the result of routine maintenance.

7.2. Operations to convert any well for use as a disposal well or other use not associated with enhancing the recovery of hydrocarbons.

7.3. Operations to convert a well to a Class II injection well for enhanced recovery purposes may qualify if the secondary or enhanced recovery project has received the necessary board approval.

8. A recompletion that may qualify under Utah Code Ann. Section 59-5-102(6) shall be downhole operations conducted to reestablish producibility or serviceability of a well in any geologic interval(s).

9. The division shall review the request for designation of a workover or recompletion and advise the operator and the State Tax Commission of its decision to approve or deny the operations for the purposes of Utah Code Ann. Section 59-5-102(6).

10. The division is responsible for approval of workover and recompletion operations that qualify for the tax credit.

10.1. If the operator disagrees with the decision of the division, the decision may be appealed to the board.

10.2. Appeals of all other workover and recompletion tax credit decisions should be made to the State Tax Commission.

R649-3-24. Plugging and Abandonment of Wells.

1. Before operations are commenced to plug and abandon any well the owner or operator shall submit a notice of intent to plug and abandon to the division for its approval.

1.1. The notice shall be submitted on Form DOGM-9, Sundry Notice and Report on Wells.

1.2. A legible copy of a similar report and form filed with the appropriate federal agency may be used in lieu of the forms prescribed by the board.

1.3. In cases of emergency the operator may obtain verbal or telegraphic approval to plug and abandon.

1.4. Within five days after receiving verbal or telegraphic approval, the operator shall submit a written notice of intent to plug and abandon on Form 9.

2. Both verbal and written notice of intent to plug and abandon a well shall contain the following information:

2.1. The location of the well described by section, township, range, and county.

2.2. The status of the well, whether drilling, producing, injecting or inactive.

2.3. A description of the well bore configuration indicating depth, casing strings, cement tops if known, and hole size.

2.4. The tops of known geologic markers or formations.

2.5. The plugging program approved by the appropriate federal agency if the well is located on federal or Indian land.

2.6. An indication of when plugging operations will commence.

3. A dry or abandoned well must be plugged so that oil, gas, water, or other substance will not migrate through the well bore from one formation to another.

3.1. Unless a different method and procedure is approved by the division, the method and procedure for plugging the well shall be as follows:

3.2. The bottom of the hole shall be filled to, or a bridge shall be placed at, the top of each producing formation open to the well bore, and a cement plug not less than 100 feet in length shall be placed immediately above each producing formation open to the well bore.

3.3. A solid cement plug shall be placed from 50 feet below a fresh water zone to 50 feet above the fresh water zone, or a 100 foot cement plug shall be centered across the base of the fresh water zone and a 100 foot plug shall be centered across the top of the fresh water zone.

3.4. At least ten sacks of cement shall be placed at the surface in a manner completely plugging the entire hole. If more than one string of casing remains at the surface, all annuli shall be so cemented.

3.5. The interval between plugs shall be filled with noncorrosive fluid of adequate density to prevent migration of formation water into or through the well bore.

3.6. The hole shall be plugged up to the base of the surface string with noncorrosive fluid of adequate density to prevent migration of formation water into or through the well bore, at which point a plug of not less than 50 feet of cement shall be placed.

3.7. Any perforated interval shall be plugged with cement and any open hole porosity zone shall be adequately isolated to prevent migration of fluids.

3.8. A cement plug not less than 100 feet in length shall be centered across the casing stub if any casing is cut and pulled, a second plug of the same length shall be centered across the casing shoe of the next larger casing.

4. An alternative method of plugging, required under a federal or Indian lease, will be accepted by the division.

5. Within 30 days after the plugging of any well has been accomplished, the owner or operator shall file a subsequent report of plugging with the division. The report shall give a detailed account of the following items:

5.1. The manner in which the plugging work was carried out, including the nature and quantities of materials used in plugging and the location, nature, and extent by depths, of the plugs.

5.2. Records of any tests or measurements made.

5.3. The amount, size, and location, by depths of any casing left in the well.

5.4. A statement of the volume of mud fluid used.

5.5. A complete report of the method used and the results obtained, if an attempt was made to part any casing.

6. Upon application to and approval by the division, and following assumption of liability for the well by the surface owner, a well or other exploratory hole that may safely be used as a fresh water well need not be filled above the required sealing plugs set below the fresh water formation. The owner of the surface of the land affected may assume liability for any well capable of conversion to a water well by sending a letter assuming such liability to the division and by filing an application with and obtaining approval for appropriation of underground water from the Division of Water Rights.

7. Unless otherwise approved by the division, all abandoned wells shall be marked with a permanent monument showing the well number, location, and name of the lease. The monument shall consist of a portion of pipe not less than four inches in diameter and not less than ten feet in length, of which four feet shall be above the ground level and the remainder shall be securely embedded in cement. The top of the pipe must be permanently sealed.

8. If any casing is to be pulled after a well has been abandoned, a notice of intent to pull casing must be filed with the division and its approval obtained before the work is commenced.

8.1. The notice shall include full details of the contemplated work. If a log of the well has not already been filed with the division, the notice shall be accompanied by a copy of the log showing all casing seats as well as all water strata and oil and gas shows.

8.2. Where the well has been abandoned and liability has been terminated with respect to the bond previously furnished under R649-3-1, a $10,000 plugging bond shall be filed with the division by the applicant.

R649-3-25. Underground Disposal of Drilling Fluids.

1. Operators shall be permitted to inject and dispose of reserve pit drilling fluids downhole in a well upon submitting an application for such operations to the division and obtaining its approval. Injection of reserve pit fluids shall be considered by the division on a case-by-case basis.

2. Each proposed injection procedure will be reviewed by the division for conformance to the requirements and standards for permitting disposal wells under R649-5-2 to assure protection of fresh-water resources.

3. The subsurface disposal interval shall be verified by temperature log, or suitable alternative, during the disposal operation.

4. The division shall designate other conditions for disposal, as necessary, in order to ensure safe, efficient fluid disposal.

R649-3-26. Seismic Exploration.

1. Form 1, Application for Permit to Conduct Seismic Exploration shall be submitted to the division by the seismic contractor at least seven days prior to commencing any type of seismic exploration operations. In cases of emergency, approval may be obtained either verbally or by telegraphic communication.

1.1. Changes of plans or line locations may be implemented in an emergency situation without division approval.

1.2. Within five days after the change is performed, the seismic contractor shall submit written notice of the change to the division.

1.3. The permit may be revoked at any time by the division for failure to comply with the rules and orders of the board.

1.4. Any request to deviate from the general plugging and operations procedures of these rules shall be included on the permit application.

1.5. The name, address, and telephone number of the seismic contractor's local contact shall be submitted to the division as soon as determined if not available when the permit application is submitted.

1.6. After review of the application for a seismic permit, the division may require written permission of the owner of the surface of the affected land if it is determined that the seismic operation may significantly impact any building, pipeline, water well, flowing spring, or other cultural or natural feature in the area.

1.7. The permit will be in effect for six months from the date of approval. The permit may be extended upon application to and approval by the division.

2. Bonding shall not be required for seismic exploration requiring the drilling of shot holes.

3. Seismic contractors shall give the division at least 24 hours advance notice of the plugging of seismic holes. The notice shall include the date and time the plugging activities are expected to commence, the name and address of the seismic contractor responsible for the holes, and, if different, the name and address of the hole plugging company.

4. Unless the seismic contractor can prove to the satisfaction of the division that another method will provide adequate protection to ground water resources and other man-made or natural features and will provide long-term land stability, the following procedures shall be required for the

conduct of seismic operations and hole plugging:

4.1. Seismic contractors shall take reasonable precautions to avoid conducting shot hole operations closer than 1,320 feet to any building, pipeline, water well, flowing spring, or other cultural/natural feature, e.g., a historical monument, marker, or structure, that may be adversely affected by the seismic operations.

4.2. When nonartesian water is encountered while drilling seismic shot holes, the holes shall be filled from the bottom up with a high grade bentonite/water slurry mixture.

4.3. The slurry shall have a density that is at least four percent greater than the density of fresh water and shall have a marsh funnel viscosity of at least 60 seconds per quart.

4.4. The density and viscosity of the slurry are to be measured prior to adding cuttings. Cuttings not added to the slurry are to be disposed of in accordance with R649-3-26-4.6.

4.5. Upon approval by the division, any other suitable plugging material commonly used in the industry may be substituted for the bentonite/water slurry as long as the physical characteristics of the substitute plugging material are at least comparable to those of the bentonite/water slurry.

4.6. The hole shall be filled with the substitute plugging material from the bottom up to a depth of three feet below ground level.

4.7. A nonmetallic permaplug shall be set at a depth of three feet. The remaining hole shall be filled and tamped to the surface with cuttings and native soil.

4.8. The permaplug shall be imprinted with an approved identification number or mark.

4.9. When drilling with air only, and in completely dry holes, plugging may be accomplished by returning the cuttings to the holes, tamping the returned cuttings to the depth of three feet below ground level, and setting the permaplug topped with more cuttings and soil. A small mound shall be left over the hole for settling allowance.

4.10. If artesian flow, water flowing at the surface, is encountered in the drilling of any seismic hole, cement shall be used to seal off the water flow to prevent cross-flow, erosion, or contamination of fresh water supplies.

4.11. Unless severe weather conditions prevent access, the holes shall be cemented immediately.

4.12. Approval may be granted to seismic operator to plug a flowing hole in another manner, if it is proved to this division that the alternate method will provide adequate protection to ground water resources and provide long term land stability.

4.13. The owner of the surface of the land affected may assume liability for a seismic hole capable of conversion to a water well by sending a letter assuming such liability to the division and by filing an application with and obtaining approval for appropriation of underground water from the Division of Water Rights.

4.14. Shotholes shall be properly plugged and abandoned as soon as practical after the shot has been fired.

4.15. No shothole shall be left unplugged for more than 30 days without approval of the division.

4.16. Until properly plugged, shotholes shall be covered with a tin hat or other similar cover.

4.17. The hats shall be imprinted with the seismic contractor's name or initials.

4.18. Any slurry, drilling fluids, or cuttings that are deposited on the surface around the seismic hole shall be raked or otherwise spread out to a height of not more than one inch above the surface, so that the growth of the natural grasses or foliage will not be impaired.

4.19. Restoration plans required by the Mined Land Reclamation Act, Chapter 8 of Title 40, or by any other surface management agency will be accepted by the division.

4.20. The surface area around each seismic shothole shall be reclaimed and reseeded to its original condition insofar as such restoration is practical and is required by the surface management agency.

4.21. All flagging, stakes, cables, cement, or mud sacks shall be removed from the drill site and disposed of in an acceptable manner.

5. Upon application to the division, approval may be obtained for preplugging of shotholes using coarse bentonite material or a suitable alternative used in the industry. Preplugging of holes in this manner shall be performed according to the following procedures:

5.1. A sales receipt indicating proof of purchase of an adequate amount of coarse bentonite to properly plug all shotholes shall be submitted to the division upon request.

5.2. For shotholes drilled with air that are completely dry, the seismic contractor shall have the option of preplugging with the coarse bentonite material or of using an alternate plugging material under R649-3-26-4.3.

5.3. For conventionally drilled, wet holes, enough approved material shall be used to cover the initial water level, i.e., the depth of the initial water level in the hole prior to adding coarse bentonite material shall be equal to the final plug depth.

5.4. An additional ten feet of approved material shall be placed above this depth and hole cuttings shall be used to fill the remainder of the hole to a depth of three feet below ground level.

5.5. A nonmetallic plug imprinted with an approved identification number or mark shall be installed at this depth.

5.6. The remaining three feet of hole shall be filled and tamped to the surface with cuttings and native soil.

5.7. The remaining cuttings shall be raked or spread to a height not to exceed one inch above ground level.

5.8. When using heliportable drills and insufficient cuttings are available, the hole shall be preplugged with bentonite plugging material or an approved alternate material to a depth of three feet below ground level.

5.9. Installation of a nonmetallic plug and filling the remainder of the hole shall be performed as required by R649-3-26-5.3.

5.10. The coarse bentonite plugging material shall have the following specifications - chemically unaltered sodium bentonite, coarse ground, three quarter inch maximum size, not more than 19% moisture content and not more than 15% inert solids by volume.

6. Form 2, Seismic Exploration Completion Report shall be submitted to the Division within 60 days after completion of each seismic exploration project. The report shall include: Certification by the seismic contractor that all shot holes have been plugged as prescribed by the division.

R649-3-27. Multiple Mineral Development.

1. Drilling operations conducted in areas designated by the board for multiple mineral development shall comply with all rules or orders of the board for drilling, casing, cementing, and plugging except as the general rules or orders may be modified by this rule.

2. It is the policy of the division to promote the development of all mineral resources on land under its jurisdiction. Consistent with that policy, operators engaged in oil and gas operations on lands on which operators are exploring for and developing mineral resources other than oil and gas may enter into a cooperative agreement with these other operators with respect to multiple mineral development. The agreement shall define:

2.1. The extent and limits of liability when one operator, either intentionally or unintentionally, interferes with or damages the deposits of another.

2.2. The coordination of access to and development of the area.

2.3. Mitigation of surface impact including but not limited to issues pertaining to relocation of natural gas pipeline gathering and distribution systems and other surface facilities occasioned by placement of a spent shale pile; phased or coordinated surface occupancy so as to allow each operator to enjoy his respective mineral estate with the least disruption of operations and damage to the oil and gas deposits, either directly or indirectly, through waste; and limitation of oil and gas operations in areas of concentrated surface oil shale facilities.

2.4. Mitigation of subsurface impact including but not limited to issues pertaining to the interface in the underground environment of oil shale mining operations with other mineral operations.

2.5. The extent of exchange of geological, engineering, and production data.

2.6. Other cooperative efforts consistent with multiple mineral development under the rules and orders of the board pertaining to oil and gas operations, oil shale operations, and mined land reclamation.

3. The division, together with the Division of Forestry, Fire and State Lands, and School and Institutional Trust Lands Administration shall be signatory to the agreement, where applicable.

4. In the event the operators cannot agree on cooperative development of their respective mineral deposits, or having once entered into a cooperative agreement subsequently disagree on the application of the terms and provisions thereof, any operator whose oil and gas or mining operation or deposit may be adversely affected or damaged by the operations of another operator may apply to the board for, or the board may on its own motion enter an order, after notice and hearing, delineating the respective rights and obligations of all operators with respect to development of all minerals concerned.

5. After notice and hearing the board may modify its order to more effectively carry out the policies of multiple mineral development.

R649-3-28. Designated Potash Areas.

1. In any area designated as a potash area, either by the board, or an appropriate state or federal government agency, all wells shall be drilled, cased, cemented, and plugged in accordance with the rules and orders of the board. The following minimum requirements and definitions shall also apply to the drilling, logging, casing, and plugging operations within the Salt Section to protect against migration of oil, gas, or water into or within any formation or zone containing potash. As used in this rule, Salt Section shall mean the Paradox Salt Section of Pennsylvanian Age.

2. Any drilling media used through the Salt Section shall be such that sodium chloride is not soluble in the media at normal temperatures.

3. Gamma ray-neutron, gamma ray-sonic or other appropriate logs shall be run promptly through the Salt Section. One field copy of the log through the Salt Section shall be submitted to the division within ten days, or upon the request of the division, whichever is the earlier.

4. A directional survey shall be run from a point at least 20 feet below the Salt Section to the surface. The survey shall be filed with the division prior to completion or plugging and abandonment of the well.

5. In addition to the requirements of the R649-3-8, any casing set into or through the Salt Section shall be cemented solidly through the Salt Section above the casing shoe.

6. Any cement used in setting casing or in plugging that comes in contact with the Salt Section shall be of such chemical composition as to avoid dissolution of the Salt Section and to provide weight, strength, and physical properties sufficient to protect uphole formations and prevent blowouts or uncontrolled flows.

7. If a well is dry, cement plugs at least 200 feet in length shall be placed across the top and the base of the Salt Section, across any oil, gas or water show, and across any potash zone.

7.1. Plugs shall not be required inside a properly cemented casing string. The division shall approve the location of the plugs after examining the appropriate logs, drilling and testing records for the well.

7.2. No well shall be temporarily abandoned with open hole in the Salt Section.

8. The division may inspect the drilling operations at all times, including any mining operations that may affect any drilling or producing well bores. A potash owner, if contributing by agreement to the logging and directional survey costs of a well, may inspect the well for compliance with this rule.

9. Before commencing drilling operations for oil or gas on any land within designated potash area, the operator shall furnish by registered mail, a copy of the APD, together with the plat or map required under R649-3-4, to all potash owners and lessees whose interests are within a radius of 2,640 feet of the proposed well.

10.After proper notice and hearing, the board may modify this rule for a particular well or area by requiring that greater or lesser precautions be taken to prevent the escape of oil, gas, or water from one stratum into another. The board may also expand or contract from the designated potash areas.

R649-3-29. Workable Coal Beds.

1. Prior to commencing drilling operations for oil and gas on any lands where there are mine workings, the operator shall furnish a copy of the APD, a plat or map as required under R649-3-4, and a designation of the proposed angle and direction of the well, if the well is to be deviated substantially from a vertical course, to all coal owners and lessees whose interests are within a radius of 5,280 feet of the proposed well.

2. A well penetrating one or more workable coal beds or mine workings shall be drilled to a depth and shall be of a size, to permit the placing of casing in the hole at the points and in the manner necessary to exclude all oil, gas or gas pressure from the coal bed, other than oil, gas or gas pressure originating in the coal bed.

3. Unless otherwise authorized by the division, the casing run through a coal bed shall be seated at least 50 feet into the closest impervious formation below the coal bed. The casing shall be cemented solidly through the coal bed to a height at least 50 feet into the closest impervious formation above the coal bed.

4. A directional survey or a cement bond log shall be performed and furnished to the division upon written request by the division.

5. Upon penetrating a coal bed the operator shall notify the division, in writing, before completing or plugging and abandoning the well.

R649-3-30. Underground Mining Operations.

1. Prior to commencing drilling operations for oil and gas on any land where there are known or suspected underground mining operations, solution mining operations or surface mining operations, including solar evaporation ponds, the operator shall include in the APD or in a separate cover letter, any information known to the operator concerning the name and address of the owner or operator of the mining workings.

2. The division may, with the concurrence of the operator, change the surface location of the proposed well if there appears to be any possibility of interference between the proposed well bore and the mine workings.

R649-3-31. Designated Oil Shale Areas.

1. Designated oil shale areas are subject to the general drilling, plugging and other performance standards described in

this section, except where the board has adopted, by order, specific standards for individual oil shale areas. As of June 8, 2001, the board has adopted specific standards for individual oil shale areas by board orders in Cause Nos. 190-5(b), 190-3, and 190-13. The board may adopt specific standards in other areas, or modify the above orders, in the future.

2. Lands may be designated as an oil shale area by the board, either upon its own motion, or upon the petition of an interested person following notice and hearing.

3. As used in this rule, oil shale section means the sequence of strata containing oil shale beds, including any interbedded strata not containing oil shale, consisting of the Parachute Creek Member of the Green River Formation of Tertiary Age, defined as the stratigraphic equivalent of the interval between 1,428 feet and 2,755 feet below the Kelly Bushing on the induction-electrical log of the Ute Trail No. 10 API No. 43-047-15382 well drilled by Dekalb Agricultural Association, Inc. and located in the NE 1/4 of Section 34, Township 9 South, Range 21 East, S.L.M., Uintah County, Utah. The Mahogany Zone is defined as the stratigraphic equivalent of the interval between 2,230 feet and 2,360 feet below the Kelly Bushing on the induction-electrical log of the well cited above.

4. For purposes of identifying the oil shale intervals, an appropriate electrical log shall be run through the oil shale section. One field copy of the log through the oil shale section shall be made available to the division pursuant to R649-3-23 or upon written request by the division.

5. On all wells that are intentionally deviated from the vertical within the oil shale section, pursuant to the provisions of R649-3-10 and R649-3-11, a directional survey shall be run from a point at least 20 feet below the oil shale section to the surface and shall thereafter be filed with the division within 20 days after reaching total depth.

6.Any oil shale lessee or operator whose oil shale mine workings reach a distance of 2,640 feet from a producing well or any oil and gas lessee or operator whose producing well is approached by oil shale mine workings within a distance of 2,640 feet shall request agency action with the board. The board may promulgate an order after notice and hearing with respect to the running of a directional survey through the oil shale section, the cost and potential resource loss liability and responsibility as to the oil and gas operator and the oil shale lessee or operator and any other issues regarding multiple mineral development.

7. The directional survey shall be the confidential property of the parties paying for the survey and shall be kept confidential until released by said parties or the division.

8. In addition to the requirements pertaining to the cementing of casing contained in the R649-3-8, any casing set into or through the oil shale section shall be cemented over the entire oil shale section.

9. If a well is dry, junked or abandoned, a cement plug shall be placed across that portion of the oil shale section extending 200 feet above and 200 feet below the longitudinal center of the Mahogany Zone. The cement plug shall not be required inside a casing cemented in accordance with R649-3-31-8. When the casing is cemented, cement plugs 200 feet in length shall be centered across the top and across the base of the Parachute Creek Member of the Green River Formation.

10. In the event the casing is not cemented in accordance with R649-3-31-8, the division shall approve the method and procedure to prevent the migration of oil, gas, and other substances through the wellbore from one formation to another.

11. The division shall approve the adequacy and location of the cement plugs after examining the appropriate logs and drilling and testing records for the well, to ensure that the oil shale section is adequately protected.

12. Upon written request of the owner or operator under R649-8-6, the division shall keep all well logs confidential. The division may inspect the drilling operations at all times, including any mining operations that may affect drilling or producing well bores.

13. Before commencing drilling operations for oil or gas on any land within a designated oil shale area, the operator shall furnish a copy of the APD, together with a plat or map as directed under R649-3-4, to all oil shale owners or their lessees whose interests are within a radius of 2,640 feet of the proposed well. The operator shall furnish a notice of intention to plug and abandon any well in the oil shale area, as required under R649-3-24-1, to the owners or their lessees prior to commencement of plugging operations.

14. The operator shall use generally accepted techniques for vertical or directional drilling as defined under R649-3-10 and R649-3-11 to maintain the well bore within an intact core of a mine pillar. Within 20 days of reaching the total depth or before completion of the well, whichever is the earlier, a directional survey shall be run as prescribed by this rule.

R649-3-32. Reporting of Undesirable Events.

1. The division shall be notified of all fires, leaks, breaks, spills, blowouts, and other undesirable events occurring at any oil or gas drilling, producing, or transportation facility, or at any injection or disposal facility.

2. Immediate notification shall be required for all major undesirable events as outlined in R649-3-32-5.

2.1. Immediate notification shall mean a verbal report submitted to the division as soon as practical but within a maximum of 24 hours after discovery of an undesirable event.

2.2. A complete written report of the incident shall also be submitted to the division within five days following the conclusion of an undesirable event.

2.3. The requirements for written reports are specified in R649-3-32-4.

3. Subsequent notification shall be required for all minor undesirable events as outlined in R649-3-32-6.

3.1. Subsequent notification shall mean a complete written report of the incident submitted to the division within five days following the conclusion of an undesirable event.

3.2. The requirements for written reports are specified in R649-3-32-4.

4. Complete written reports of undesirable events may be submitted on Form 9, Sundry Notice and Report on Wells. The report shall include:

4.1. The date and time of occurrence and, if immediate notification was required, the date and time the occurrence was reported to the Division.

4.2. The location where the incident occurred described by section, township, range, and county.

4.3. The specific nature and cause of the incident.

4.4. A description of the resultant damage.

4.5. The action taken, the length of time required for control or containment of the incident, and the length of time required for subsequent cleanup.

4.6. An estimate of the volumes discharged and the volumes not recovered.

4.7. The cause of death if any fatal injuries occurred.

5. Major undesirable events include the following:

5.1. Leaks, breaks or spills of oil, salt water or oil field wastes that result in the discharge of more than 100 barrels of liquid, that are not fully contained on location by a wall, berm, or dike.

5.2. Equipment failures or other accidents that result in the flaring, venting, or wasting of more than 500 Mcf of gas.

5.3. Any fire that consumes the volumes of liquid or gas specified in R649-3-32-5.1 and R649-3-32-5.2.

5.4. Any spill, venting, or fire, regardless of the volume involved, that occurs in a sensitive area stipulated on the

approval notice of the initial APD for a well, e.g., parks, recreation sites, wildlife refuges, lakes, reservoirs, streams, urban or suburban areas.

5.5. Each accident that involves a fatal injury.

5.6. Each blowout, loss of control of a well.

6. Minor undesirable events include the following:

6.1. Leaks, breaks or spills or oil, salt water, or oil field wastes that result in the discharge of more than ten barrels of liquid and are not considered major events in R649-3-32-5.

6.2 Equipment failures or other accidents that result in the flaring, venting or wasting of more than 50 Mcf of gas and are not considered major events in R649-3-32-5.

6.3. Any fire that consumes the volumes of liquid or specified in R649-3-32-6.1 and R649-3-32-6.2.

6.4. Each accident involving a major or life-threatening injury.

R649-3-33. Drilling Procedures in the Great Salt Lake.

1. For all drilling activities proposed within the Great Salt Lake, the APD required by R649-3-4 shall be filed at least 30 days prior to the date on which the operator intends to commence operations. As part of the APD, the operator shall include:

1.1. The name of the drilling contractor and the number and type of rig to be used.

1.2. An illustration of the boundaries of all state or federal parks, wildlife refuges, or waterfowl management areas within one mile of the proposed well location.

1.3. An illustration of the locations of all evaporation pits, producing wells, structures, buildings, and platforms within one mile of the proposed well location.

1.4.An oil spill emergency contingency plan.

2. Unless permitted by the board after notice and hearing, no well shall be drilled that has a surface location:

2.1. Within 1,320 feet from an evaporation pit without the consent of the operator of such pit.

2.2. Within one mile from the boundary of a state or federal park, wildlife refuge, or waterfowl management area without the consent of the appropriate state or federal regulatory agency.

2.3. Within three miles of Gunnison Island during the Pelican nesting season (March 15 through September 30) or within one mile from said island at any other time.

2.4. Within any area south of the Salt Lake Base Meridian Line.

2.5. Within any area north of Township 10 North.

2.6. Within one mile inside of what would be the water's edge if the water level of the Great Salt Lake were at the elevation of 4,193.3 feet above sea level.

3. Well casing and cementing shall be subject to the following special requirements for the purpose of this rule, the several casing strings in order of normal installation are drive or structural casing, conductor casing, surface casing, intermediate casing, and production casing. All depths refer to true vertical depth:

3.1. The drive or structural casing shall be set by drilling, driving or jetting to a minimum depth of 50 feet below the floor of the lake bed or to such greater depth required to support unconsolidated deposits and to provide hole stability for initial drilling operations. If drilled in, the drilling fluid shall be a type that will not pollute the lake; in addition, a quantity of cement sufficient to fill the annular space back to the lake floor with returns circulated, must be used.

3.2. The conductor casing shall be set at a minimum depth of 200 feet below the floor of the lake, and shall be cemented with a quantity sufficient to fill the annular space back to the lake surface with returns circulated.

3.3. The surface casing shall be set at a minimum depth of 500 feet if the proposed depth of the well is less than 7,000 feet; or 1,000 feet if the proposed depth is over 7,000 feet but less than 11,000 feet; or 1,500 feet if the depth is 11,000 feet. The casing shall be cemented with a quantity sufficient to fill the annular space back to the lake surface with returns circulated, and the bottom of the casing shall be in competent rock.

3.4. The intermediate and production casing shall be set at any time when drilling below the surface casing and hole conditions justify setting casing. This casing will be cemented in such a manner that all hydrocarbons, water aquifers, lost-circulation or zones of significant porosity and permeability, significant beds containing priority minerals, and abnormal pressure intervals are covered or isolated.

3.5. Prior to drilling the plug after cementing, all casing strings except the drive or structural casing, shall be pressure tested. This test shall not exceed the rated working pressure of the casing. If the pressure declines more than ten percent in 30 minutes, or if there are other indications of a leak, corrective measures must be taken until a satisfactory test is obtained. All casing pressure tests shall be recorded on the driller's log.

4. Blowout preventers and related well control equipment shall be installed, and tested in a manner necessary to prevent blowouts and shall be subject to the following special conditions:

4.1. Prior to drilling below the surface casing, blowout prevention equipment shall be installed and maintained ready for use until drilling operations are completed.

4.2. An inside blowout preventer assembly and a full opening string safety valve in the open position shall be maintained on the rig floor at all times while drilling operations are being conducted.

4.2.1. Valves shall be maintained on the rig floor to fit all pipe in the drill string.

4.2.2. A top kelly cock shall be installed below the swivel and another at the bottom of the kelly of such design that it can be run through the blowout preventers.

4.3. Before drilling below the surface casing the blowout prevention equipment shall include a minimum of:

4.3.1. Three remotely and manually controlled, hydraulically operated blowout preventers with a rated working pressure that exceeds the maximum anticipated surface pressure, including one equipped with pipe rams, one with blind rams and one hydril type.

4.3.2. A drilling spool with side outlets, if side outlets are not provided in the blowout preventer body.

4.3.3. A choke manifold.

4.3.4. A kill line.

4.3.5. A fill-up line.

4.4. Ram-type blowout preventers and related control equipment shall be tested to the rated working pressure of the stack assembly or to the working pressure of the casing, whichever is the lesser, at the following times:

4.4.1. When installed.

4.4.2. Before drilling out after each string of casing is set.

4.4.3. Not less than once each week while drilling.

4.4.4. Following repairs that require disconnecting a pressure seal in the assembly.

4.5. The hydril-type blowout preventer shall be tested to 70 percent of the pressure testing requirements of ram-type blowout preventers. The hydril-type blowout preventer shall be actuated on the drill pipe once each week.

4.6. Accumulators or accumulators and pumps shall maintain a reserve capacity at all times to provide for repeated operation of hydraulic preventers.

4.7. A blowout prevention drill shall be conducted weekly for each drilling crew to insure that all equipment is operational and that crews are properly trained to carry out emergency duties. All blowout preventer tests and crew drills shall be recorded on the driller's log.

5. The characteristics and use of drilling mud and the

conduct of related drilling procedures shall be such as are necessary to maintain the well in a safe condition to prevent uncontrolled blowouts of any well. Quantities of mud materials sufficient to insure well control shall be maintained and readily accessible for use at all times.

6. Mud testing equipment shall be maintained on the derrick floor at all times, and mud tests consistent with good operating practice shall be performed daily, or more frequently as conditions warrant. The following mud system monitoring equipment must be installed, with derrick floor indicators, and used throughout the period of drilling after setting and cementing the surface casing:

6.1. A recording mud pit level indicator including a visual and audio warning device to determine mud pit volume gains and losses.

6.2. A mud return indicator to determine when returns have been obtained, or when they occur unintentionally, and additionally to determine that returns essentially equal the pump discharge rate.

7. In the conduct of all oil and gas operations, the operator shall prevent pollution of the waters of the Great Salt Lake. The operator shall comply with the following pollution prevention requirements:

7.1. Oil in any form, liquid or solid wastes containing oil, shall not be disposed of into the waters of the lake.

7.2. Liquid or solid waste materials containing substances that may be harmful to aquatic life or wildlife, or injurious in any manner to life and property, or that in any way unreasonably adversely affects the chemicals or minerals in the lake shall not be disposed of into the waters of the lake.

7.3. Waste materials, exclusive of cuttings and drilling media, shall be transported to shore for disposal.

8. All spills or leakage of oil and liquid or solid pollutants shall be immediately reported to the division. A complete written statement of all circumstances, including subsequent clean-up operation, shall be forwarded to said agencies within 72 hours of such occurrences.

9. Standby pollution control equipment consistent with the state of the art, shall be maintained by, and shall be immediately available to, each operator.

R649-3-34. Well Site Restoration.

1. The operator of a well shall upon plugging and abandonment of the well restore the well site in accordance with these rules.

2. For all land included in the well site for which the surface is federal, Indian, or state ownership, the operator shall meet the well site restoration requirements of the appropriate surface management agency.

3. For all land included in the well site for which the surface is fee or private ownership, the operator shall meet the well site restoration requirements of the private landowner or the minimum well site restoration requirements established by the division.

4. Well site restoration on lands with fee or private ownership shall be completed within one (1) year following the plugging of a well unless an extension is approved by the division for just and reasonable cause.

5. These rules shall not preclude the opportunity for a private landowner to assume liability for the well as a water well in accordance with R649-3-24.6.

6. The operator shall make a reasonable effort to establish surface use agreements with the owners of land included in the well site prior to the commencement of the following actions on fee or private surface:

6.1. Drilling a new well.

6.2. Reentering an abandoned well.

6.3. Assuming operatorship of existing wells.

7. Upon application to the division to perform any of the aforementioned and prior to approval of such actions by the division, the operator shall submit an affidavit to the division stating whether appropriate surface use agreements have been established with and approved by the surface landowners of the well site.

8. If necessary and upon request by the division, the operator shall submit a copy of the established surface use agreements to the division.

9. If no surface use agreement can be established, the division shall establish minimum well site restoration requirements for any well located on fee or private surface for the purposes of final bond release.

10. Established surface use agreements may be modified or terminated at any time by mutual consent of the involved parties; however, the operator shall notify the division if such is the case and if a surface use agreement is terminated without a new agreement established, the division shall establish minimum well site reclamation requirements.

11. The operator shall be responsible for meeting the requirements of any surface use agreement, and it shall be assumed by the division until notified otherwise that surface use agreements remain in full force and effect until all the requirements of the agreement are satisfied or until the agreement has been terminated by mutual consent of the involved parties.

12. The surface use agreement shall stipulate the minimum well site restoration to be performed by the operator in order to allow final release of the bond.

13. The final bond release by the division shall include a determination by the division whether or not the operator has met the requirements of an established surface use agreement, and the division may suspend final bond release until the operator has completed all the requirements of the surface use agreement.

14. The agreement may state requirements for well site grading, contouring, scarification, reseeding, and abandonment of any equipment or facilities for which the landowner agrees to assume liability.

15. The agreement shall not address operations regulated by the rules and orders of the board such as:

15.1. Disposal of drilling fluid, produced fluid, or other fluid waste associated with the drilling and production of the well.

15.2. Reclamation or treating of waste crude oil.

15.3. Any other operation or condition for which the board has jurisdiction.

16. If the operator cannot establish surface use agreements then the operator shall so notify the division.

17. Within 30 days of the notification or as soon as weather conditions permit, the division shall conduct an inspection and evaluation of the well site in order to establish minimum well site restoration requirements for the purpose of final bond release.

18. The operator shall be given notice by the division of the date and time of the inspection, and if the operator cannot attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

19. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner cannot attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

20. The evaluation shall consider the condition of the land prior to disturbance, the extent of proposed disturbance, the degree of difficulty to conduct complete restoration, the potential for pollution, the requirements for abating pollution, and the possible land use after plugging and restoration are

completed.

21. Within 30 days after performing the inspection, the division shall provide the operator with the results of the inspection and the evaluation listing the minimum well site restoration requirements established by the division.

22. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the minimum well site restoration requirements established by the division.

23. If any person disagrees with the results of the inspection and the evaluation and desires a reconsideration of the minimum well site restoration requirements established by the division, such person may submit a request to the board for a hearing and order to modify the requirements.

24. The board, after proper notice and hearing, may issue an order modifying the minimum well site restoration requirements established by the division.

25. The minimum well site restoration requirements established by the division or by board order shall be considered part of any permit granted by the division to conduct operations at a well site, and the inability of the operator to meet such requirements shall be considered grounds for forfeiture of the bond.

26.If the minimum well site restoration requirements suggest to the division that bond coverage for a well should be increased, the division shall take action as stated in R649-3-1.

R649-3-35. Wildcat Wells.

1. For purposes of qualifying for a severance tax exemption under Section 59-5-102(5)(b), an operator must file an application with the division for designation of a wildcat well.

1.1. The application may be filed prior to drilling the well, and a tentative determination of the wildcat designation will be issued at that time. An application or request for final designation of wildcat status as appropriate, must be filed at the time of filing of Form 8, Well Completion or Recompletion Report and Log.

1.2. The application shall contain, where applicable, the following information:

1.2.1. A plat map showing the location of the well in relation to producing wells within a one mile radius of the wellsite.

1.2.2. A statement concerning the producing formation or formations in the wildcat well and also the producing formation or formations of the producing wells in the designated area, including completion reports and other appropriate data.

1.2.3. Stratigraphic cross sections through the producing wells in the designated area and the proposed wildcat well.

1.2.4. A statement as to whether the well is in a known geologic structure. However, whether the well is in a known geologic structure shall not be the sole basis of determining whether the well is a wildcat.

1.2.5. Bottomhole pressures, as applicable, in a wildcat well compared to the wells producing in the designated area from the same zone.

1.2.6. Any other information deemed relevant by the applicant or requested by the division.

2. Information derived from well logs, including certain information in completion reports, stratigraphic cross sections, bottomhole pressure data, and other appropriate data provided in R649-3-35-1 will be held confidential in accordance with R649-2-11 at the request of the operator.

3. The division shall review the submitted information and advise the operator and the State Tax Commission of its decision regarding the wildcat well designation as related to Section 59-5-102(5)(b).

4. The division is responsible for approval of a request for designation of a well as a wildcat well. If the operator disagrees with the decision of the division, the decision maybe appealed to the board. Appeals of all other tax-related decisions concerning wildcat wells should be made to the State Tax Commission.

R649-3-36. Shut-in and Temporarily Abandoned Wells.

1. Wells may be initially shut-in or temporarily abandoned for a period of twelve (12) consecutive months. If a well is to be shut-in or temporarily abandoned for a period exceeding twelve (12) consecutive months, the operator shall file a Sundry Notice providing the following information:

1.1. Reasons for shut-in or temporarily abandonment of the well,

1.2. The length of time the well is expected to be shut-in or temporarily abandoned, and

1.3. An explanation and supporting data, for showing the well has integrity, meaning that the casing, cement, equipment condition, static fluid level, pressure, existence or absence of Underground Sources of Drinking Water and other factors do not make the well a risk to public health and safety or the environment.

2. After review the Division will either approve the continued shut-in or temporarily abandoned status or require remedial action to be taken to establish and maintain the well's integrity.

3. After five (5) years of nonactivity or nonproductivity, the well shall be plugged in accordance with R649-3-24, unless approval for extended shut-in time is given by the Division upon a showing of good cause by the operator.

4. If after a five (5) year period the well is ordered plugged by the Division, and the operator does not comply, the operator shall forfeit the drilling and reclamation bond and the well shall be properly plugged and abandoned under the direction of the Division.

R649-3-37. Enhanced Recovery Project Certification.

1. In order for incremental production achieved from an enhanced recovery project to qualify for the severance tax rate reduction provided under Subsection 59-5-102(7), the operator on behalf of the producers shall present evidence demonstrating that the recovery technique or techniques utilized qualify for an enhanced recovery determination and the Board must certify the project as an enhanced recovery project.

2. For enhanced recovery projects certified by the Board after January 1, 1996:

2.1. As part of the process of certifying incremental production that qualifies for a reduction in the severance tax rate under Subsection 59-5-102(7), the operator shall furnish the Division:

2.1.1. An extrapolation (projection) and tabulation of expected non-enhanced recovery of oil and gas production from the project.

2.1.2. The projection shall be for not less than seventy-two (72) months commencing with the first month following the project certification by the Board.

2.1.3. The projection shall be based on production history of all wells within the project area for not less than twelve (12) months immediately preceding either certification or commencement of the project; reservoir and production characteristics; and the application of generally accepted petroleum engineering practices.

2.1.4. The projected production volumes approved by the division shall serve as the base level production for purposes of determining the incremental oil and gas production that qualifies for a reduction in the severance tax rate.

2.2. The operator shall provide a statement as to all assumptions made in preparing the projection and any other information concerning the project that the division may

reasonably require in order to evaluate the operator's projection.

2.3. An operator's request for incremental production certification may be approved administratively by the Director or authorized agent. The Director or authorized agent shall review the request within 30 days after its receipt and advise the operator of the decision. If the operator disagrees with the Director or authorized agent's decision, the operator may request a hearing before the Board at its next regularly scheduled hearing. The Director or authorized agent may also refer the matter to the Board if a decision is in doubt.

2.4. Upon approval of a request for incremental production certification, the Director or authorized agent shall forward a copy of the certification to the Utah Tax Commission.

R649-3-38. Surface Owner Protection Act Provisions.

1. These rules and all subsequent revisions as approved by the board are developed pursuant to the requirements of the Surface Owner Protection Act of 2012 in Title 40, Chapter 6. It is the intent of the board and the division to encourage owners or operators and surface land owners to enter into surface use agreements. Surface use agreements should fairly consider the respective rights of the owner or operator and the surface land owner and also comply with the requirements of R649-3-34.

2. For the purposes of R649-3-38, these definitions are utilized.

2.1. "Crops" means any growing vegetative matter used for an agricultural purpose, including forage for grazing and domesticated animals.

2.2. "Oil and gas operations" means to explore for, develop, or produce oil and gas.

2.3. "Surface land" means privately owned land overlying privately owned oil and gas resources, upon which oil and gas operations are conducted, and owned by a surface land owner.

2.4. "Surface land owner" means a person who owns, in fee simple absolute, all or part of the surface land as shown by the records of the county where the surface land is located. Surface land owner does not include the surface land owner's lessee, renter, tenant, or other contractually related person.

2.5. "Surface land owner's property" means a surface land owner's surface land, crops on the surface land, and existing improvements on the surface land.

2.6. "Surface use agreement" means an agreement between an owner or operator and a surface land owner addressing the use and reclamation of surface land owned by the surface land owner and compensation for damage to the surface land caused by oil and gas operations that result in loss of the surface land owner's crops on the surface land, loss of value of existing improvements owned by the surface land owner on the surface land, and permanent damage to the surface land.

3. Oil and gas operations shall be conducted in such manner as to prevent unreasonable loss of a surface land owner's crops on surface land, unreasonable loss of value of existing improvements owned by a surface land owner on surface land, and unreasonable permanent damage to surface land.

4. In accordance with Section 40-6-20, an owner or operator may enter onto surface land under which the owner or operator holds rights to conduct oil and gas operations and use the surface land to the extent reasonably necessary to conduct oil and gas operations and consistent with allowing the surface land owner the greatest possible use of the surface land owner's property, to the extent that the surface land owner's use does not interfere with the owner's or operator's oil and gas operations.

4.1. Except as is reasonably necessary to conduct oil and gas operations, an owner or operator shall mitigate the effects of accessing the surface land owner's surface land, minimize interference with the surface land owner's use of the surface land owner's property, and compensate a surface land owner for unreasonable loss of a surface land owner's crops on the surface land, unreasonable loss of value to existing improvements owned by a surface land owner on the surface land, and unreasonable permanent damage to the surface land.

4.2. An owner or operator may but is not required to obtain location or spacing exceptions from the division or board or utilize directional or horizontal drilling techniques that are not technologically feasible, economically practicable, or reasonably available.

5. In accordance with Section 40-6-21, non-binding mediation may be requested by a surface land owner and an owner or operator, by providing written notice to the other party, if they are unable to agree on the amount of damages for unreasonable crop loss on the surface land, unreasonable loss of value to existing improvements owned by the surface land owner on the surface land, or unreasonable permanent damage to the surface land.

5.1. A mediator may be mutually selected by a surface land owner and an owner or operator from a listing of qualified mediators maintained by the division and the Utah Department of Agriculture and Food, which includes the mediators identified on the Utah State Courts website with "property" or "real estate" as an area of expertise, or a mediator may be selected from any other source.

5.2. The surface land owner and the owner or operator shall equally share the cost of the mediator's services.

5.3. The mediation provisions of this subsection do not prevent or delay an owner or operator from conducting oil and gas operations in accordance with applicable law.

6. A surface use bond shall be furnished to the division by the owner or operator, in accordance with the following provisions of Subsection R649-3-38-6.

6.1. A surface use bond does not apply to surface land where the surface land owner is a party to, or a successor of a party to:

6.1.1. A lease of the underlying privately owned oil and gas;

6.1.2. A surface use agreement applicable to the surface land owner's surface land; or

6.1.3. A contract, waiver, or release addressing an owner's or operator's use of the surface land owner's surface land.

6.2. The surface use bond shall be in the amount of $6,000 per well site and shall be conditioned upon the performance by the owner or operator of the duty to protect a surface land owner against unreasonable loss of crops on surface land, unreasonable loss of value of existing improvements, and unreasonable permanent damage to surface land.

6.3. The surface use bond shall be furnished to the division on Form 4S after good faith negotiation and prior to the approval of the application for permit to drill. The mediation process identified in R649-3-38-5 may commence and is encouraged to be completed.

6.4. The division may accept a surface use bond in the form of a cash account as provided in R649-3-1-10.2.1 or a certificate of deposit as provided in R649-3-1-10.2.3. Interest will remain within the account.

6.5. The division may allow the owner or operator, or a subsequent owner or operator, to replace an existing surface use bond with another bond that provides sufficient coverage.

6.6. The surface use bond shall remain in effect by the operator until released by the division.

6.7. The surface use bond shall be payable to the division for the use and benefit of the surface land owner, subject to the provisions of these rules.

6.8. The surface use bond shall be released to the owner or operator after the division receives sufficient information that:

6.8.1. A surface use agreement or other contractual agreement has been reached;

6.8.2. Final resolution of the judicial appeal process for an action for unreasonable damages, as defined in R649-3-38-6.2, has occurred and have been paid; or

6.8.3. Plugging and abandonment of the well is completed.

6.9. The division shall make a reasonable effort to contact the surface land owner prior to the division's release of the surface use bond.

R649-3-39. Hydraulic Fracturing.

1. Chemical disclosure.

1.1. The amount and type of chemicals used in a hydraulic fracturing operation shall be reported to www.fracfocus.org within 60 days of hydraulic fracturing completion for public disclosure.

2. Wellbore integrity.

2.1. The operator shall comply with R649-3-8, Casing Program.

1. The method of cementing casing in the hole shall be by pump and plug method, displacement method, or other method approved by the division.

2. When drilling in wildcat territory or in any field where high pressures are probable, the conductor and surface strings of casing must be cemented throughout their lengths, unless another procedure is authorized or prescribed by the division, and all subsequent strings of casing must be securely anchored.

3. In areas where the pressures and formations to be encountered during drilling are known, sufficient surface casing shall be run to:

3.1. Reach a depth below all known or reasonably estimated, utilizable, domestic, fresh water levels.

3.2. Prevent blowouts or uncontrolled flows.

4. The casing program adopted must be planned to protect any potential oil or gas horizons penetrated during drilling from infiltration of waters from other sources and to prevent the migration of oil, gas, or water from one horizon to another.

2.2. The operator shall comply with R649-3-9, Protection of Upper Productive Strata.

1. No well shall be deepened for the purpose of producing oil or gas from a lower stratum until all upper productive strata are protected, either permanently by casing and cementing or temporarily through the use of tubing and packer, to the satisfaction of the division.

2. In any well that appears to have defective, poorly cemented, or corroded casing that will permit or may create underground waste or may contaminate underground or surface fresh water, the operator shall proceed with diligence to use the appropriate method and means to eliminate such hazard of underground waste or contamination of fresh water. If such hazard cannot be eliminated, the well shall be properly plugged and abandoned.

3. Natural gas that is encountered in substantial quantities in any section of a drilled hole above the ultimate objective shall be shut off with reasonable diligence, either by mudding, casing or other approved method, and shall be confined to its original source to the satisfaction of the division.

2.3. The operator shall comply with R649-3-13, Casing Tests.

1. In order to determine the integrity of the casing string set in the well, the operator shall, unless otherwise requested by the division, perform a pressure test of the casing to the pressures specified under R649-3- 7.4 before drilling out of any casing string, suspending drilling operations, or completing the well.

2.4. The operator shall comply with R649-3-6, Drilling Operations.

1. Drilling operations shall be conducted according to the drilling program submitted on the original APD and as approved by the division. Any change of plans to the original drilling program shall be submitted to the division by using Form 9, Sundry Notices and Reports on Wells and shall receive division approval prior to implementation. A change of plans necessary because of emergency conditions may be implemented without division approval. The operator shall provide the division with verbal notice of the emergency change within 24 hours and written notice within five days.

2. An operator of a drilling well as designated in R649-2-4 shall comply with reporting requirements as follows:

2.1. The spudding in of a well shall be reported to the division within 24 hours. The report should include the well name and number, drilling contractor, rig number and type, spud date and time, the date that continuous drilling will commence, the name of the person reporting the spud, and a contact telephone number.

2.2. The operator shall file Form 6, Entity Action Form with the division within five working days of spudding in a well. The division will assign the well an entity number that will identify the well on the operator's monthly oil and gas production and disposition reports.

2.3. The operator shall notify the division 24 hours in advance of all testing to be performed on the blowout preventer equipment on a well.

2.4. The operator shall submit a monthly status report for each drilling well on Form 9, Sundry Notices and Reports on Wells. The report should include the well depth and a description of the operations conducted on the well during the month. The report shall be submitted no later than the fifth day of the following calendar month until such time as the well is completed and the well completion report is filed.

2.5. The operator shall notify the division 24 hours in advance of all casing tests performed in accordance with R649-3-13.

2.6. The operator shall report to the division all fresh water sand encountered during drilling on Form 7, Report of Water Encountered During Drilling. The report shall be filed with Form 8, Well Completion or Recompletion Report and Log.

2.5. The operator shall comply with R649-3-7, Well Control.

1. When drilling in wildcat territory, the owner or operator shall take all reasonably necessary precautions for keeping the well under control at all times and shall provide, at the time the well is started, proper high pressure fittings and equipment. All pressure control equipment shall be maintained in good working condition at all times.

2. In all proved areas, the use of blowout prevention equipment "BOPE" shall be in accordance with the established and approved practice in the area. All pressure control equipment shall be maintained in good working condition at all times.

3. Upon installation, all ram type BOPE and related equipment, including casing, shall be tested to the lesser of the full manufacturer's working pressure rating of the equipment, 70% of the minimum internal yield pressure of any casing subject to test, or one psi/ft of the last casing string depth. Annular type BOPE are to be tested in conformance with the manufacturer's published recommendations. The operator shall maintain records of such testing until the well is completed and will submit copies of such tests to the division if required.

4. In addition to the initial pressure tests, ram and annular type preventers shall be checked for physical operation each trip. All BOPE components, with the exception of an annular type blowout preventer, shall be tested monthly to the lesser of 50% of the manufacturer's rated pressure of the BOPE, the maximum anticipated pressure to be contained at the surface, one psi/ft of the last casing string depth, or 70% of the minimum internal yield pressure of any casing subject to test.

5. If a pressure seal in the assembly is disassembled, a test of that seal shall be conducted prior to the resumption of any drilling operation. A shell test of the affected seal shall be adequate. If the affected seal is integral with the BOP stack, either pipe or blind ram, necessitating a test plug to be set in order to test the seal, the division may grant approval to proceed

without testing the seal if necessary for prudent operations.

6. All tests of BOPE shall be noted on the driller's log, IADC report book, or equivalent and shall be available for examination by the director or an authorized agent during routine inspections.

7. BOPE used in possible or probable hydrogen sulfide or sour gas formations shall be suitable for use in such areas.

2.6. The operator shall comply with R649-3-23, Well Workover and Recompletion.

1. Requests for approval of a notice of intention to perform a workover or recompletion shall be filed by an operator with the division on Form 9, Sundry Notices and Reports on Wells, or if the operation includes substantial redrilling, deepening, or plugging back of an existing well, on Form 3, Application for Permit to Drill, Deepen or Plug Back.

2. The division shall review the proposed workover or recompletion for conformance with the Oil and Gas Conservation General Rules and advise the operator of its decision and any necessary conditions of approval.

3. Recompletions shall be conducted in a manner to protect the original completion interval(s) and any other known productive intervals.

4. The same tests and reports are required for any well recompletion as are required following an original well completion.

5. The applicant shall file a subsequent report of workover on Form 9, Sundry Notices and Reports, or a subsequent report of recompletion on Form 8, Well Completion or Recompletion Report and Log, within 30 days after completing the workover or recompletion operations.

3. Management of flowback water and surface protection.

3.1. The operator shall comply with R649-3-15, Pollution and Surface Damage Control.

1. The operator shall take all reasonable precautions to avoid polluting lands, streams, reservoirs, natural drainage ways, and underground water.

1.1. The owner or operator shall carry on all operations and maintain the property at all times in a safe and workmanlike manner having due regard for the preservation and conservation of the property and for the health and safety of employees and people residing in close proximity to those operations.

1.2. At a minimum, the owner or operator shall:

1.2.1. Take reasonable steps to prevent and shall remove accumulations of oil or other materials deemed to be fire hazards from the vicinity of well locations, lease tanks and pits.

1.2.2. Remove from the property or store in an orderly manner, all scrap or other materials not in use.

1.2.3. Provide secure workmanlike storage for chemical containers, barrels, solvents, hydraulic fluid, and other non-exempt materials.

1.2.4. Maintain tanks in a workmanlike manner that will preclude leakage and provide for all applicable safety measures, and construct berms of sufficient height and width to contain the quantity of the largest tank at the storage facility.

1.2.4.1. The use of crude or produced water storage tanks without tops is strictly prohibited except during well testing operations.

1.2.5. Catch leaks and drips, contain spills, and cleanup promptly.

1.2.6. Waste reduction and recycling should be practiced in order to help reduce disposal volumes.

1.2.7. Produced water, tank bottoms and other miscellaneous waste should be disposed of in a manner that is in compliance with these rules and other state, federal, or local regulations or ordinances.

1.2.8. In general, good housekeeping practices should be used.

3.2. The operator shall comply with R649-3-16, Reserve Pits and Other On-site Pits.

1. Small onsite oil field pits including, but not limited to, reserve pits, emergency pits, workover and completion pits, storage pits, pipeline drip pits, and sumps shall be located and constructed in such a manner as to contain fluids and not cause pollution of waters and soils. They shall be located and constructed according to the Division guidelines for onsite pits. See Ranking Criteria for Reserve and Onsite Pit Liner Requirements, on the Oil, Gas and Mining web page.

2. Reserve pit location and construction requirements including liner requirements will be discussed at the predrill site evaluation. Special stipulations concerning the reserve pit will be included as part of the Division's approval to drill.

3. Following drilling and completion of the well the reserve pit shall be closed within one year, unless permission is granted by the Division for a longer period.

4. Pit contents shall meet the Division's Cleanup Levels (guidance document for numeric clean-up levels) or background levels prior to burial.

5. The contents may require treatment to reduce mobility and/or toxicity in order to meet cleanup levels.

6. The alternative to meeting cleanup levels would be transporting of material to an appropriate disposal facility.

3.3. The operator shall comply with R649-9-2, General Waste Management.

1. Wastes addressed by these rules are E and P Wastes that are exempt from the RCRA hazardous waste management requirements.

1.1. Before using a commercial disposal facility the operator may contact the Division to verify the status of the facility. The Division regularly updates this information on the Division of Oil, Gas and Mining web site.

1.2. Each site and/or facility used for disposal must be permitted and in good standing with the division.

2. Reduction of the amount of material generated that must be disposed of is the preferred practice.

2.1. Recycling should be used whenever possible and practical.

2.2. In general, good housekeeping practices shall be used.

2.3. Operators shall catch leaks, drips, contain spills, and cleanup promptly.

3. The method of disposal used shall be compatible with the waste that is the subject of disposal.

3.1. RCRA exempt waste shall not be mixed with nonexempt waste.

4. Every operator shall file an Annual Waste Management Plan by January 15 of each year to account for the proper disposition of produced water and other E and P Wastes.

4.1. If changes are made to the plan during the year, then the operator shall notify the division in writing of this change.

4.2. This plan will include the type and estimated annual volume of wastes that will be or have been generated.

4.3. The disposal facilities private or to be used for disposal,

4.4. The description of any waste reduction or minimization procedures.

4.5. Any onsite disposal/treatment methods or programs to be implemented by the operator.

3.4. The operator shall comply with R649-5-1, Requirements for Injection of Fluids Into Reservoirs.

1. Operations to increase ultimate recovery, such as cycling of gas, the maintenance of pressure, the introduction of gas, water or other substances into a reservoir for the purpose of secondary or other enhanced recovery or for storage and the injection of water into any formation for the purpose of water disposal shall be permitted only by order of the board after notice and hearing.

2. A petition for authority for the injection of gas, liquefied petroleum gas, air, water, or any other medium into any formation for any reason, including but not necessarily

limited to the establishment of or the expansion of waterflood projects, enhanced recovery projects, and pressure maintenance projects shall contain:

2.1. The name and address of the operator of the project.

2.2. A plat showing the area involved and identifying all wells, including all proposed injection wells, in the project area and within one-half mile radius of the project area.

2.3. A full description of the particular operation for which approval is requested.

2.4. A description of the pools from which the identified wells are producing or have produced.

2.5. The names, description and depth of the pool or pools to be affected.

2.6. A copy of a log of a representative well completed in the pool.

2.7. A statement as to the type of fluid to be used for injection, its source and the estimated amounts to be injected daily.

2.8. A list of all operators or owners and surface owners within a one-half mile radius of the proposed project.

2.9. An affidavit certifying that said operators or owners and surface owners within a one-half mile radius have been provided a copy of the petition for injection.

2.10. Any additional information the board may determine is necessary to adequately review the petition.

3. Applications as required by R649-5-2 for injection wells that are located within the project area, may be submitted for board consideration and approval with the request for authorization of the recovery project.

4. Established recovery projects may be expanded and additional wells placed on injection only upon authority from the board after notice and hearing or by administrative approval.

5. If the proposed injection interval can be classified as an USDW, approval of the project is subject to the requirements of R649-5-4.

3.5. The operator shall comply with R649-5-2, Requirements for Class II Injection Wells Including Water Disposal, Storage and Enhanced Recovery Wells.

1. Injection wells shall be completed, equipped, operated, and maintained in a manner that will prevent pollution and damage to any USDW, or other resources and will confine injected fluids to the interval approved.

2. The application for an injection well shall include a properly completed UIC Form 1 and the following:

2.1. A plat showing the location of the injection well, all abandoned or active wells within a one- half mile radius of the proposed well, and the surface owner and the operator of any lands or producing leases, respectively, within a one-half mile radius of the proposed injection well.

2.2. Copies of electrical or radioactive logs, including gamma ray logs, for the proposed well run prior to the installation of casing and indicating resistivity, spontaneous potential, caliper, and porosity.

2.3. A copy of a cement bond or comparable log run for the proposed injection well after casing was set and cemented.

2.4. Copies of logs already on file with the division should be referenced, but need not be refiled.

2.5. A description of the casing or proposed casing program of the injection well and of the proposed method for testing the casing before use of the well.

2.6. A statement as to the type of fluid to be used for injection, its source and estimated amounts to be injected daily.

2.7. Standard laboratory analyses of:

2.7.1. The fluid to be injected,

2.7.2. The fluid in the formation into which the fluid is being injected, and

2.7.3. The compatibility of the fluids.

2.8. The proposed average and maximum injection pressures.

2.9. Evidence and data to support a finding that the proposed injection well will not initiate fractures through the overlying strata or a confining interval that could enable the injected fluid or formation fluid to enter any fresh water strata.

2.10. Appropriate geological data on the injection interval with confining beds clearly labeled,

2.10.1. Nearby Underground Sources of Drinking Water, including the geologic formation name,

2.10.2. Lithologic descriptions, thicknesses, depths, water quality, and lateral extent;

2.10.3. Information relative to geologic structure near the proposed well that may effect the conveyance and/or storage of the injected fluids.

2.11. A review of the mechanical condition of each well within a one-half mile radius of the proposed injection well to assure that no conduit exists that could enable fluids to migrate up or down the wellbore and enter improper intervals.

2.12. An affidavit certifying that a copy of the application has been provided to all operators, owners, and surface owners within a one-half mile radius of the proposed injection well.

2.13. Any other additional information that the board or division may determine is necessary to adequately review the application.

3. Applications for injection wells that are within a recovery project area will be considered for approval:

3.1. Pursuant to R649-5-1-3.

3.2. Subsequent to board approval of a recovery project pursuant to R649-5-1-1.

4. Approval of an injection well is subject to the requirements of R649-5-4, if the proposed injection interval can be classified as an USDW.

5. In addition to the requirements of this section, the provisions of R649-3-1, R649-3-4, R649-3-24, R649-3-32, and R649-8-1 and R649-10 shall apply to all Class II injection wells.

3.6. The operator shall comply with R649-5-3, Noticing and Approval of Injection Wells.

1. Applications for injection wells submitted pursuant to R649-5-1-3 shall be noticed in conformance with the procedural rules of the board as part of the hearing for the recovery project. Any person desiring to object to approval of such an application for an injection well shall file the objection in conformance with the procedural rules of the board.

2. The receipt of a complete and technically adequate application, other than an application submitted pursuant to R649-5-3-1, shall be considered as a request for agency action by the Division and shall be published in a daily newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county where the proposed well is located. A copy of the notice of agency action shall also be sent to all parties including government agencies. The notice of agency action shall contain at least the following information:

2.1. The applicant's name, business address, and telephone number.

2.2. The location of the proposed well.

2.3. A description of proposed operation.

3. If no written objection to the application for administrative approval of an injection well is received by the division within 15 days after publication of the notice of agency action, or an aquifer exemption is not required in accordance with R649-5-4, and a board hearing is not otherwise required, the application may be considered and approved administratively.

4. If a written objection to an application for administrative approval of an injection well is received by the division within 15 days after publication of the notice of application, or if a hearing is required by these rules or deemed advisable by the director, the application shall be set for notice

and hearing by the board.

5. The director shall have the authority to grant an exception to the hearing requirements of R649-5- 1.1 for conversion to injection of additional wells that constitute a modification or expansion of an authorized project provided that any such well is necessary to develop or maintain thorough and efficient recovery operations for any authorized project and provided that no objection is received pursuant to R649-5-3-3.

6. The director shall have authority to grant an exception to the hearing requirements of R649-5-1-1 for water disposal wells provided disposal is into a formation or interval that is not currently nor anticipated to be an underground source of drinking water and provided that no objection is received pursuant to R649-5-3-3.

3.7. The operator shall comply with R649-5-4, Aquifer Exemption.

1. The board may, after notice and hearing and subject to the EPA approval, authorize the exemption of certain aquifers from classification as an USDW based upon the following findings:

1.1. The aquifer does not currently serve as a source of drinking water.

1.2. The aquifer cannot now and will not in the future serve as a source of drinking water for any of the following reasons:

1.2.1. The aquifer is mineral, hydrocarbon or geothermal energy producing, or it can be demonstrated by the applicant as part of a permit application for a Class II well operation, to contain minerals or hydrocarbons that, considering their quantity and location, are expected to be commercially producible.

1.2.2. The aquifer is situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impractical.

1.2.3. The aquifer is contaminated to the extent that it would be economically or technologically impractical to render water from the aquifer fit for human consumption.

1.2.4. The aquifer is located above a Class III well mining area subject to subsidence or catastrophic collapse.

1.3. The total dissolved solids content of the water from the aquifer is more than 3,000 and less than 10,000 mg/l, and the aquifer is not reasonably expected to be used as a source of fresh or potable water.

2. Interested parties desiring to have an aquifer exempted from classification as a USDW, shall submit to the division an application that includes sufficient data to justify the proposal. The division shall consider the application and if appropriate, will advise the applicant to submit a request to the board for an aquifer exemption.

3.8. The operator shall comply with R649-5-5, Testing and Monitoring of Injection Wells.

1. Before operating a new injection well, the casing shall be tested to a pressure not less than the maximum authorized injection pressure, or to a pressure of 300 psi, whichever is greater.

2. Before operating an existing well newly converted to an injection well, the casing outside the tubing shall be tested to a pressure not less than the maximum authorized injection pressure, or to a pressure of 1,000 psi, whichever is lesser, provided that each well shall be tested to a minimum pressure of 300 psi.

3. In order to demonstrate continuing mechanical integrity after commencement of injection operations, all injection wells shall be pressure tested or monitored as follows:

3.1. Pressure Test. The casing-tubing annulus above the packer shall be pressure tested not less than once each five years to a pressure equal to the maximum authorized injection pressure or to a pressure of 1,000 psi, whichever is lesser, provided that no test pressure shall be less than 300 psi. A report documenting the test results shall be submitted to the division.

3.2. Monitoring. If approved by the director, and in lieu of the pressure testing requirement, the operator may monitor the pressure of the casing-tubing annulus monthly during actual injection operations and report the results to the division.

3.3. Other test procedures or devices such as tracer surveys, temperature logs or noise logs may be required by the division on a case-by-case basis.

3.4. The operator shall sample and analyze the fluids injected in each disposal well or enhanced recovery project at sufficiently frequent time intervals to yield data representative of fluid characteristics, and no less frequently than every year.

3.5. The operator shall submit a copy of the fluid analysis to the division with the Annual Fluid Injection Report, UIC Form 4.

3.9. The operator shall comply with R649-5-6, Duration of Approval for Injection Wells.

1. Approvals or orders authorizing injection wells shall be valid for the life of the well, unless revoked by the board for just cause, after notice and hearing.

2. An approval may be administratively amended if:

2.1. There is a substantial change of conditions in the injection well operation.

2.2. There are substantial changes to the information originally furnished.

2.3. Information as to the permitted operation indicates that an USDW is no longer being protected.

KEY: oil and gas law

February 26, 2015	**40-6-1 et seq.**
Notice of Continuation February 3, 2012	**40-6-5**
	40-6-20
	40-6-21

R651. Natural Resources, Parks and Recreation.
R651-101. Adjudicative Proceedings.
R651-101-1. Authority and Effective Date.

This rule does not apply to an Agency action that is not governed by the Administrative Procedures Act and the laws of the State of Utah, including:

(a) Subsection 63G-4-102, Administrative Procedures Act; and

(b) Title 63G, Chapter 6, Utah Procurement Code.

R651-101-2. Definitions.

These definitions are in addition to definitions in Section 63-46b-2.

(a) "Adjudicative proceeding" means a Division action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Division actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend the authority, right, permit or license; and judicial review of all such actions. Any matters not governed by Chapter 63-46b shall not be included within this definition.

(b) "Board" means the Board of Parks and Recreation.

(c) "Director" means the Director of the Division.

(d) "Division" means the Division of Parks and Recreation and (as the context requires) its officers, employees, or agents.

(e) "Party" means the Division, Director or other person commencing an adjudicative proceeding, all respondents, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

(f) "Presiding officer" means the Director or an individual or body of individuals designated by the Director, rules or statute to conduct a particular adjudicative proceeding.

(g) "Respondent" means any person against whom an adjudicative proceeding is initiated, whether by the Division, Director or any other person.

The meaning of any other words used shall be as defined in Chapters 41-22, 63-11, 73-18, 73-18a or 73-18b; or any rules subsequently promulgated.

R651-101-3. Designation of Informal Proceedings.

All adjudicative proceedings of the Division or Director are hereby designated as informal proceedings.

R651-101-4. Construction.

(a) These rules shall be construed in accordance with the Utah Administrative Procedures Act, Chapter 63-46b, and supersede any conflicting provision of procedural rules promulgated by the Board or Division.

(b) These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the Division or Director.

(c) Deviation from Rules

For good cause, and where no party will be prejudiced, the Division or Director may permit a deviation from these rules except where precluded by statute.

(d) Computation of Time

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

R651-101-5. Commencement of Proceedings.

(a) Proceedings Commenced by the Division or Director.

All informal adjudicative proceedings commenced by the Division or Director, shall be initiated as provided by applicable statute, Division rules, and Section 63-46b-3(2)(a).

(b) Proceedings Commenced by Persons Other than the Division or Director.

(1) All informal adjudicative proceedings commenced by persons other than the Division or Director shall be commenced by either completing prepared forms requesting agency action on file at the Division or, if no such forms are required to initiate a particular proceeding, by submitting in writing a request for agency action in accordance with Subsection 63-46b-3(2)(c).

R651-101-6. Pleadings.

(a) Pleadings before the Presiding Officer for administrative hearings shall consist of a notice of agency action, a request for agency action, responses and motions together with affidavits, briefs, memoranda of law and fact in support thereof.

(b) Motions may be submitted for the Presiding Officer's consideration on either written or oral argument and the filing of affidavits in support or contravention thereof may be permitted. Any written motion shall be accompanied by a short supporting memorandum of fact and law.

(c) Amendments to Pleadings

The Presiding Officer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.

R651-101-7. Hearings.

(a) The Division, Director or a Presiding Officer shall hold a hearing if a hearing is required by statute, or if a hearing is permitted by statute and is requested by a party within 30 days of the commencement of the adjudicative proceeding. The Division, Director or a Presiding Officer may at their discretion initiate a hearing to determine matters within their authority.

(b) Notice of the hearing will be served on all parties by regular mail at least ten (10) days prior to the hearing.

(c) If no hearing is held in a particular adjudicative proceeding, the Presiding Officer shall within a reasonable time issue a decision pursuant to Subsection 63-46b-5(1)(i).

R651-101-8. Intervention.

Intervention is prohibited except where a federal statute or rule requires that a state permit intervention.

R651-101-9. Pre-hearing Procedure.

The Presiding Officer may, upon written notice to all parties of record, hold a pre-hearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to such other matters as may expedite the orderly conduct of the proceedings or the settlement thereof.

R651-101-10. Continuance.

If application is made to the Presiding Officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties the Presiding Officer may grant a continuance of the hearing.

R651-101-11. Parties to a Hearing.

(a) All persons defined as a "party" are entitled to participate in hearings before the Division or Director.

(b) All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

R651-101-12. Appearances and Representation.

(a) Taking Appearances

Parties shall enter their appearances at the beginning of a hearing or at such time as may be designated by the Presiding Officer by giving their names and addresses and stating their positions or interests in the proceeding.

(b) Representation of Parties

(1) An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

(2) Any party may be represented by an attorney licensed to practice in the State of Utah.

R651-101-13. Failure to Appeal--Default.

When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the Presiding Officer may continue the matter or may enter an order of default as provided by Section 63-46b-11 or may proceed to hear the matter in the absence of the defaulting party.

R651-101-14. Discovery, Testimony, Evidence and Argument.

(a) Discovery is prohibited and the Division or Director may not issue subpoenas or other discovery orders.

(b) All parties shall have access to information contained in the Division's files of public record and to all materials and information gathered in any investigation, to the extent permitted by law.

(c) Testimony

At the hearing, the Presiding Officer shall accept oral or written testimony from any party. Further, the Presiding Officer shall have the right to question and examine any witnesses called to present testimony at a hearing. The testimony and statements which are received at hearings may, but need not, be under oath.

(d) Order of Presentation of Evidence

Unless otherwise directed by the Presiding Officer at a hearing, the presentation of evidence shall be as follows:

(1) When agency action is initiated by a person other than the Division or Director:

(i) person initiating the action,

(ii) respondent (if any), then

(iii) Division staff.

(2) When the Division or Director initiates agency action:

(i) Division staff,

(ii) respondent, then

(ii) other interested parties (if any).

During any hearing a party may offer rebuttal evidence.

(e) Rules of Evidence

A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence shall be excluded. The weight to be given to evidence shall be determined by the Presiding Officer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent man in the conduct of their affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible in a judicial proceeding.

(f) Documentary Evidence

Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

(g) Official Notice

The Presiding Officer may take official notice of the following matters:

(1) Rules, regulations, official reports, written decisions, orders or policies of the Board, Division or any other regulatory agency, state or federal;

(2) Official documents introduced into the record by proper reference; provided, however such documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

(3) Matters of common knowledge and generally recognized technical or scientific facts within the Division's or Director's specialized knowledge and of any factual information which the Presiding Officer may have gathered from a field inspection.

(h) Oral Argument and Memoranda

Upon the conclusion of the taking of evidence, the Presiding Officer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the Presiding Officer.

R651-101-15. Record of Hearing.

(a) A record of any hearing shall be recorded at the Division's expense. When a record is made by the Division, it shall be done by means of an automatic recording device. Any party, at his own expense, may have a reporter approved by the Division prepare a transcript from the record of the hearing.

(b) If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the Division free of charge. This transcript shall be available at the Division office to any party to the hearing.

R651-101-16. Decisions and Orders.

(a) Report and Order

After the Presiding Officer has reached a final decision upon any adjudicative proceeding, he shall make and enter a signed order in writing that states the decision, the reasons for the decision, a notice of the rights of the parties to request Division or Director review reconsideration or judicial review, as appropriate, and notice of the time limits for filing a request for review, reconsideration or a court appeal. The order shall be based on the facts appearing in any of the Division's files and on the facts presented in evidence at any hearings.

(b) Service of Decisions

A copy of the Presiding Officer's order shall be promptly mailed by regular mail to each of the parties.

R651-101-17. Agency Review.

Who may file

(a) Where the agency action is taken by a Presiding Officer other than the Director, any aggrieved party may seek review of an order or decision, to the Director as the case may be, by following the procedures of Section 63-46b-12 and the following additional rules. Such review shall be considered a prerequisite for judicial review. The requests for review shall be to the Director, as provided by law.

(b) Filing of Request for Review.

(1) Requests for review of agency action within the statutory or regulatory purview of the Division shall be filed with the Director within ten days after the issuance of the order.

(c) Action on the Request for Review

(1) Where the request for review is to the Director, the request shall be reviewed by the Director.

(2) Unless otherwise provided by law, all reviews shall be based on the record before the Presiding Officer. In order to assist in review, parties, upon request, may be allowed to file briefs or other documents explaining their position.

(3) Parties shall not be entitled to a hearing on review, except as allowed by law; provided, however, that the Director may, in his discretion, grant a hearing for their benefit to assist them in the review. Notice of any hearing shall be mailed to all parties at least 10 days prior to the hearing.

(d) Action on Review

Within a reasonable time after the filing of any response, other filings, or after any hearing, the Director shall issue a written order on review which shall be signed by the Director and shall be mailed to each party. The order shall contain the items, findings, conclusions and notices more fully set forth in Subsection 63-46b-12(6)(c).

R651-101-18. Request for Reconsideration.

(a) Who may file

Within ten days after the date that an order on review is issued, any aggrieved party may file a request for reconsideration by following the procedures of Section 63-46b-13 and the following additional rules. Such a request is not a prerequisite for judicial review.

(b) Action on the Request

The Director shall issue a written order granting or denying the request for reconsideration. If such an order is not issued within 20 days after the filing of the request, the request for rehearing shall be considered denied. Any order granting rehearing shall be strictly limited to the matter specified in the order.

R651-101-18. Judicial Review.

Any party aggrieved by final agency action may obtain judicial review of such action pursuant to sections 63-46b-14 and 15, except where judicial review is expressly prohibited by statute. A petition for judicial review shall be filed within 30 days after the date that the order constituting final agency action is issued.

R651-101-20. Declaratory Orders.

An interested person may file a request for agency action requesting that the Division or Director issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the Board, Division or Director pursuant to Section 63-46b-21. A request for a declaratory order shall set forth in detail the specific statute, rule, or order which is in question, the specific facts for which the order is requested, the manner in which the person making the request claims the statute, rule, or order may affect him, and the specific questions for which a declaratory order is requested.

The Division or Director may in their discretion decline to issue declaratory orders where they deem the facts presented to be conjectural, or where the public interest would best be served by not issuing such order.

R651-101-21. Emergency Orders.

The Division or Director may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63-46b-20.

KEY: administrative procedures
April 21, 2010 63G-4-102
Notice of Continuation February 12, 2015

R651. Natural Resources, Parks and Recreation.
R651-207. Registration Fee.
R651-207-1. Yearly Registration Fee.

The registration fee shall be $30 per year.

KEY: boating
February 11, 2015 73-18-7(2)
Notice of Continuation January 26, 2011

R651. Natural Resources, Parks and Recreation.
R651-409. Minimum Amounts of Liability Insurance Coverage for an Organized Practice or Sanctioned Race.
R651-409-1. Insurance Policy Requirements Maintained.

The insurance specifications for Subsections 41-22-29(1)(a) and (b) for an organization conducting "organized practices" or "sanctioned races" shall be a continuously maintained policy fully covering insurable responsibilities. This insurance policy shall be obtained from a reliable insurance company that is authorized to do business in Utah and is at all times A.M. Best Company rated "A" or better with a financial size category of XII or larger. The policy shall include Comprehensive General Liability Insurance, including coverage for premises and operations, products, combined single limit per occurrence, meeting the minimum insurance requirements set by the Utah Division of Risk Management, which shall be designated as applying only to the organization conducted under Subsections 41-22-29(1)(a) and (b) U.C.A. 1953. If this coverage is written on a claims-made basis, the certificate of insurance shall so indicate. The policy shall also contain an extended-reporting-period provision or similar "tail" provision that keeps full insurance in force for claims reported up to three (3) years after the organization ceases activities covered by the policy. The insurance policy shall be endorsed to add all persons providing services or who own lands affected by the activities conducted.

KEY: parks, liability, insurance
June 9, 2014 **79-4-501**
Notice of Continuation February 12, 2015 **41-22-29(1)(a)**
41-22-29(1)(b)

R651. Natural Resources, Parks and Recreation.
R651-635. Commercial Use of Division Managed Park Areas.
R651-635-1. No Commercial Activity in Park Areas without Specific Written Authorization.

No commercial activity may be conducted on any park area managed or owned by the division unless the division has provided specific written authorization for that activity.

R651-635-2. Written Forms of Authorization.

Written authorization may be in the form of a concession contract, special use permit, lease, right of way, or other negotiated agreement.

R651-635-3. Signature Requirements - Division Documents.

Regardless of any preceding activities, no contract, agreement, lease, or other similar document is binding on the division until signed by the division director or deputy director, the division contract officer and any other individual as required by state law or regulation.

R651-635-4. Signature Requirements - Special Use Permits.

No special use permit is binding on the division until signed by the park manager of the park where the activity to be carried out under the permit will occur and the region manager supervising the park.

R651-635-5. Forms Provided by Division.

The division shall provide forms and documents that provide authorization for commercial activity, special uses, and other privileged uses of park areas managed or owned by the division.

KEY: parks
June 11, 2001 79-2-402(4) and (5)
Notice of Continuation February 12, 2015 79-4-304
79-2-402(6), (7), and (8)

R655. Natural Resources, Water Rights.
R655-14. Administrative Procedures for Enforcement Proceedings Before the Division of Water Rights.
R655-14-1. Authority.

(1) These rules establish procedures for enforcement adjudicative proceedings which may be commenced under Section 73-2-25. Under Subsection 73-2-1(4)(g), the State Engineer, as the Director of the Utah Division of Water Rights, is required to make rules regarding enforcement orders and the imposition of fines and penalties.

(2) The State Engineer's powers and duties include acting on behalf of the State of Utah to administer, as the agency head of the Division of Water Rights, the distribution and use of all surface and ground waters within the state in accordance with statutory authority, including but not limited to Sections 73-2-1, 73-2-1.2, and 73-2-25.

R655-14-2. Application and Preamble.

(1) These rules are applicable statewide to the use of the waters of the state. Additional rules may be promulgated to address enforcement for specific hydrologic areas.

(2) The Division may issue an Initial Order for any violation of the Water and Irrigation Code as set forth in Subsection 73-2-25(2)(a).

(3) Following the issuance of an Initial Order, the respondent may contest the Initial Order in a proceeding before the State Engineer or the appointed Presiding Officer. Enforcement adjudicative proceedings are not governed by the Utah Administrative Procedures Act as provided under Subsection 63G-4-102(2)(s) and are not governed by Rule R655-6 regarding informal proceedings before the Division of Water Rights.

(4) These rules shall be liberally construed to permit the Division to effectuate the purposes of Utah law.

R655-14-3. Purpose.

(1) These rules are intended to:

(a) Assure the protection of Utah's water and the public welfare by promoting compliance and deterring noncompliance with the statutes, rules, regulations, permits, licenses and orders administered and issued under the Division's authority by removing any economic benefit realized as a direct or indirect result of a violation; and

(b) Assure that the State Engineer assesses and imposes administrative fines and penalties lawfully, fairly, and consistently, which fines and penalties reflect:

(i) The nature and gravity of the violation and the potential for harm to Utah's water and the public welfare by the violation;

(ii) The length of time which the violation was repeated or continued; and

(iii) The additional costs which are actually expended by the Division during the course of the investigation and subsequent enforcement.

(c) Clarify the Division's authority to enforce the laws it administers under the State Engineer's supervision, and the rules, regulations, permits, and orders adopted pursuant to appropriate authority.

(2) The three elements of the statutorily provided penalties are intended to achieve different aims of equity and public policy. To achieve these aims, the following classes of penalties have been established by statute:

(a) Administrative fines are intended to remove the financial incentive of the violation by removing the economic benefit as well as imposing a punitive measure.

(b) Replacement of water is intended to make whole the resource and impacted water users, as far as this is possible, by requiring respondents to leave an amount of water undiverted or undiminished in the resource for use by others. The allowance of up to 200% replacement indicates the penalty can incorporate a punitive element, as appropriate.

(c) Reimbursement of enforcement costs is intended to make whole the state by requiring a violator to replace the public funds expended to achieve compliance with the law.

R655-14-4. Definitions.

(1) Terms used in this rule are defined in Section 73-3-25.

(2) In addition,

(a) "Administrative Penalty" means a monetary fine or water replacement ordered by the Presiding Officer to be paid or accomplished by the respondent in response to a violation of, or a failure to comply with, a law administered by the State Engineer, or any rule, regulation, license, permit or order adopted pursuant to the State Engineer's authority.

(b) "Cease and Desist Order" (CDO) means a written order issued by the State Engineer or the Enforcement Engineer requiring a respondent to cease and desist violations and/or directing that positive steps be taken to mitigate any harm or damage arising from the violation, including a notice of administrative penalties to which a respondent may be subject. CDO's are further described in Section R655-14-11. A CDO constitutes an Initial Order (IO), whether issued alone or in conjunction with a Notice of Violation (NOV).

(c) "Consent Order" means an order issued by the Presiding Officer reflecting a stipulated and voluntary agreement between the parties concerning the resolution of an enforcement adjudicative proceeding. A Consent Order constitutes a Final Judgment and Order.

(d) "Default Order" means an order issued by the Presiding Officer after a respondent fails to participate or continue to participate in an enforcement proceeding. A Default Order constitutes a Final Judgment and Order.

(e) "Distribution Order" means a written order from the State Engineer that includes any or all of the following:

(i) An interpretation of the water rights on a river system or other water source and procedures for the regulation and distribution of water according to those water rights;

(ii) A requirement of specific action or actions on the part of a water right owner or a group of water right owners to ensure that water is diverted, measured, stored, or used according to the water rights involved and that the diversion, storage, or use does not infringe on the rights of other water right owners;

(iii) A description of the hydrologic limitations of a river system or other water source and a plan based on the water rights of record designed to manage and maximize beneficial use of water while protecting the sustainability of the water source;

(iv) A requirement that reports be submitted to the Division as provided in Section 73-5-8.

(v) A regulation tag issued by the Division or by a Water Commissioner according to Section 73-5-3 and as defined in Section R655-15.

(f) "Division" means the Division of Water Rights.

(g) "Economic Benefit" means the benefit actually or potentially realized and/or a cost actually or potentially avoided by a violator as a result of unlawful activity defined as a violation in an IO.

(h) "Enforcement Costs" means a monetary sum ordered by the Presiding Officer to be paid by a respondent for any expense incurred by the State Engineer in investigating and stopping a violation of, or a failure to comply as defined herein. Enforcement costs are further defined in this rule at Subsection R655-14-12(6). Collection of said costs is authorized at Subsection 73-2-26(1)(a)(iii).

(i) "Enforcement Engineer" means the State Engineer or an authorized delegate who may commence and prosecute an enforcement action pursuant to Subsection 73-2-25(2)(a).

(j) "Filed" means timely submitted to the Division

pursuant to Subsection R655-14-8(3).

(k) "Files" means information maintained in the Division's public records, which may include both paper and electronic information.

(l) "Final Judgment and Order" means a final decision issued by the Presiding Officer on the whole or a part of an enforcement adjudicative proceeding. This definition includes "Consent Orders" and "Default Orders."

(m) "Initial Administrative Penalty" means an administrative fine, a requirement to replace water unlawfully taken, and/or the enforcement costs required to be repaid as these are described and set forth in the Initial Order (IO) as required at Subsection 73-2-25(2)(b)(ii). These penalties do not include accrued penalties for violations continuing past the date of the IO.

(n) "Initial Order" (IO) means a Notice of Violation and/or a Cease and Desist Order.

(o) "Issued" as it applies to an IO or a Final Judgment and Order means the document has been executed by an authorized delegate of the State Engineer (in the case of an IO) or by the Presiding Officer (in other cases) and deposited in the mail.

(p) "Knowing" or "Knowingly" as used in Section 73-2-26, means the same as the definition contained in Section 76-2-103. A person engages in conduct knowingly, or with knowledge with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(q) "License" means the express grant of permission or authority by the State Engineer to carry on an activity or to perform an act, which, without such permission or authority, would otherwise be a violation of State law, rule or regulation.

(r) "Location" means the current residential or business address of a party as recorded in the Division's files. If a current residential address is not available for an individual, "location" means an employment or business address if known, or nonresidential mailing address such as a Post Office Box or Rural Route, at which a party whose location information is being sought receives mail.

(s) "Mitigation" means compensation acceptable to the Division for injury caused by a stream channel or dam safety violation.

(t) "Noncompliance" or "Nonconformance" or "Failure to Comply" or "Violation" each means any act or failure to act which constitutes or results in:

(i) Engaging in an activity prohibited by, or not in compliance with, any law administered by the State Engineer or any rule, license, permit or order adopted or granted pursuant to the State Engineer's authority;

(ii) Engaging in an activity without a necessary permit or approval that is required by law or regulation;

(iii) The failure to perform, or the failure to perform in a timely fashion, anything required by a law administered by the State Engineer or by a rule, license, permit or order adopted pursuant to the State Engineer's authority.

(u) "Notice of Violation" (NOV) means a written notice issued by the Enforcement Engineer that informs a respondent of Water and Irrigation Code violations. Notice of Violation is further described in Section R655-14-11. A NOV constitutes an Initial Order (IO), whether issued alone or in conjunction with a Cease and Desist Order (CDO).

(v) "Participate" means, in an enforcement proceeding that was commenced by an IO, to:

(i) Present relevant information to the Presiding Officer within the time period prescribed by statute or rule or order of the Presiding Officer for submitting relevant information or requesting a hearing; and/or

(ii) Attend a preliminary conference or hearing if a preliminary conference or hearing is scheduled and a notice is properly issued.

(w) "Party" means the State Engineer, an authorized delegate of the State Engineer, and/or the respondent(s).

(x) "Permit" means an authorization, license, or equivalent control document issued by the State Engineer to implement the requirements of any federally delegated program or Utah law administered or enforced by the State Engineer.

(y) "Person" means an individual, trust, firm, joint stock company, corporation (including a quasi-governmental corporation), partnership, association, syndicate, municipality, municipal or state agency, fire district, club, non-profit agency or any subdivision, commission, department bureau, agency, department or political subdivision of State or Federal Government (including quasi-governmental corporation) or of any interstate body and any agent or employee thereof.

(z) "Post Initial Order Penalty Adjustments" means those adjustments, in the form of increases or decreases, made by the Presiding Officer to the initial administrative penalties assessed in the IO in consideration of information pertaining to the violation.

(aa) "Presiding Officer" means the State Engineer or an authorized delegate of the State Engineer who conducts an enforcement adjudicative proceeding.

(ab) "Record" means the official collection of all written and electronic materials produced in an enforcement proceeding, including but not limited to the IO, pleadings, motions, exhibits, orders and testimony produced during the adjudicative proceedings, as well as the files of the Division as defined herein.

(ac) "Respondent" means any person against whom the Enforcement Engineer commences an enforcement action by issuing an IO.

(ad) "Requirement" means any law administered by the State Engineer, or any rule, regulation, permit, license or order issued or granted pursuant to the State Engineer's authority.

(ae) "State Engineer" is the Director and agency head of the Division of Water Rights in whom ultimate legal authority is vested by Sections 73-2-1 and 73-2-1.2.

(af) "Unknowingly" or "Not Knowing" means the converse of the definition of "Knowingly" contained in Section 76-2-103. A person engages in conduct unknowingly, or without knowledge with respect to his conduct or to circumstances surrounding his conduct when he is unaware of the nature of his conduct or the existing circumstances. A person acts unknowingly, or without knowledge, with respect to a result of his conduct when he is unaware that his conduct is reasonably certain to cause the result.

(ag) "Water Commissioner" or "Commissioner" means a person appointed to distribute water within a water distribution system pursuant to Section 73-5-1 and Section R655-15.

(ah) "Well" means an open or cased excavation or borehole for diverting, using, or monitoring underground water made by any construction method.

(ai) "Well driller" means a person with a license to engage in well drilling for compensation or otherwise.

(aj) "Well drilling" means the act of drilling, constructing, repairing, renovating, deepening, cleaning, developing, or abandoning a well.

R655-14-5. Other Authorities.

(1) Nothing in these rules shall limit the State Engineer's authority to take alternative or additional actions relating to the administration, appropriation, adjudication and distribution of the waters of Utah as provided by Utah law.

R655-14-6. Designation of Presiding Officers.

(1) The following persons may be designated Presiding

Officers in adjudicative proceedings:
(a) Assistant State Engineers;
(b) Deputy State Engineers; or
(c) Other qualified persons designated by the State Engineer.

R655-14-7. Service of Notice and Orders.
(1) Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Section 73-2-25 shall be served upon the respondent at the respondent's location using certified mail or methods described in Rule 5 of the Utah Rules of Civil Procedure.

R655-14-8. Computation of Time.
(1) Computation of any time period referred to in these rules shall begin with the first day following the act that initiates the running of the time period. The last day of the time period computed is included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Division is closed, in which event the period shall run until the end of the business hours of the following business day. When the time period is less than seven (7) days, intervening days when the Division is closed shall be excluded in the computation.
(2) The Presiding Officer, for good cause shown, may extend any time limit contained in these rules, unless precluded by statute. All requests for extensions of time shall be made by motion.
(3) Documents required or permitted to be filed under these rules shall be filed with the Division, to the attention of the Presiding Officer or Enforcement Engineer, as may be required, within the time limits for such filing as set by the Enforcement Engineer, the Presiding Officer, or other provision of law. Papers filed in the following manner shall be deemed filed as set forth:
(a) Papers hand delivered to the Division during regular business hours shall be deemed filed on the date of hand-delivery. Papers delivered by hand at times other than during regular business hours shall be deemed filed on the next regular business day when stamped received by the Division.
(b) Papers deposited in the U.S. mail shall be deemed filed on the date stamped received by the Division. In the event that no stamp by the Division appears, papers shall be deemed filed on the postmarked date.
(c) Papers transmitted by facsimile, telecopier or other electronic transmission shall not be accepted for filing unless permitted in writing by the Presiding Officer, the Enforcement Engineer or by this rule.

R655-14-9. Filings Generally.
(1) Papers filed with the Division shall state the State Engineer Agency Action (SEAA) number, the title of the proceeding, and the name of the respondent on whose behalf the filing is made.
(2) Papers filed with the Division shall be signed and dated by the respondent on whose behalf the filing is made or by the respondent's authorized representative. The signature constitutes certification that the respondent:
(a) Read the document;
(b) Knows the content thereof;
(c) To the best of the respondent's knowledge, represents that the statements therein are true;
(d) Does not interpose the papers for delay; and
(e) If the respondent's signature does not appear on the paper, authorized a representative with full power and authority to sign the paper.
(3) All papers, except those submittals and documents that are kept in a larger format during the ordinary course of business, shall be submitted on an 8.5 x 11-inch paper. All papers shall be legibly hand printed or typewritten.
(4) The Division may provide forms to be used by the parties.
(5) The original of all papers shall be filed with the Division with such number of additional copies as the Division may reasonably require.
(6) Simultaneously with the filing of any and all papers with the Division, the party filing such papers shall send a copy to all other parties, or their authorized representative to the proceedings, by hand delivery, or U.S. Mail, postage prepaid, properly addressed.

R655-14-10. Motions.
(1) A party may submit a request to the Presiding Officer for any order or action not inconsistent with Utah law or these rules. Such a request shall be called a motion. The types of motions made shall be those that are allowed under these Rules and the Utah Rules of Civil Procedure.
(2) Motions may be made in writing at any time before or after the commencement of a hearing, or they may be made orally during a hearing or a preliminary conference. Each motion shall set forth the grounds for the desired order or action and, if submitted in writing, state whether oral argument is requested. A written supporting memorandum, specifying the legal basis and support of the party's position shall accompany all motions.

R655-14-11. Options for Adjudicative Enforcement.
(1) The State Engineer may pursue any combination of the following administrative and judicial enforcement actions depending upon the circumstances and gravity of each case.
(a) Notice of Violation: a formal notice of a suspected violation issued in accordance with Section 73-2-25 which:
(i) Cites the law, rule, regulation, permit and/or order allegedly violated;
(ii) States the facts that form the basis for the State Engineer's belief that a violation has occurred;
(iii) States the administrative fine, enforcement costs, and/or other penalty to which the respondent may be subject;
(iv) Specifies a reasonable deadline or deadlines by which the respondent:
(A) Shall comply with the requirements described in the Notice of Violation, and/or
(B) Shall pay the administrative fine and enforcement costs, and/or
(C) Shall submit a written plan or proposal setting forth how and when the respondent proposes to replace water taken without right.
(v) Informs the respondent:
(A) Of the right to file a timely written request for a hearing on the alleged violation, the administrative penalties defined, or both;
(B) That the respondent must file said written request for a hearing with Division within fourteen (14) days after service of the Notice of Violation;
(C) That said written request shall strictly comply with R655-14-16;
(D) That said notice shall become the basis for a Final Judgment and Order of the Presiding Officer upon the respondent's election to waive participation or failure to timely respond or otherwise participate in the proceeding, and
(E) That the Enforcement Engineer may treat each day's violation as a separate violation in describing the Initial Administrative Penalty under Subsection 73-2-25 (2)(b)(ii); that is, the administrative penalty continues to accrue each day from the time the violation begins until compliance is achieved.
(vi) Identifies the individual to whom correspondence and inquiries regarding the Notice of Violation should be directed;
(vii) States to whom and the date by which the administrative fine and enforcement costs shall be paid if the

respondent elects to waive or fails to request an adjudicative hearing in a timely manner and elects to pay the fine and costs; and

(viii) States the State Engineer's authority to pursue further administrative or judicial enforcement action.

(b) Cease and Desist Order (CDO): an immediate compliance order issued pursuant to Section 73-2-25 either upon discovery of a suspected violation of the Water and Irrigation Code or in combination with a Notice of Violation, which:

(i) Cites the law, rule, license, permit, notice and/or order allegedly violated;

(ii) Describes the act or course of conduct that is prohibited by the Cease and Desist Order;

(iii) Orders the respondent to immediately cease the prohibited act or prohibited course of conduct;

(iv) States any action deemed necessary by the Enforcement Engineer to confirm compliance and assure continued compliance;

(v) Takes effect immediately upon the date issued or within such time as specified by the Enforcement Engineer in the CDO; and

(vi) States the administrative penalties to which the respondent may be subject for any violation of the CDO.

(c) Court Action

(i) Civil: direct recourse to a court of competent jurisdiction either in addition to or in lieu of administrative action where:

(A) It is necessary to enforce a Final Judgment and Order and seek civil and/or administrative penalties

(B) An imminent threat to the public health, safety, welfare or environment exists which warrants injunctive or other emergency relief; or

(C) A pattern of continuous, significant violations exists such that administrative enforcement action alone is unlikely to achieve compliance; or

(D) The court is the most convenient or appropriate forum for resolution of the dispute.

(ii) Criminal: referral to the County Prosecutor or the Attorney General's Office for prosecution or criminal investigation where:

(A) The alleged act or failure to act may be defined as a criminal offense by state law;

(B) Enforcement is beyond the jurisdiction or investigative capability of the State Engineer; or

(C) Criminal sanctions may be appropriate.

(d) Miscellaneous - other enforcement options may be pursued to achieve compliance. Additional options include, but are not limited to:

(i) Joint actions with, or referrals to, other federal, state or local agencies;

(ii) Direct legal or equitable actions in state or federal court; and/or

(iii) Denial, suspension or revocation of state-granted licenses, approvals permits or certifications.

(2) Unless otherwise stated, all notices, orders and judgments are effective upon the date issued.

(3) Combinations of enforcement actions are not mutually exclusive and may be concurrent and/or cumulative.

(4) An IO may be incorporated into a Default Order if the respondent fails to participate as defined herein.

R655-14-12. Administrative Penalties and Administrative Costs.

(1) Pursuant to Sections 73-2-1 and 73-2-25 and these rules, the Enforcement Engineer shall assess the initial administrative penalties, which may include an administrative fine, a requirement to replace water and the reimbursement of enforcement costs to which the respondent may be subject for any violation as set forth in Subsection 73-2-25(2)(a).

(2) No penalty shall exceed the maximum penalty allowed by Subsection 73-2-26(1), as may be amended.

(3) Each day a violation is repeated, continued or remains in place, constitutes a separate violation.

(4) The penalty imposed shall begin on the first day the violation occurred, and may continue to accrue through and including the day the Notice of Violation and/or Cease and Desist Order is issued, or the Final Judgment and Order is issued, or until compliance is achieved.

(5) The amount of the penalty shall be calculated based on:

(a) The value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;

(b) The gravity of the violation, including the economic injury or impact to others;

(c) Whether the respondent attempted to comply with the State Engineer's orders; and

(d) The respondent's economic benefit from the violation.

(6) Enforcement costs, interest, late payment charges, costs of compliance inspections, and collection costs may be assessed in addition to the administrative fine. These include:

(a) Enforcement costs: Costs for time spent by Division staff, supervisors, the Presiding Officer, and personnel of the Attorney General's Office, at the full cost of each employee's hourly rate, including salary, benefits, overhead and other directly related costs.

(b) Late payment charges: Costs accrued at the monthly percentage rate assessed by the Utah Department of Administrative Services, Office of Debt Collections.

(c) Compliance inspection costs: Time spent by Division staff at the full cost of each employee's hourly rate, including salary, benefits, overhead and other directly related costs.

(d) Collection costs: Actual collection costs.

(7) The State Engineer may report the total amount of administrative fines and/or enforcement costs assessed to consumer reporting agencies and pursue collection as provided by Utah law.

(8) Any monies collected under Section 73-2-26 and these rules shall be deposited into the General Fund.

R655-14-13. Replacement of Water.

(1) In addition to administrative fines and enforcement costs, the Enforcement Engineer may impose and the Presiding Officer may order the respondent to replace up to 200 percent of water unlawfully taken in accordance with Section 73-2-26.

(2) The Presiding Officer may order actual replacement of water after:

(a) A respondent fails to request judicial review of a Final Judgment and Order issued under Section 73-2-25; or

(b) Completion of judicial review, including any appeals.

(3) Pursuant to Section 73-2-26, and before imposing or ordering replacement of water, the Enforcement Engineer and the Presiding Officer shall consider the following factors:

(a) The value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;

(b) The gravity of the violation, including the economic injury or impact to others;

(c) Whether the respondent attempted to comply with the State Engineer's orders; and

(d) The respondent's economic benefit from the violation.

(4) The Enforcement Engineer may require and the Presiding Officer may order the respondent to submit a plan to replace water, which shall be submitted in writing and contain the following information:

(a) The name and mailing address of the respondent or persons submitting the plan;

(b) The State Engineer Agency Action (SEAA) number assigned to the IO;

(c) Identification of the water right(s) and property for which the water replacement plan is proposed;

(d) A description of the water replacement plan; and

(e) Any information that assists the Enforcement Engineer in evaluating whether the proposed water replacement plan is acceptable.

(5) The factors the Enforcement Engineer or Presiding Officer may consider to determine if the plan is acceptable include, but are not limited to:

(a) Whether the plan provides for the respondent to forgo use of a vested water right owned or leased by the respondent until water is replaced to the extent required in the IO or ordered in the Final Judgment and Order;

(b) The reliability of the source of replacement water over the term in which it is proposed to be used under the plan; and

(c) Whether the plan provides for monitoring and adjustment as necessary to protect vested water rights.

(6) As provided in Section 73-2-26, water replaced shall be taken from water to which the respondent would be entitled during the replacement period.

(7) In accordance with Subsection 73-2-26(5)(a), or any other statutory authority, the Division may record any order requiring water replacement in the office of the county recorder where the place of use or water right is located. Any subsequent transferee of such property shall be responsible for complying with the requirements of said order.

R655-14-14. Procedures For Determining Administrative Penalties, Enforcement Costs and Water Replacement.

(1) An administrative fine shall not exceed the maximum amounts established by statute at Subsection 73-2-26 (1), as such may be amended.

(2) For violations per Subsections 73-2-25(2)(a)(i) through (vii), the following procedures shall be employed:

(a) Administrative Fines: This penalty shall be based primarily on the actual economic benefit estimated to result or potentially to result from the violation. The economic benefit may come in the form of a direct economic benefit as income derived directly from the unlawful activity or it may come in the form of avoided costs that would otherwise be incurred in order to comply with a specific statute, rule, notice or order from the State Engineer. The administrative fine assessment procedure used (direct economic benefit or avoided costs) will be that which produces the greater fine. In order to implement the punitive intent of this penalty, a multiplier is to be calculated and applied to the estimated actual direct economic benefit or avoided costs.

(i) "Direct Economic Benefit" Initial Administrative Fine Calculations. The initial administrative fine shall be calculated in the following manner:

(A) The daily economic benefit is equal to the gross income that is or could potentially be realized from the violation (without regard for production costs, taxes, etc.) divided by the number of days of violation. For water right violations, the daily economic benefit is calculated using the gross income through a full period of beneficial use, divided by the number of days in the period of beneficial use.

(B) The daily administrative fine is equal to the product of the daily economic benefit and the multiplier to be calculated as described in paragraph (iii) below.

(C) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation to the date the IO is issued, but shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(D) The total initial administrative fine will have a maximum value of four times the direct economic benefit or the statutory maximum fine, whichever is less.

(ii) The multiplier for penalties based on direct economic benefit shall be calculated utilizing the following statutory considerations. (Statutorily required considerations relative to the quantity of water taken and the gravity and impact of the violation are accommodated in the calculations of the economic "benefit" and "injury.")

(A) Whether the violation was committed knowingly or unknowingly;

(B) The economic injury to others;

(C) The length of time over which the violation has occurred; and

(D) The violator's efforts to comply.

(iii) The penalty multiplier is the sum of the points calculated using Table 1:

TABLE 1

DIRECT ECONOMIC BENEFIT PENALTY MULTIPLIER CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Economic injury to others	
Greater than $15,000	1.00
$10,000 to $15,000	0.75
Less than $10,000 or injury is not measurable or there is no evidence others suffered economic injury	0.50
Length of violation	
Three (3) or more years of violation	1.00
More than one (1), but less that three (3) years of violation	0.75
One (1) year or less of violation	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited but ineffective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator fully complied prior to issuance of Initial Order	0.00

(iv) "Avoided Cost Economic Benefit" Initial Administrative Fine Calculation: In some cases, including but not limited to violations under Subsections 73-2-25 (2)(a) (iii) through (vii), an economic benefit may result from an avoided cost of compliance with a notice or order from the State Engineer, or from failure to obtain a necessary approval, permit or license. In the case of a failure to comply with a prior notice or order, the daily administrative fine commences with the day following the compliance date in the notice or order. In the event of a failure to obtain a necessary approval, permit or license, the period of violation is deemed to begin on the first day the unauthorized activity is commenced. The economic benefit and daily administrative fine for an "avoided cost economic benefit" shall be calculated in the following manner:

(A) The total realized economic benefit is equal to the highest calculated avoided costs of failing to implement specific actions required by a statute, rule, notice or order from the State Engineer.

(B) The daily administrative fine is equal to the product of $20 or 5% of the total realized economic benefit, whichever is greater, and the penalty multiplier to be calculated as described in paragraph (vi), below.

(C) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation preceding the date of the IO, but shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(D) The total initial administrative fine will have a maximum value of three times the economic benefit or the statutory maximum fine, whichever is less.

(v) The statutory considerations applicable to producing the multiplier for an avoided cost economic benefit are: (Statutorily required considerations relative to the quantity of water taken and the gravity and impact of the violation are

accommodated in calculations of the economic "benefit" and "injury.").

(A) Whether the violation was committed knowingly or unknowingly;

(B) The economic injury to others; and

(C) The violator's efforts to comply.

(vi) The penalty multiplier is the sum of the points resulting from Table 2:

TABLE 2

AVOIDED COST ECONOMIC BENEFIT PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing.	.1.00
Unknowing	0.00
Economic injury to others	
Greater than $15,000.	.1.00
$10,000 to $15,000	.0.75
Less than $10,000 or injury is not measurable or there is no evidence others suffered economic injury	.0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	.1.00
Violator has made limited but ineffective efforts to comply	.0.75
Violator has made reasonable and partially effective efforts to comply	.0.50
Violator fully complied prior to issuance of Initial Order	0.00

(b) Replacement of Water: This penalty will be initially calculated as the product of 100% of the amount unlawfully taken and the penalty multiplier previously calculated, but not to exceed 200% of that unlawfully taken. If replacement of water unlawfully taken is deemed to be infeasible by the Enforcement Engineer or the Presiding Officer, this penalty will not be further considered.

(c) Reimbursement of Enforcement Costs: This penalty will be initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the IO.

(3) For violations related to unlawful natural stream channel alteration or dam safety regulations per Subsections 73-2-25(1)(a)(vi) and (vii), the following procedures shall be employed:

(a) Daily Administrative Fine: All enforcement activities for unlawful natural stream alteration or dam safety violations must statutorily result from violation of a prior notice or order. Statute provides for a daily administrative fine with the day following the compliance date in the notice/order being counted as the first day of violation. The calculated daily administrative fine would apply to violations continuing beyond the compliance date set forth in the notice or order. The economic benefit and daily administrative fine shall be calculated in the following manner:

(i) For stream alteration and dam safety violations, there may be a direct economic benefit, or there may be an avoided cost economic benefit deriving from:

(A) Initiating an activity without the benefit of proper permitting and/or,

(B) Failing to implement specific actions required by a notice, order or permit from the State Engineer.

(ii) The daily administrative fine is equal to the product of $20 or 5% of the total realized economic benefit, whichever is greater, and the multiplier to be calculated as described in paragraph (iii), below.

(iii) The penalty multiplier is calculated as the sum of the points from Table 3 or Table 4, as may be appropriate:

TABLE 3

STREAM ALTERATION PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Gravity of violation	
Natural stream environment harmed to significant levels not readily reversible by mitigation efforts	1.00
Natural stream environment harmed to moderate levels partially reversible by mitigation efforts	0.75
Natural stream environment harmed to minor levels readily reversible by mitigation efforts.	.0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	.1.00
Violator has made no reasonable or effective efforts to comply	.0.75
Violator has made reasonable and partially effective efforts to comply	.0.50
Violator achieved full compliance prior to issuance of Initial Order	.0.00

TABLE 4

DAM SAFETY PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Gravity of violation	
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam: 1) Related to building, enlarging or substantially altering same without prior approval or authorization; OR 2) Addressing an existing unsafe condition	.1.00
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam: 1) Addressing a developing unsafe condition OR 2) Requiring monitoring or critical dam performance indicators; OR Failure to prepare and file acceptable required operational documents, OR Failure to comply with a notice or order for a low-hazard dam related to building, enlarging or substantially altering same without prior authorization	.0.75
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam related to routine operation or maintenance activities, OR Failure to comply with a notice or order for a low-hazard dam to address an existing or developing unsafe condition	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	.1.00
Violator has made limited reasonable or effective efforts to comply	.0.75
Violator has made reasonable and partially effective efforts to comply	.0.50
Violator achieved full compliance prior to issuance of Initial Order	.0.00

(iv) The total administrative fine shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(b) Reimbursement of Enforcement Costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(4) For violations under Subsection 73-2-25(2)(a)(viii) related to failure to submit a report required by Section 73-3-25, the following procedures shall be employed:

(a) The daily administrative fine is equal to $5.00.

(b) The number of days of continuing violation commences 90 days after the day on which the well driller license lapses.

(c) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation to the date the IO is issued, up to a maximum fine of $200.

(d) The total administrative fine shall not exceed the product of the daily administrative fine and the number of days of continuing violation, up to a maximum fine of $200.

(e) Reimbursement of enforcement costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(5) For violations under Subsection 73-2-25(2)(a)(ix) related to engaging in well drilling without a license required by Section 73-3-25, the following procedures shall be employed:

(a) The direct economic benefit is equal to the gross income that is or could potentially be realized (without regard for production costs, taxes, etc.) from engaging in well drilling (as defined herein) without a license.

(b) The total initial administrative fine is equal to the product of the direct economic benefit resulting from the violation and the penalty multiplier described in paragraph (c) below.

(c) The penalty multiplier is calculated as the sum of the points from Table 5.

TABLE 5

WELL DRILLING PENALTY MULTIPLIER

CONSIDERATION/ CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.50
Unknowing	1.00
Gravity of Violation	
New well construction	1.00
Deepening a well	0.80
Renovating a well	0.60
Abandoning a well	0.40
Cleaning/developing a well	0.20

(d) The total administrative fine shall not exceed the product of the direct economic benefit and the penalty multiplier.

(e) Reimbursement of enforcement costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(6) Post-Initial Order penalty adjustments: Subsequent to issuance of the IO, the Presiding Officer may make adjustments to the initial administrative fine; the requirement for replacement of water unlawfully taken; requirements pertaining to violations of stream channel alteration or dam safety regulations; and/or the requirement for reimbursement of enforcement costs. Such adjustments may be based on one or more of the following considerations:

(a) Errors or Omissions in Calculation of an Initial Administrative Penalty: If shown by acceptable evidence or testimony that any fact used in calculation of the economic benefit, of the quantity of water unlawfully taken, or of the penalty multiplier was in error, or that a significant fact or group of facts was omitted from consideration, the Presiding Officer shall recalculate the initial administrative penalties taking consideration of the corrected or additional fact(s).

(b) Reduction in Penalty Multiplier: The penalty multiplier used in calculating the Initial Administrative Penalties may be reduced according to Table 6 on the basis of the respondent's efforts to comply after receiving the IO.

TABLE 6

PENALTY MULTIPLIER REDUCTION

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Respondent's efforts to comply with the Initial Order	
Respondent has made extraordinary efforts to successfully achieve full and prompt compliance with the IO.	.1.00
Respondent has made efforts to successfully achieve full and prompt compliance with the IO, but these efforts are not extraordinary	.0.50
Respondent has made efforts that achieve full compliance with the IO, but the efforts were neither extraordinary nor prompt	0.25
Respondent has made no efforts to comply or has made efforts that fail to achieve full compliance with the IO	.0.00

If the Presiding Officer determines that the penalty multiplier should be reduced according to the table above, the appropriate number of points will be subtracted from the penalty multiplier used in calculating the initial administrative penalty and the penalty will be re-calculated with the new multiplier.

(c) Failure to take reasonable and effective measures to achieve full and prompt compliance with the requirements of the IO will allow the daily administrative fines to continue to accrue as provided in rule at Subsection R655-14-12(4) until full compliance is achieved.

(d) Adjustments to recovery of enforcement costs:

(i) If shown by acceptable evidence or testimony that any expense incurred by the State Engineer and assessed for reimbursement resulted from activities not pertinent to the violation, the Presiding Officer may reduce that portion of the reimbursement requirement accordingly.

(ii) Pursuit of an enforcement action after issuance of the IO will continue to require the expenditure of varying amounts of staff time and may require acquisition and analysis of special data or information. Such costs may be added to the initial reimbursement requirement, specifically including all costs incurred that are unique to the enforcement action under consideration.

(e) Mitigating Factors: Other factors which the Presiding Officer may consider in amendment of initial penalties for incorporation into a Final Order or Consent Order may include, as appropriate:

(i) Ability to pay: This factor will be considered only if raised by a respondent and only if the respondent provides all necessary information to evaluate the claim. The burden to demonstrate inability to pay rests solely on the respondent. The Presiding Officer shall disregard this factor if a respondent fails to provide sufficient or persuasive financial information. If it is determined that a respondent cannot afford the full monetary penalties prescribed by this rule, or if it is determined that payment of all or a portion of the monetary penalties will preclude the respondent from achieving compliance or from carrying out remedial measures which are deemed more important than the deterrent effect of the monetary penalties, the following options may be considered by the Presiding Officer:

(A) A delayed payment schedule with full payment of monetary penalties to be made at a date not exceeding 180 days from the date the Final Judgment and Order is issued; or

(B) A direct reduction of the monetary penalties, which reduction is deemed by the Presiding Officer to be consistent with achieving the purposes of the enforcement action and the aims of equity and justice.

(C) A portion of the monetary penalties may be suspended with conditions as determined by the Presiding Officer, which suspension is deemed by the Presiding Officer to be consistent with achieving the purposes of the enforcement action and the aims of equity and justice. Failure by a respondent to adhere to the conditions of the suspension may result in an Order of reinstatement of any part of the suspended monetary penalties, which will be due and payable immediately upon reinstatement.

R655-14-15. Procedures for Conducting Adjudicative Enforcement Proceedings.

(1) The procedures for conducting adjudicative enforcement proceedings are as follows:

(a) In proceedings initiated by an IO, the Presiding Officer shall issue a default order unless the respondent does one of the following within fourteen (14) days of the date the IO is issued:

(i) Satisfies all requirements of the IO, including but not limited to ceasing the violation(s), full payment of all the administrative fines, reimbursement of the State Engineer's enforcement costs in full, and submission of any required water

replacement plan; or,

(ii) Files with the Division a timely and proper written response to the IO but waives a hearing and submits the case upon the record. Submission of a case without a hearing does not relieve the respondent from the necessity of providing the facts supporting the respondent's burdens, allegations or defenses; or

(iii) Files with the Division a timely and proper written response to the IO, having timely filed a request for a hearing as provided in the IO and in Section R655-14-16.

(b) Within a reasonable time after the close of an enforcement adjudicative proceeding, the Presiding Officer shall issue a written and signed Final Judgment and Order, including but not limited to:

(i) A statement of law and jurisdiction;

(ii) A statement of facts;

(iii) An identification of the confirmed violation(s);

(iv) An order setting forth actions required of the respondent(s);

(v) A notice of the option to request reconsideration and the right to petition for judicial review, except as such are waived in a Consent Order;

(vi) The time limits for requesting reconsideration or filing a petition for judicial review, except as such are waived in a Consent Order; and

(vii) Other information the Presiding Officer deems necessary or appropriate.

(c) The Presiding Officer's Final Judgment and Order shall be based on the record, as defined in this rule, or, in the case of a Consent Order, on the stipulation accepted by the parties and the Presiding Officer.

(d) A copy of the Presiding Officer's Final Judgment and Order shall be promptly mailed to each of the parties.

R655-14-16. Request for Hearing.

(1) Regardless of any other provision of the general laws to the contrary, all requests for a hearing shall be in writing and shall be filed with the Division within fourteen (14) calendar days of the date the IO was issued.

(2) The request for a hearing shall state clearly and concisely the specific facts that are in dispute, the supporting facts, the relief sought, the State Engineer Agency Action (SEAA) number, and any additional information required by applicable statutes and rules.

(3) The Presiding Officer may, upon the Presiding Officer's own initiative or upon the motion of any party, order any party to file a response or other pleading, and further permit either party to amend its pleadings in a manner just to all parties.

(4) The Presiding Officer shall, if it is determined a hearing is warranted, give all parties at least three (3) days notice of the date, time and place for the hearing. The Presiding Officer may grant requests for continuances for good cause shown.

(5) Any party may, by motion, request that a hearing be held at some place other than that designated by the Presiding Officer, due to disability or infirmity of any party or witness, or where justice and equity would be best served.

R655-14-17. General Requirements for Hearings.

(1) A hearing before a Presiding Officer is permitted in an enforcement adjudicative proceeding if:

(a) The proceeding was commenced by an IO; and

(b) The respondent files a timely request for hearing that meets the requirements of Section R655-14-16; and

(c) The respondent raises a genuine issue of material fact; or

(d) The Presiding Officer determines that a hearing is required to serve the interests of equity or justice.

(2) No genuine issue of material fact exists if:

(a) The evidence presented to the Presiding Officer by the Enforcement Engineer and by the respondent is sufficient to establish the violation of the respondent under applicable law; and

(b) No evidence presented by the respondent conflicts with or substantially counters the evidence the Enforcement Engineer relied on when issuing the IO.

(3) The Presiding Officer may make a decision without holding a hearing if:

(a) Presentation of testimony or oral argument would not advance the Presiding Officer's understanding of the issues involved;

(b) Delay would cause serious injury to the public health and welfare;

(c) Disposition without a hearing would best serve the public interest.

(4) If no hearing is held, the Presiding Officer may issue a Final Judgment and Order in reliance upon the record, as defined in this rule, or may order a preliminary conference to supplement or clarify the record.

(5) A respondent at any time may withdraw the respondent's request for a hearing. The withdrawal shall be filed with the Division, in writing, signed by the respondent or an authorized representative, and is deemed final upon the date filed.

R655-14-18. Preliminary Conference.

(1) The Presiding Officer may require the parties to appear for a preliminary conference prior to granting a request for a hearing or prior to the scheduled commencement of a hearing or at any time before issuing a Final Judgment and Order.

(2) The purpose of a preliminary conference is to consider any or all of the following:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which shall avoid unnecessary proof;

(c) The limitation of the number of witnesses or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; or

(e) Such other matters as may aid in the efficient and equitable disposition of the adjudicative enforcement proceeding.

(3) If a request for hearing has been timely and properly filed and has not been denied, all parties shall prepare and exchange the following information at the initial preliminary conference:

(a) Names and addresses of prospective witnesses including proposed areas of expertise for expert witnesses;

(b) A brief summary of proposed testimony;

(c) A time estimate of each witness' direct testimony;

(d) Curricula vitae (resumes) of all prospective expert witnesses.

(4) The scheduling of a preliminary conference shall be solely within the discretion of the Presiding Officer.

(5) The Presiding Officer shall give all parties at least three (3) days notice of the preliminary conference.

(6) The notice shall include the date, time and place of the preliminary conference.

R655-14-19. Telephonic or Electronic Hearings and Preliminary Conferences.

(1) The Presiding Officer may conduct hearings or preliminary conferences by telephone or other reliable electronic technology.

R655-14-20. Procedures and Standards for Orders

Resulting from Service of an Initial Order.

(1) Consent Order:

(a) If the respondent substantially agrees with or does not contest the statements of fact in the IO, or if the parties agree to specific amendments to the statements of fact in the IO, the parties may enter into a Consent Order by stipulating to the facts and either or both of the following:

(i) Negotiated administrative penalties;

(ii) Negotiated replacement of water; or

(iii) Negotiated reimbursement of enforcement costs.

(b) A Consent Order based on that stipulation, shall be prepared by the Enforcement Engineer for execution by the parties. The executed Consent Order shall be reviewed by the Presiding Officer and, if found to be acceptable, will be signed and issued by the Presiding Officer.

(c) A Consent Order issued by the Presiding Officer is not subject to reconsideration or judicial review.

(2) Final Judgment and Order Without Hearing: If the respondent does not request a hearing or is not granted a request for a hearing, participates by attending a preliminary conference or otherwise presents relevant information to the Presiding Officer, but is unable or unwilling to negotiate a stipulated Consent Order, the Presiding Officer shall issue a Final Judgment and Order based on the record, as defined in this rule.

(3) Final Judgment and Order After Hearing: If the respondent timely and properly requests a hearing, the hearing request is granted, the respondent participates by attending all scheduled preliminary conferences, and/or by attending the hearing, but is unwilling or unable to negotiate a stipulated Consent Order, the Presiding Officer shall issue a Final Judgment and Order based upon the record, as defined in this rule.

(4) Default Order: The Presiding Officer may issue a Default Order if the respondent fails to participate as follows:

(a) The respondent does not timely request a hearing and fails to respond to the IO; or

(b) After proper notice the respondent fails to attend a preliminary conference scheduled by the Presiding Officer; or

(c) After proper notice, the respondent fails to attend a hearing scheduled by the Presiding Officer.

(5) A respondent who fails to participate pursuant to an IO waives any right to request reconsideration of the Final Judgment and Order per Section R655-14-25, but may petition for judicial review per Section R655-14-29.

R655-14-21. Conduct of Hearings.

(1) All parties, authorized representatives, witnesses and other persons present at the hearing shall conduct themselves in a manner consistent with the standards and decorum commonly observed in Utah courts. Where such decorum is not observed, the Presiding Officer may take appropriate action including adjournment, if necessary.

(2) The Presiding Officer shall conduct the hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters, and have an oath or affirmation administered to all witnesses.

R655-14-22. Rules of Evidence in Hearings.

(1) Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence.

(2) A party may call witnesses and present oral, documentary, and other evidence.

(3) A party may comment on the issues and conduct cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for hearing, and as may affect the disposition of any interest which permits the person participating to be a party.

(4) A witness' testimony shall be under oath or affirmation.

(5) Any evidence may be presented by affidavit rather than by oral testimony, subject to the right of any party to call and examine or cross-examine the affiant.

(6) Relevant evidence shall be admitted.

(7) The Presiding Officer's decision may not be based solely on hearsay.

(8) Official notice may be taken of all facts of which judicial notice may be taken in Utah courts.

(9) All parties shall have access to public information contained in the Division's files and to all materials and information gathered in the investigation, to the extent permitted by law.

(10) No evidence shall be admitted after completion of a hearing or after a case is submitted on the record, unless otherwise ordered by the Presiding Officer.

(11) Intervention is prohibited.

(12) A respondent appearing before the Presiding Officer for the purpose of a hearing may be represented by a licensed attorney. The Enforcement Engineer shall present evidence before a Presiding Officer supporting the State Engineer's claim. At the State Engineer's discretion, a representative from the office of the Attorney General may also present supporting evidence.

R655-14-23. Transcript of Hearing.

(1) Testimony and argument at the hearing shall be either recorded electronically or stenographically. The Division shall make copies of electronic recordings available to any party, upon written request. The fee charged for this service shall be equal to the actual costs of providing the copy. The Division is not responsible to supply any party with a transcript of a hearing.

(2) If any party shall cause to be produced a transcript of a hearing, a copy of said transcript shall be filed with the Division and provided to all other parties. By order of the Presiding Officer and with the consent of all parties, such written transcript may be deemed an official transcript.

(3) Corrections to an official transcript may be made only to conform it to the evidence presented at the hearing. Transcript corrections, agreed to by opposing parties, may be incorporated into the record, if and when approved by the Presiding Officer, at any time during the hearing, or after the close of the adjudicative proceeding. The Presiding Officer may call for the submission of proposed corrections and may determine the disposition thereof at appropriate times during the course of the proceeding.

R655-14-24. Consent Order.

(1) At any time prior to the Presiding Officer issuing a Final Judgment and Order, the parties may attempt to settle a dispute by stipulating to a Consent Order.

(2) Every Consent Order shall contain, in addition to an appropriate order:

(a) A statement of facts accepted by the parties;

(b) A waiver of further procedural steps before the Presiding Officer and of the right to judicial review; and

(c) A statement that the stipulation is enforceable as an order of the State Engineer in accordance with procedures prescribed by law.

(3) The Consent Order may contain a statement that signing the Consent Order is for settlement purposes only and does not constitute an admission by any party that the law or rules have been violated as alleged in the IO.

(4) When issued by the Presiding Officer, a Consent Order constitutes a Final Judgment and Order, effective on the date issued.

R655-14-25. Reconsideration.

(1) Within 14 days after the Presiding Officer issues a

Final Judgment and Order, any party may file a written request for reconsideration stating the specific grounds upon which relief is requested.

(2) Unless otherwise provided by statute, the filing of a request for reconsideration is not a prerequisite for seeking judicial review of the order.

(3) The request for reconsideration shall be filed with the Division to the attention of the Presiding Officer and one copy shall be mailed to each party by the party filing the request.

(4) The Presiding Officer may issue a written order granting or denying the request for reconsideration. It is not required that the written order explain the grounds for the Presiding Officer's decision.

(5) If the Presiding Officer does not issue an order granting a request for reconsideration within 14 days after the date it is filed with the Division, the request shall be considered denied.

(6) A Final Judgment and Order in the form of a Consent Order or a Default Order is not subject to a request for reconsideration under this rule.

R655-14-26. Setting Aside a Final Judgment and Order.

(1) On the motion of any party or on a motion by the Presiding Officer, the Presiding Officer may set aside a Final Judgment and Order on any reasonable grounds, including but not limited to the following:

(a) The respondent was not properly served with an IO;

(b) The order has been replaced by a judicial order that covers the same violation and time period;

(c) A rule or policy was not followed when the Final Judgment and Order was issued;

(d) Mistake, inadvertence, excusable neglect;

(e) Newly discovered evidence which by due diligence could not have been discovered before the Presiding officer issued the Final Judgment and Order; or

(f) Fraud, misrepresentation or other misconduct of an adverse party;

(2) A motion to set aside a final order shall be made in a reasonable time and not more than three (3) months after the Final Judgment and Order was issued.

(3) The Presiding Officer shall notify the parties of the receipt and consideration of a motion to set aside a final order by issuing a notice to all parties, including therewith a copy of the motion.

(4) Any party opposing a motion to set aside a final order may submit information within the time period to be established by the Presiding Officer's notice of the motion.

(5) After consideration of the motion to set aside an order and any information received from the parties, the Presiding Officer shall issue an order granting or denying the motion, and provide a copy of the order to all parties.

R655-14-27. Amending Administrative Orders.

(1) On the motion of any party or of the Presiding Officer, the Presiding Officer may amend an IO or Final Judgment and Order for reasonable cause shown, including but not limited to the following:

(a) A clerical mistake made in the preparation of the order; or

(b) The time periods and alleged violation(s) covered in the order overlap the time periods and alleged violation(s) in another order for the same respondents.

(2) A motion by any party to amend an order shall be made in a reasonable time and, if to amend a Final Judgment and Order, not more than three (3) months after the Final Judgment and Order was issued.

(3) The Presiding Officer shall notify the parties of the receipt and consideration of a motion to amend an order by issuing a notice. The notice shall include a copy of the motion.

(4) Any party opposing a motion to amend an order may submit information within the time period to be established by the Presiding Officer's notice of the motion.

(5) After considering a motion to amend an order and any relevant information received from the parties, the Presiding Officer shall advise the parties of his determination. If the Presiding Officer determines that the order shall be amended, the Presiding Officer shall issue the amended order to all parties.

R655-14-28. Disqualification of Presiding Officers.

(1) A Presiding Officer shall disqualify himself from performing the functions of the Presiding Officer regarding any matter in which he, his spouse, or a person within the third degree of relationship to either of them or the spouse of such person:

(a) Is a party to the proceeding, or an officer, director, or trustee of a party;

(b) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented, a party concerning the matter in controversy;

(c) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(d) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

(e) Is likely to be a material witness in the proceeding.

(2) A Presiding Officer is also subject to disqualification under principles of due process and administrative law.

(3) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Section 67-16-1 et seq.

(4) A motion for disqualification shall be made first to the Presiding Officer. If the Presiding Officer is appointed, any determination of the Presiding Officer upon a motion for disqualification may be appealed to the State Engineer.

R655-14-29. Judicial Review.

(1) Pursuant to Section 73-2-25, a Final Judgment and Order may be reviewed by trial de novo by the district court:

(a) In Salt Lake County; or

(b) In the county where the violation occurred.

(2) A respondent shall file a petition for judicial review of a Final Judgment and Order within 20 days from the day on which the order was issued, or if a request for reconsideration has been filed and denied, within 20 days of the date of denial of the request for reconsideration.

(3) The Presiding Officer may grant a stay of an order or other temporary remedy during the pendency of the judicial review on the Presiding Officer's own motion, or upon the motion of a party. The procedures for notice, for consideration of motions, and for issuing a determination shall be as set forth herein for a motion to set aside a Final Judgment and Order.

KEY: water rights, enforcement, administrative penalties
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Notice of Continuation February 24, 2015 73-2-25
73-2-26
73-3-25

R655. Natural Resources, Water Rights.
R655-16. Administrative Procedures for Declaring Beneficial Use Limitations for Supplemental Water Rights.
R655-16-1. Authority.

Section 73-1-3 declares, "Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state."

Subsection 73-2-1(3) declares, "The State Engineer shall be responsible for the general administrative supervision of the waters of the state and the measurement, appropriation, apportionment, and distribution of those waters."

Subsection 73-2-1(5)(e) authorizes the State Engineer to make rules governing the form and content of applications and related documents, maps and reports.

Subsection 73-3-3(4)(b)(vii) requires the State Engineer to supply an application form for the permanent or temporary change of a water right which shall set forth, among other information, "the place, purpose, and extent of the present use."

Section 73-3-16 requires applicants to submit proof of appropriation or permanent change including, among other information, "a map showing the place of use", "the nature and extent of the completed works" and "the method of applying the water to beneficial use".

Section 73-3-20(2) states "The state engineer may require the owner of record of an approved exchange application to provide information concerning ... the extent to which the development under the exchange has occurred and other information the state engineer considers necessary ... to arrive at the quantity of water being exchanged."

Section 73-5-8 states, "Every person using water from any river system or water source, when requested by the State Engineer, shall within 30 days after such request report to the State Engineer in writing: (1) the nature of the use of any such water; (2) the area on which it is used; (3) the kind of crops grown; and (4) water elevations on wells or tunnels and quantity of underground water used."

R655-16-2. Justification.

Proper water right administration requires a quantification of the Beneficial Use(s) to which the holder of a water right is entitled. To facilitate record keeping, each unique Beneficial Use or set of Beneficial Uses is assigned a Water Use Group number in the State Engineer's records. Some of the State Engineer's records indicate the Beneficial Uses in a Water Use Group are authorized under two or more water rights (Supplemental Rights), but do not quantify the Beneficial Use Amount authorized under each individual right. Administrative activities requiring an evaluation of the Beneficial Use of a water right may necessitate the quantification of the Beneficial Use allowed under each supplemental water right in a Water Use Group.

This rule provides for a "Declaration of Beneficial Use Amounts" form to enable Water Right Holders to declare Beneficial Use information and document agreement with that declaration by those with supplemental water rights.

R655-16-3. Purpose.

The purpose of this rule is to allow Water Right Holders to determine and declare the amount of Beneficial Use that each water right contributes to the total Beneficial Use of a Water Use Group. To accomplish this, a Declaration of Beneficial Use Amounts form may be completed and submitted to the State Engineer. To complete the form, the Water Right Holders must quantify, by agreement, the amount of Beneficial Use that some or all of the supplemental water right contributes to the Water Use Group.

R655-16-4. Application of Rule.

This rule applies to all Water Use Groups defined in the State Engineer's water right records for which Beneficial Use Amounts of each of the individual water rights have not been established.

R655-16-5. Definitions.

(1) Terms used in this rule are defined as follows:

(a) "Application for Apportionment of Beneficial Use Amounts" means an application requesting that the State Engineer apportion the Beneficial Uses of a Water Use Group among the supplemental water rights that make up the Water Use Group.

(b) "Beneficial Use" means the purpose to which water diverted under a water right is applied and the amount of that Beneficial Use. Examples include but are not limited to irrigation (amounts measured in acres); stock watering (amounts measured in numbers of equivalent livestock units); domestic (indoor residential - amounts measured in numbers of equivalent domestic units); and commercial, industrial, municipal (amounts measured in acre-feet).

(c) "Beneficial Use Amount" means the amount of Beneficial Use a water right contributes to a Water Use Group that includes the subject water right.

(d) "Change Application" means an application for permanent or temporary change of a water right as defined in Section 73-3-3.

(e) "Declaration of Beneficial Use Amounts" (Declaration) means either a form provided by the State Engineer, or an alternative document containing the same information, for use by Water Right Holders to declare the Beneficial Use Amount of some or all of the individual water rights in a Water Use Group.

(f) "Party" means only the applicant and other Water Right Holders within the Water Use Group.

(g) "Proof" means Proof of Beneficial Use for an appropriation or permanent change as described in Section 73-3-16 or as may be required by the State Engineer under 73-3-20(2).

(h) "Sole Supply" means the amount of Beneficial Use allowed under a particular water right when used alone and separate from all Supplemental Rights. If a water right has been assigned to more than one Water Use Group, the Sole Supply of the water right is the sum of its Beneficial Use Amounts.

(i) "Supplemental Right" means a water right that is used together with one or more other water rights for a common Beneficial Use.

(j) "Water Right Holder" means the entity, person, or persons documented as owning a water right in the records of the State Engineer.

(k) "Water Use Group" means one or more water rights listed and assigned a unique number in the records of the State Engineer as being applied to a common Beneficial Use.

R655-16-6. Declaration of Beneficial Use Amounts.

(1) A Declaration shall be prepared by Water Right Holders using either a form provided by the State Engineer or an alternative document containing the same information.

(a) To be considered acceptably complete, a Declaration must:

(i) be signed by all Water Right Holders in the Water Use Group: and

(ii) include documentation supporting the Beneficial Use Amounts declared.

(b) A Declaration shall apportion the Beneficial Use Amount of a water right in the Water Use Group according to the average annual Beneficial Use of each water right being quantified on a long-term basis or by any other evaluation method consistent with the information contained in the State Engineer's records.

(c) The Declaration form shall include a statement

acknowledged by those signing the form and recognizing that the Beneficial Use Amounts declared by the Declaration is not a general adjudication of the water rights involved under Chapter 73-4.

(d) The State Engineer may require additional documentation to support the Beneficial Use Amounts declared in a Declaration.

(e) The State Engineer will review and evaluate a Declaration as described in R655-16-7.

(2) A Declaration filed in connection with a Change Application.

(a) Shall be required in situations where:

(i) the Change Application is filed on fewer than all of the water rights in a Water Use Group;

(ii) the Change Application seeks to remove a water right from a Water Use Group;

(iii) the Beneficial Use Amount of a water right to be removed from the Water Use Group has not been quantified; and

(iv) the nature of the change requires a quantification of the Sole Supply of the water right being changed.

(b) Shall be prepared for each Water Use Group to which the water right or the portion of the water right to be changed has been assigned.

(c) May quantify only the Beneficial Use Amount of the water right that would be the subject of a Change Application.

(d) Must, together with any other Declarations required by the Change Application, if the water right has been assigned to more than one Water Use Group, declare the Sole Supply of the water right or the portion of the water right to be changed.

(3) A Declaration to declare the Beneficial Use Amount of a water right for which Proof has been filed:

(a) May be required in situations where:

(i) the Beneficial Use Amount has not been quantified for the water right in the Water Use Group for which Proof has been filed; and

(ii) the Proof is filed on fewer than all of the water rights in the Water Use Group; or

(iii) the Water Right Holder who has filed Proof does not hold all the water rights in the Water Use Group.

(b) Shall be prepared for each Water Use Group to which the water right for which Proof has been filed belongs.

(c) May quantify only the Beneficial Use Amount of the water right that would be the subject of the Proof.

(d) Must, together with any other Declarations required for the Proof, if the water right has been assigned to more than one Water Use Group, declare the Sole Supply of the water right for which Proof has been filed.

(4) The filing of a Declaration does not limit the ability of a Water Right Holder to continue to use the water rights together supplementally as they have historically been used. Regardless of the Beneficial Use Amounts declared in a Declaration, the previous supplemental use of the water rights may continue, with the exclusion of any water right removed from the group through an approved Change Application or invalidated through other legal or administrative process.

(5) Once accepted for filing, a Declaration may only be revised by filing a new Declaration:

(a) That is signed by at least all Water Right Holders within the Water Use Group affected by the revision and whose Beneficial Use Amounts were previously declared by the filing of a Declaration; and

(b) That addresses only water rights that have not been previously removed from the Water Use Group through an approved Change Application or invalidated through other legal or administrative process.

R655-16-7. State Engineer Review and Evaluation.

(1) If a Declaration is filed with the State Engineer:

(a) The State Engineer shall review the Declaration for consistency with the water right information contained in the State Engineer's records.

(b) If the Declaration is inconsistent with the water right information contained in the State Engineer's records, it will be returned without further action to the Water Right Holder who submitted the Declaration with an explanation of the inconsistencies.

(c) If there is reason to believe the Declaration is consistent with the State Engineer's records, the State Engineer shall update the water right records of all water rights listed in the Declaration, consistent with the Beneficial Use Amounts included in the Declaration. With the update, a memo documenting the Beneficial Use declarations shall be placed on the file of each affected water right.

(2) A Water Right Holder may request, in writing to the State Engineer, a review of the State Engineer's Water Right Database entries and the State Engineer's Water Right Files related to a Water Use Group.

(a) Such a request is not a request for agency action pursuant to Chapter 63G-4 because the review shall be limited to a determination as to whether the State Engineer's Water Right Database entries are consistent with the State Engineer's Water Right Files for the water rights in the Water Use Group.

(b) A request for a records review filed pursuant to this rule shall set forth a statement as to how the submitter believes the State Engineer's Water Right Database should be modified to be consistent with the State Engineer's Water Right Files for the water rights in the Water Use Group.

(c) The State Engineer shall complete a review of the Water Rights Database and the Water Right Files within a reasonable time from receipt of the written request and shall notify the requester in writing when the review has been completed.

(d) A copy of the State Engineer's reply to the request for a records review shall be placed on the water right file for each water right in the Water Use Group reviewed.

(3) The State Engineer may modify Water Use Group records at any time to resolve errors, deficiencies, or ambiguities. With the modification, a memo documenting the change in the Water Use Group shall be placed on the file of each affected water right.

R655-16-8. Application to State Engineer for Apportionment of Beneficial Use Amounts.

(1) An applicant may submit an application to the State Engineer requesting an informal adjudicative proceeding pursuant to Chapter 63G-4 for the apportionment of the Beneficial Use Amounts of the water rights in the Water Use Group if:

(a) An apportionment is necessary for an administrative action on a Change Application or Proof of Beneficial Use; and

(b) The applicant has exhausted all reasonable efforts and has been unable to produce a Declaration because:

(i) It is impossible to identify and/or contact one or more of the parties or their successors in interest in the Water Use Group. In this case the applicant must document:

(A) the attempts to identify and contact the parties or their successors in interest; and

(B) the reasons why the parties or their successors in interest cannot be identified or no contact can be made.

(ii) One or more of the parties or their successors in interest refuses to participate in completing the Declaration or refuses to sign the Declaration. In this case the applicant must document:

(A) the attempts to reach agreement with the parties or their successors in interest; and

(B) the reasons, in detail, why no agreement could be reached.

(iii) Any other reason or reasons the applicant cannot cure, which prevents the completion of the Declaration. In this case the applicant must document why the Declaration cannot be completed.

(2) An Application for Apportionment of Beneficial Use Amounts shall be made on a form provided by the State Engineer and shall comply with Section 63G-4-201 as a request for agency action.

(a) The applicant shall provide all information requested on the form provided by the State Engineer including all affidavits and documentation gathered in the effort to prepare a Declaration.

(b) The application form shall include a statement acknowledged by the applicant signing the form and recognizing that the State Engineer's apportionment of the Beneficial Use Amounts of the water rights within the Water Use Group is not a general adjudication of the water rights involved under Chapter 73-4.

(c) To the extent possible, the applicant shall provide notice to the other parties pursuant to Section 63G-4-201(3)(b).

(3) The State Engineer shall review the application for completeness and compliance with the criteria described in (1). As part of the review, the State Engineer shall determine whether the applicant's effort to complete a Declaration without success has been sufficient.

(4) If the application is incomplete or does not meet the criteria described in (1), or if the State Engineer believes the applicant should make additional effort to complete the Declaration, the State Engineer shall return the application to the applicant without further action with an explanation of the inadequacies. Returning an incomplete or inadequate application is not a final agency action; it is an intermediate step instructing the applicant regarding further steps that must be taken before the application can be accepted for filing.

(5) If the application is complete and does meet the criteria described in (1), and if the State Engineer believes the applicant has exerted all reasonable efforts to complete the Declaration without success, the State Engineer shall accept the application for filing and apportion the Beneficial Uses of the water rights in the Water Use Group accordingly.

(6) For the purposes of this rule, the State Engineer shall apportion the Beneficial Use Amounts of the water rights in the Water Use Group according to the following procedure:

(a) The State Engineer shall notify all parties in accordance with Section 63G-4-201(3)(d)(iii) and (e)(ii) and shall issue a request for information to each Party as authorized in Section 73-5-8.

(b) The parties will be allowed at least thirty (30) days for submittal of the requested information.

(c) Upon expiration of the allotted response time, the State Engineer will review:

(i) all information received with the application: and

(ii) all information received pursuant to the State Engineer's request (including historical records of flows diverted, historical water use patterns, etc.); and

(iii) any other information relevant to the water rights in the Water Use Group , including the State Engineer's water right records (such as, relative priority and water flow limitations, distribution records, etc.).

(d) Based upon a review of the information described in (c), the State Engineer shall make a preliminary apportionment. The State Engineer may determine whether to make a preliminary apportionment of the Beneficial Use Amount for each of the water rights in the Water Use Group or an apportionment of only the Beneficial Use Amount of the water right involved in the administrative action.

(7) The State Engineer shall notify all parties by regular mail of the preliminary apportionment of the Beneficial Use Amounts apportioned. This notification is an intermediate rather than a final agency action.

(a) The parties shall be advised of their right to protest the preliminary Beneficial Use Amounts apportioned by the State Engineer.

(b) The parties will be allowed at least thirty (30) days for submittal of protests or other information.

(8) The State Engineer may hold a hearing if deemed necessary to obtain further information regarding the apportionment of the Beneficial Use Amounts of the water rights within the Water Use Group.

(9) The State Engineer shall review any further information obtained either through protest or the hearing process and may revise the preliminary apportionment of the Beneficial Use Amounts if necessary to ensure a proper apportionment of the Beneficial Use among the water rights in the Water Use Group.

(10) The State Engineer shall issue an Order, which shall be the agency's final action, setting forth the Beneficial Use Amount of each water right apportioned consistent with the apportionment.

(11) Orders of the State Engineer regarding the apportionment of Beneficial Use shall be subject to the applicable law including provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-401, 63G-4-402, and 73-3-14 which provide for filing either a Request for Reconsideration with the State Engineer or de novo review in the appropriate district court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of the Order. However, a Request for Reconsideration is not a prerequisite to filing for de novo review. De novo review must be sought within 30 days after the date of the Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied or deemed denied. A Request for Reconsideration is deemed denied when no action is taken within 20 days after the request is filed.

(12) Once the time to seek de novo review of a State Engineer Order has passed, or if such review has been sought, once the courts have issued a final, non-appealable order, the State Engineer shall update the Division's documentary and electronic records for each of the water rights apportioned consistent with the State Engineer's Order, or the court order if one has been issued. With the update, a memo documenting the Beneficial Use apportionment shall be placed on the file of each affected water right.

R655-16-9. Exceptions.

(1) Water Use Groups created for public water suppliers that do not describe the extent of the Beneficial Uses but rather group water rights within a use area will not require a Declaration.

(2) At any time during a Change Application or Proof process, if it becomes apparent, through State Engineer review, protest, or otherwise, that a Declaration is necessary to complete the administrative process, the State Engineer may require Declaration be completed consistent with this rule.

(3) A Water Right Holder who wishes to declare that a water right contributes no Beneficial Use amount to a Water Use Group, where the holder is the sole owner of the non-contributing water right, may make that declaration by filing a Declaration signed only by that Water Right Holder. The Declaration may address only those rights declared to be non-contributing. Once accepted for filing, a Declaration filed to declare no Beneficial Use amount may not be withdrawn or modified by the Water Right Holder. No effort will be made to contact the other Water Right Holders in the Water Use Group concerning such filing. Once a Declaration of no Beneficial Use has been accepted for filing, the State Engineer shall update the water right records of all water rights listed in the Declaration,

consistent with the Declaration. With the update a memo documenting the no Beneficial Use declarations shall be placed on the file of each affected water right.

(4) If the Beneficial Use Amount of a water right has been quantified by a court order or other legal instrument of equivalent effect, and which instrument is not a part of the State Engineer's documentary records, such instrument may be submitted by any person for consideration by the State Engineer.

(5) The State Engineer may administratively cancel the assignment of a water right to a Water Use Group if such action provides for more efficient or proper water right administration. When the database is updated to cancel the assignment, a memo documenting the cancellation shall be placed on the file of each affected water right.

(6) The State Engineer may waive the filing of a Declaration for a temporary Change Application when he believes sufficient water and Beneficial Use Amounts are available for the purposes of the change.

KEY: beneficial use, supplemental water rights, water rights

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73-3-3(4)(b)(vii)
73-5-8
73-3-14
73-3-16
73-3-20(2)
63G-4
73-4

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism and safety attached to the device.

(l) "Hunter's choice" means either sex may be taken.

(m) "Limited entry hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(n) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, wildlife convention permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(o) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(p) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, wildlife conventions permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(r) "Spike bull" means a bull elk which has at least one antler beam with no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(s) "Drone" means an autonomously controlled, aerial vehicle of any size or configuration that is capable of controlled flight without a human pilot aboard.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or its parts in accordance with Section 23-19-1 and the rules or guidebooks of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

(3) A person must possess or obtain a Utah hunting or combination license to apply for or obtain any big game hunting permit.

R657-5-4. Age Requirements and Restrictions.

(1)(a) Subject to the exceptions in subsection (c), a person 12 years of age or older may apply for or obtain a permit to hunt big game. A person 11 years of age may apply for a permit to hunt big game if that person's 12th birthday falls within the calendar year for which the permit is issued.

(b) A person may not use a permit to hunt big game before their 12th birthday.

(c) A person who is younger than 14 years of age may not apply for or obtain the following types of big game permits issued by the division through a public drawing:

(i) premium limited entry;

(ii) limited entry;

(iii) once-in-a-lifetime; and

(iv) cooperative wildlife management unit.

(d) A person who is 13 years of age may apply for or obtain a type of permit listed in Subsection(1)(c) if that person's 14th birthday falls within the calendar year for which the permit is issued.

(e) antlerless deer, antlerless elk, and doe pronghorn permits are not limited entry, premium limited entry or cooperative wildlife management unit permits for purposes of determining a 12 or 13 year olds eligibility to apply for or obtain through a public drawing administered by the division.

(2)(a) A person at least 12 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License 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 or online license agent, for ten dollars or half of the price of the original license, permit, or certificate of registration, 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.

R657-5-6. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-7. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a visible beam of light. Laser range finding devises are exempt from this restriction.

R657-5-8. Rifles and Shotguns.

(1) The following rifles and shotguns may be used to take

big game:

(a) any rifle firing centerfire cartridges and expanding bullets; and

(b) a shotgun, 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

R657-5-9. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at 100 yards.

R657-5-10. Muzzleloaders.

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has open sights, peep sights, or a fixed non-magnifying 1x scope, except as provided in Subsection (4) and R657-12;

(c) has a single barrel;

(d) has a minimum barrel length of 18 inches;

(e) is capable of being fired only once without reloading;

(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;

(g) is loaded with black powder or black powder substitute, which must not contain smokeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A bullet 130 grains or heavier, or a sabot 170 grains or heavier must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit for a big game hunt may:

(i) use only muzzleloader equipment authorized in this Subsections (1) and (2) to take the species authorized in the permit; and

(ii) not possess or be in control of a rifle or shotgun while in the field during the muzzleloader hunt.

(A) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found. "Field" does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Guidebook and Waterfowl Guidebook, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) 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 firearm to hunt or take protected wildlife.

(4) A person who has obtained an any weapon permit for a big game hunt may use muzzleloader equipment authorized in this Section to take the species authorized in the permit, including a fixed or variable magnifying scope.

R657-5-11. Archery Equipment.

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded, and

(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow, except as provided in Subsection (5) and Rule R657-12;

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw, except as provided in Subsection (5) and Rule R657-12;

(d) a release aid that is not hand held or that supports the draw weight of the bow, except as provided in Subsection (5) and Rule R657-12; or

(e) a bow with an attached electronic range finding device or a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit for a big game hunt may :

(i) use only archery equipment authorized in Subsections (1) and (2) to take the species authorized in the permit; and

(ii) not possess or be in control of a crossbow, draw-lock, rifle, shotgun or muzzleloader while in the field during an archery hunt.

(A) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found. "Field" does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Guidebook and Waterfowl Guidebook, respectively, and possessing only the weapons authorized to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt, provided the person is in compliance with the regulations of that hunt and possesses only the weapons authorized for that hunt;

(iii) livestock owners protecting their livestock;

(iv) 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 firearm to hunt or take protected wildlife; or

(v) a person possessing a crossbow or draw-lock under a certificate of registration issued pursuant to R657-12.

(5) A person who has obtained an any weapon permit for a big game hunt may use arechery equipment authorized in this Section to take the species authorized in the permit, including a crossbow or draw-lock.

(6)(a) A crossbow used to hunt big game must have:

(i) a minimum draw weight of 125 pounds;

(ii) a minimum draw length of 14 inches, measured between the latch (nocking point) and where the bow limbs attach to the stock;

(iii) an overall length of at least 24 inches; measured between the butt stock end and where the bow limbs attach to the stock; and

(iv) a positive mechanical safety mechanism.

(b) A crossbow arrow or bolt used to hunt big game must be at least 16 inches long and have:

(i) fixed broadheads that are at least 7/8 inch wide at the widest point; or

(ii) expandable, mechanical broadheads that are at least 7/8 inch wide at the widest point when the broadhead is in the open position.

(c) It is unlawful for any person to:

(i) hunt big game with a crossbow during a big game archery hunt, except as provided in R657-12-8;

(ii) carry a cocked crossbow containing an arrow or a bolt while in or on any motorized vehicle on a public highway or other public right-of-way, except as provided in R657-12-4; or

(iii) hunt any protected wildlife with a crossbow:

(A) bolt that has any chemical, explosive or electronic device attached;

(B) that has an attached electronic range finding device; or

(C) that has an attached magnifying aiming device, except as provided in Subsection (7).

(7) A crossbow used to hunt big game during an any weapon hunt may have a fixed or variable magnifying scope.

R657-5-12. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-614-4.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the guidebook of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Scott M. Matheson Wetland Preserve.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-13. 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:

(i) take protected wildlife; or

(ii) locate protected wildlife while in possession of a rifle, shotgun, archery equipment, crossbow, or muzzleloader.

(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 headlights 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 firearm to hunt or take wildlife.

R657-5-14. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane, drone, or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by any vehicle, device, or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft, drone, or other airborne vehicle or device from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft, drone, or other airborne vehicle or device in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

R657-5-15. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game. The use of one blood-trailing dog controlled by leash during lawful hunting hours within 72 hours of shooting a big game animal is allowed to track wounded animals and aid in recovery.

R657-5-16. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or its parts; and

(2) offers cash or prizes totaling more than $500.

R657-5-17. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-18. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as

follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-19. Exporting Big Game From Utah.

(1) A person may export big game or its parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-20. Purchasing or Selling Big Game or Its Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or its parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and horns of legally possessed big game as provided in Subsection 23-20-3, may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.

(b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-21. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully obtained as provided in Section R657-5-20; or

(c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns at any time. An authorization is required to gather shed antlers or shed horns or parts of shed antlers or shed horns during the shed antler and shed horn season published in the guidebook of the Wildlife Board for taking big game.

(b) A person must complete a wildlife harassment and habitat destruction prevention course annually to obtain the required authorization to gather shed antlers during the antler gathering season.

(3) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-22. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication of guilt for the poaching incident.

(2) Any person who provides information leading to another person's successful prosecution under Section 23-20-4 for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn within any once-in-a-lifetime or limited entry area may receive a permit from the division to hunt the same species on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (3).

(3)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must possess or obtain a Utah hunting or combination license and otherwise be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

R657-5-23. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment prescribed in R657-5-11 to take:

(a) one buck deer within the general hunt area specified on the permit for the time specified in the guidebook of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.

(c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b)(i) A person must complete the Archery Ethics Course annually to hunt any extended archery areas during the extended archery season.

(ii) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained a general archery buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer and extended archery areas.

(5) If a person 17 years of age or younger obtains a general archery buck deer permit, that person may only hunt during the general archery deer season and the extended archery season as provided Section R657-5-23(3).

(6) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study rifle hunt tables and identify these areas described in the guidebook of the Wildlife Board for taking big game.

R657-5-24. General Any Weapon Buck Deer Hunt.

(1) The dates for the general any weapon buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3) A person who has obtained a general any weapon buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer, as provided in R657-5-27; and

(b) any person 17 years of age or younger on July 31 of the current year, may hunt the general archery, extended archery, general any weapon and general muzzleloader buck deer seasons applicable to the unit specified on the general any weapon buck deer permit, using the appropriate equipment as provided in Sections R657-5-7 through R657-5-11, respectively.

R657-5-25. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader, as prescribed in R657-5-10, to take one buck deer within the general hunt area specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within any deer Cooperative Wildlife Management unit.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3)(a) A person who has obtained a general muzzleloader buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer, as provided in R657-5-27.

(b) If a person 17 years of age or younger purchases a general muzzleloader buck deer permit, that person may only hunt during the general muzzleloader deer season.

(4) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the guidebooks of the Wildlife Board for taking big game.

R657-5-26. Premium Limited Entry and Limited Entry Buck Deer Hunts.

(1)(a) To hunt in a premium limited entry or limited entry buck deer area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck deer, general any weapon buck deer, or general muzzleloader buck deer hunting, except as specified in the guidebook of the Wildlife Board for taking big game.

(b)(i) The Wildlife Board may establish in guidebook a limited entry buck deer hunt on a general season buck deer unit.

(ii) The season dates for a limited entry hunt under this Subsection will not overlap the season dates for the underlying general season hunt on the unit.

(iii) A landowner association under R657-43 is not eligible to receive limited entry permits that occur on general season units.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, excluding deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, management, or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management

unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, management, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A person who has obtained a premuim limited entry or limited entry buck permit may not:

(a) obtain any other deer permit, except an antlerless deer permit as provided in R657-5-27 and the guidebooks of the Wildlife Board; or

(b) hunt during any other deer hunt, except unsuccessful archery hunters may hunt within extended archery areas as provided in Subsection (7).

(5)(a) The Wildlife Board may establish a multi-season hunting opportunity in the big game guidebooks for selected premium limited entry and limited entry buck deer hunts.

(b) A person that obtains a premium limited entry or limited entry buck deer permit with a multi-season opportunity may hunt during any of the following limited entry buck deer seasons established in the guidebooks of the Wildlife Board for the unit specified on the premium limited entry or limited entry buck deer permit:

(i) archery season, using only archery equipment prescribed in R657-5-11 for taking deer;

(ii) muzzleloader season, using only muzzleloader equipment prescribed in R657-5-10 for taking deer; and

(iii) any weapon season, using any legal weapon prescribed in R657-5 for taking deer.

(c) A landowner association under R657-43 is not eligible to receive a multi-season hunting opportunity for premium limited entry or limited entry units.

(6) A premium limited entry or limited entry buck deer permit, including a permit with a multi-season opportunity, is valid only within the boundaries of the unit designated on the permit, excluding:

(a) areas closed to hunting;

(b) deer cooperative wildlife management units; and

(c) Indian tribal trust lands.

(7) A person who possesses an archery buck deer permit for a premium limited entry or limited entry unit, including a permit with a multi-season opportunity, may hunt buck deer within any extended archery area during the established extended archery season for that area, provided the person:

(a) did not take a buck deer during the premium limited entry or limited entry hunt;

(b) uses the prescribed archery equipment for the extended archery area;

(c) completes the annual Archery Ethics Course required to hunt extended archery areas during the extended archery season; and

(d) possesses on their person while hunting:

(i) the multi-season limited entry or limited entry buck deer permit; and

(ii) the Archery Ethics Course Certificate of Completion.

R657-5-27. Antlerless Deer Hunts.

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit; and

(iii) the appropriate muzzleloader hunt equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general muzzleloader deer;

(iii) limited entry archery deer; or

(iv) limited entry muzzleloader deer.

R657-5-28. General Archery Elk Hunt.

(1) The dates of the general archery elk hunt are provided in the guidebooks of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:

(i) an antlerless elk or a bull elk on a general any bull elk unit, excluding elk cooperative wildlife management units;

(ii) an antlerless elk or a spike bull elk on a general spike bull elk unit, excluding elk cooperative wildlife management units;

(iii) an antlerless elk or a bull elk on extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery elk permit may hunt within the extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b)(i) A person must complete the Archery Ethics Course annually to hunt the extended archery areas during the extended archery season.

(ii) A person must possess an Archery Ethics Course Certificate of Completion on their person while hunting.

(4) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3) and by the guidebooks of the Wildlife Board for taking big game.

(5) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study the rifle hunt tables to identify these areas described in the guidebook of the Wildlife Board for taking big game.

R657-5-29. General Season Bull Elk Hunt.

(1) The dates and areas for the general season bull elk hunts are provided in the guidebooks of the Wildlife Board for taking big game, except the following areas are closed to general any weapon bull elk hunting:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) A person may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull elk units are closed to spike bull elk permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk, on a general season any bull elk unit. Spike bull elk units are closed to any bull elk permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull elk or any bull elk, as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

R657-5-30. General Muzzleloader Bull Elk Hunt.

(1) The dates and areas for general muzzleloader bull elk hunts are provided in the guidebooks of the Wildlife Board for taking big game, except the following areas are closed to general muzzleloader bull elk hunting:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) General muzzleloader bull elk hunters may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may use a muzzleloader, prescribed in R657-5-10, to take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.

(c) A person who has obtained a general muzzleloader any bull elk permit may use a muzzleloader, as prescribed in R657-5-10, to take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.

(3) A person who has obtained a general muzzleloader bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

R657-5-31. Youth General Any Bull Elk Hunt.

(1)(a) For purposes of this section "youth" means any person 17 years of age or younger on July 31 of the current year.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A qualified person may obtain a youth any bull elk permit only once during their life.

(2) The youth any bull elk hunting season and areas are published in the guidebook of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including antlerless elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk or antlerless elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

(5) Preference points shall not be awarded or utilized when applying for or obtaining a youth general any bull elk permit.

R657-5-32. Limited Entry Bull Elk Hunts.

(1) To hunt in a limited entry bull elk area, a hunter must obtain a limited entry bull elk permit for the area.

(2)(a) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except as provided in Subsection (5) and excluding elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) The Wildlife Board may establish a multi-season hunting opportunity in the big game guidebooks for selected limited entry bull elk units.

(b) A person that obtains a limited entry bull elk permit with a multi-season opportunity may hunt during any of the following limited entry bull elk seasons established in the guidebooks of the Wildlife Board for the unit specied on the limited entry bull elk permit:

(i) archery season, using only archery equipment prescribed in R657-5-11 for taking elk;

(ii) muzzleloader season, using only muzzleloader equipment prescribed in R657-5-10 for taking elk; and

(iii) any weapon season, using any legal weapon prescribed in R657-5 for taking elk.

(c) A landowner association under R657-43 is not eligible to receive a multi-season hunting opportunity for limited entry units.

(4) A limited entry bull elk permit, including a permit with a multi-season opportunity, is valid only within the boundaries of the unit designated on the permit, excluding:

(a) areas closed to hunting;

(b) elk cooperative wildlife management units; and

(c) Indian tribal trust lands.

(5) A person who possesses any limited entry archery bull elk permit, including a permit with a multi-season opportunity, may hunt bull elk within any extended archery area during the established extended archery season for that area, provided the person:

(a) did not take a bull elk during the limited entry hunt;

(b) uses the prescribed archery equipment for the extended archery area;

(c) completes the annual Archery Ethics Course required to hunt extended archery areas during the extended archery season; and

(d) possesses on their person while hunting:

(i) the limited entry bull elk permit; and

(ii) the Archery Ethics Course Certificate of Completion.

(6) "Prescribed legal weapon" means for purposes of this subsection:

(a) archery equipment, as defined in R657-5-11, when hunting the archery season, excluding a crossbow or draw-lock;

(b) muzzleloader equipment, as defined in R657-5-10, when hunting the muzzleloader season, excluding magnifying scopes; and

(c) any legal weapon, including a muzzleloader and crossbow with a fixed or variable magnifying scope or draw-lock when hunting during the any weapon season.

(7)(a) A person who has obtained a limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.

(b) Limited entry and cooperative wildlife management unit bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

(8) A person who has obtained a limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (5) and R657-5-33(3).

R657-5-33. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife

management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit; and

(iii) the appropriate muzzleloader hunt equipment is used if hunting with a muzzleloader permit.

(b)(i) General buck deer for archery, muzzleloader or any legal weapon;

(ii) general bull elk for archery, muzzleloader or any legal weapon;

(iii) limited entry buck deer for archery, muzzleloader or any legal weapon;

(iv) Limited entry bull elk for archery, muzzleloader or any legal weapon; or

(v) antlerless elk.

R657-5-34. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

(4) A buck pronghorn permit allows a person to take one buck pronghorn within the area, during the season, and using the weapon type specified on the permit, except on a pronghorn cooperative wildlife management unit located within a limited entry unit.

R657-5-35. Doe Pronghorn Hunts.

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn, per doe pronghorn tag, using any legal weapon within the area and season as specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless pronghorn permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-36. Antlerless Moose Hunts.

(1) To hunt an antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season as specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management unit unless that person obtains an antlerless moose cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt during any other moose hunt or obtain any other moose permit.

R657-5-37. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, excluding any moose cooperative wildlife management unit located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-38. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison of either sex within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A cow bison permit allows a person to take one cow bison using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw cow bison permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a bison permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-39. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(8)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-40. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) A Rocky Mountain goat of either sex may be legally taken on a hunter's choice permit. Permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) A female-goat only permit allows a person to take one female-goat using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(7) An orientation course is required for Rocky Mountain goat hunters who draw female-goat only permits. Hunters will be notified of the orientation date, time and location.

(8)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-41. Depredation Hunter Pool Permits.

(1) When big game are causing damage or are considered a nuisance, control hunts not listed in the guidebook of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) For the purpose of this section, nuisance is defined as a situation where big game animals are found to have moved off formally approved management units onto adjacent units or other areas not approved for that species.

R657-5-42. Carcass Importation.

(1) It is unlawful to import dead elk, moose, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skull plates with antlers attached that have been cleaned of all meat and tissue;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer, elk, or moose diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, moose, mule deer, or white-tailed deer or its parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, moose, mule deer, or white-tailed deer from the affected areas are exempt if they:

(a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;

(b) do not have their deer, elk, or moose processed in Utah; or

(c) do not leave any parts of the carcass in Utah.

R657-5-43. Chronic Wasting Disease - Infected Animals.

(1) Any person who under the authority of a permit issued by the division legally takes a deer, elk, or moose that is later confirmed to be infected with Chronic Wasting Disease may:

(a) retain the entire carcass of the animal;

(b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or

(c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the guidebook of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

R657-5-44. Management Bull Elk Hunt.

(1)(a) For the purposes of this section "management bull" means any bull elk with 5 points or less on at least one antler. A point means a projection longer than one inch, measured from its base to its tip.

(b) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management bull elk archery season published in the guidebook of the Wildlife Board for taking big game.

(2)(a) Management bull elk permits shall be distributed pursuant to R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management bull elk permit holders may take one management bull elk during the season, on the area and with the weapon type specified on the permit. Management bull elk hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management bull elk.

(b) Management bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management bull elk permit holders who successfully harvest a management bull elk, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the elk they harvest to a division office for inspection within 48 hours after the date of kill.

(6) Management bull elk permit holders may not retain possession of any harvested bull elk that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

R657-5-45. General Any Weapon Buck Deer and Bull Elk Combination Hunt.

(1) Permit numbers, season dates and unit boundary descriptions for the general any weapon buck deer and bull elk combination hunt shall be established in the guidebook of the Wildlife Board for taking big game.

(2) A person who obtains a general any weapon buck deer and bull elk combination permit may use any legal weapon to take one buck deer and one bull elk during the season and within the unit specified on the permit.

(a) A general any weapon buck deer and bull elk combination permit does not authorize the holder to hunt deer or elk within any cooperative wildlife management unit.

(3) A person who has obtained a general any weapon buck deer and bull elk combination permit may not hunt during any other deer or elk hunt or obtain any other deer or elk permit, except:

(a) antlerless deer, as provided in Subsection R657-5-27, and

(b) antlerless elk, as provided in Subsection R657-5-33.

(4)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader deer permit.

R657-5-46. Management Buck Deer Hunt.

(1)(a) For the purposes of this section "management buck" means any buck deer with 3 points or less on at least one antler above and including the first fork in the antler. A point means a projection longer than one inch, measured from its base to its tip. The eye guard is not counted as a point.

(b) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.

(2) Management buck deer permits shall be distributed pursuant to rule R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management buck deer permit holders may take one management buck deer during the season, on the area and with the weapon type specified on the permit. Management buck deer hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management buck deer.

(b) Management buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management buck deer permit holders who successfully harvest a management buck deer, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 48 hours after the date of kill.

(6) Management buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-28(4).

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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 unit 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 guidebook 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 unit hunt boundary area where the landowner's property is located.

(4) The intent of the landowner appreciation permit is to provide an opportunity for landowners and their immediate family, whose property provides habitat for migratory deer, to purchase a general deer permit for the general unit hunt boundary where the landowner's property is located.

(5) 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) private land having one or more of the following attributes:

(A) 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 unit hunt boundary;

(B) for the purposes of receiving a landowner appreciation permit, a minimum of 100 acres of cultivated and mechanically harvested crop lands that, in the discretion of the division, is relied upon by migratory deer to meet herd management objectives;

(C) for the purposes of receiving a limited entry permit or voucher, private land, including crop lands, owned by members of a landowner association that is within a limited entry unit.

(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, lessees, and members of their immediate family 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 landowners or lessees, and members of their immediate family.

(5)(a) An individual who receives a general landowner buck deer permit may not receive a landowner appreciation permit for the same year.

(b) If one or more general landowner buck deer permits are awarded based on an identified parcel of eligible property, landowner appreciation permits may not be awarded for that identified parcel of eligible property during that same year.

R657-43-4. Qualifications for Landowner Appreciation Permits.

(1) The director, upon approval of the Wildlife Board, may establish a number of landowner appreciation permits within each unit to be offered to eligible landowners and members of their immediate family for the general deer hunting season only.

(2) Only private lands will be considered in qualifying for landowner appreciation permits. Public or state lands are not eligible.

(3) Private lands must:

(a) be relied upon by migratory deer for habitat; and

(b) in the discretion of the division, substantially contribute to the deer herd using the private lands in meeting its management objective.

(4)(a) Landowner appreciation permits are limited to resident or nonresident landowners and members of their immediate family.

(b) Lessees do not qualify for landowner appreciation permits.

(5)(a) An individual receiving a landowner appreciation permit may not receive a general landowner buck deer permit in the same year.

(b) If a landowner appreciation permit is awarded based on

an identified parcel of eligible property, general landowner buck deer permits may not be awarded for that identified parcel of eligible property during that same year.

R657-43-5. 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) Except as provided in R657-43-10(1)(b), 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.

R657-43-6. 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 unit 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 of eligible property owned within the respective general unit hunt boundary area;

(b) the signature of all landowners or lessees having an interest in the eligible property; and

(c) a map of the eligible property indicating the county and general unit within which it is located.

(5) In cases where the landowner's or lessee's land is in more than one general unit hunt boundary area, the landowner or lessee may select one of those units from which to receive the permit.

(6) a non-refundable handling fee must accompany each application.

(7) An individual may not apply for or obtain a general landowner buck deer permit without possessing a valid Utah hunting or combination license.

(8) Applications will be available by May 1 and must be received by October 1 of each year.

(9) Applications must be submitted to the regional division office managing the general hunting unit that the applicant applies for.

(10) The landowner or lessee signature on the application serves as an affidavit of the landowner or lessee certifying ownership of the eligible property.

R657-43-7. Application for Landowner Appreciation Permits.

(1) Applications for landowner appreciation permits are available from division offices.

(2) Only one eligible landowner may submit an application for the same parcel of eligible property within the respective general unit boundary area.

(3) In cases where more than one application is received for the same parcel of eligible property, all duplicate applications will be rejected.

(4) Applications must include:

(a) total acres of eligible property owned within the respective general unit hunt boundary area;

(b) the signature of all landowners having an interest in the property; and

(c) a map of the eligible property indicating the county and unit within which it is located.

(5) In cases where a landowner's land is in more than one general unit hunt boundary, the landowner must select one of those units from which to receive a permit.

(6) A non-refundable handling fee must accompany each application.

(7) An individual may not apply for or obtain a landowner appreciation permit without possessing a valid Utah hunting or combination license.

(8) Applications will be available by May 1 and must be received by October 1 of each year.

(9) Applications must be submitted to the regional division office managing the general hunting unit that the applicant applies for.

(10) The landowner's signature on the application serves as an affidavit of the landowner certifying ownership of the eligible property.

R657-43-8. Application for Limited Entry Permits.

(1) Applications for limited entry landowner permits are available from division offices.

(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 eligible property acting as 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 non-refundable handling fee.

(4) The division may provide a landowner association assistance in preparing the application.

(5) Applications must be completed and returned to the appropriate division office by September 1st of the year prior to when hunting is to occur.

(6) The division shall forward the application, its recommendation, and other related documentation to the Regional Wildlife Advisory Councils for public review and consideration.

(7) Recommendations by the Councils will then be forwarded to the Wildlife Board for review and action.

(8) Upon receiving the application, and recommendations from the Regional Advisory Councils and the division, the Wildlife Board may:

(a) authorize the issuance of a three year certificate of registration allowing the landowner association to operate; or

(b) deny or partially deny the application and provide the

landowner association with reasons for the decision.

(9)(a) A landowner association certificate of registration, including any variance granted under R657-43-8(6), must be renewed every three years.

(b)(i) Notwithstanding Subsection (9)(a), the Wildlife Board may annually modify permit types, numbers, and associated seasons authorized in a certificate of registration when necessary to achieve unit management objectives or otherwise comply with applicable law.

(ii) The division shall annually review the permit types, numbers, and seasons authorized by a certificate of registration issued under this Section and recommend modifications when necessary to achieve unit management objectives or otherwise comply with applicable law.

(iii) The division's recommendation and accompanying justification will be forwarded to the affected landowner association and the Regional Advisory Councils for review and recommendation.

(iv) The Wildlife Board shall consider the recommendations made by the division, Regional Advisory Councils, and landowner association and make a final decision on the proposed modifications consistent with the requirements in Subsection (9)(b).

(10)(a) A landowner association may petition to amend a certificate of registration upon submitting a written request to the regional division office where the landowner association is located.

(b) Amendment of the certificate of registration is required for changes in:

(i) permit numbers;

(ii) a landowner association's:

(A) by-laws; or

(B) distribution plan for the allocation of limited entry permits among its members;

(iii) acreage;

(iv) land ownership; or

(v) any other matter related to the management and operation of the landowner association not originally included in the certificate of registration.

(c) Requests for amendments dealing with permit numbers or permit allocation among association members:

(i) may be initiated by the landowner association or the division;

(ii) are due on September 1st of the year prior to when hunting is to occur; and

(iii) shall be forwarded to the Regional Advisory Councils and Wildlife Board for consideration and approval.

(A) Upon approval by the Wildlife Board, an amendment to the original certificate of registration shall be issued in writing.

(d) All other requests for amendments shall be reviewed by the region and Wildlife Section and, upon approval by the division director, an amendment to the original certificate of registration shall be issued in writing.

R657-43-9. Availability of General Landowner Permits and Landowner Appreciation Permits; Associated 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)(a) Only one landowner appreciation permit may be issued annually to a qualifying landowner or member of their immediate family, regardless of if that landowner owns more than 100 acres of eligible property.

(b) Only one landowner appreciation permit may be issued per parcel of eligible property.

(3) Successful applicants for the general landowner buck deer permit and the landowner appreciation permit may select only one season (archery, rifle or muzzleloader) for their permit, as provided in the guidebook of the Wildlife Board for taking big game.

(4)(a) General landowner buck deer permits and landowner appreciation 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.

(5) Any person who is issued a general landowner buck deer permit or a landowner appreciation permit under this rule is subject to all season dates, weapon restrictions and any other regulations as provided in the guidebook of the Wildlife Board for taking big game.

(6) The fee for a general landowner buck deer permit and landowner appreciation permit is the same as the fee for a general season, general archery or general muzzleloader buck deer permit.

(7) 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.

(8) 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.

(9) To receive a general landowner buck deer permit or landowner appreciation permit, the eligible person must possess or obtain a valid Utah hunting or combination license.

R657-43-10. Limited Entry Permits and Season Dates.

(1)(a) Only bull elk, buck deer or buck pronghorn limited entry permits may be applied for by the landowner association.

(b) A landowner association may not apply for or receive a :

(i) multi-season hunting opportunity on any limited entry hunt under R657-5; or

(ii) late season limited entry buck deer permits on a general season unit under R657-5-26(1)(b).

(2)(a) The division and landowner chairperson should jointly recommend the number of permits to be issued to the landowner association.

(b) If consensus between the landowner chairperson and the division on recommended permit numbers cannot be reached, a request for permits may be submitted by the landowner association along with a recommendation from the division 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 eligible property within the unit that is enrolled in a landowner association and serves as big game habitat; or

(b) the percentage of use by wildlife on eligible property enrolled in a landowner association.

(4) Landowners receiving vouchers may personally use the vouchers or reassign the vouchers to any legal hunter.

(5) All landowners who receive vouchers must:

(a) allow hunters who redeemed a voucher from that landowner access to the landowner's private lands included within the landowner association for hunting; and

(b) allow a number of public hunters with valid permits, equivalent to the number of vouchers the landowner received that year, to access the landowner'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 receiving vouchers may deny public hunters access to the landowner association's private land for hunting by receiving, 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 guidebook 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)(a) 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 guidebook of the Wildlife Board for taking big game.

(b) to receive a limited entry landowner permit, the person designated on the voucher must possess or obtain a Utah hunting or combination license.

(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.

R657-43-11. Limited Entry Permit Allocation and Fees.

(1) In order to qualify for limited entry landowner permits, a landowner association must document and upon request provide to the division:

(a) a list of landowners within the landowner association receiving vouchers for the previous year, if applicable;

(b) the number of public hunters who contacted the landowner association during the previous year requesting access to private lands within the landowner association, if applicable; and

(c) the landowners that actually provided access during the previous year to public hunters for the limited entry hunt, if applicable.

(2) If a landowner association distributes vouchers for members of the landowner association and the proceeds are distributed among members of the landowner association, the public access provisions described in R657-43-10(5) shall apply to all landowners receiving benefit from distribution of those proceeds.

(3) The division may deny a request for limited entry landowner permits if the landowner association fails to provide requested documentation from the previous year.

(4) 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.

(5) 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.

R657-43-12. 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
February 9, 2015 23-14-18
Notice of Continuation March 5, 2012 23-14-19

R708. Public Safety, Driver License.
R708-50. Vehicle Impound Fee Reimbursement.
R708-50-1. Purpose.

The purpose of this rule is to establish procedures for a person to apply for a reimbursement for the costs of towing and storing a vehicle if the vehicle was wrongfully impounded under Subsection 41-1a-1101(2).

R708-50-2. Authority.

This rule is authorized by 41-12a-806(5)(b).

R708-50-3. Definitions.

(1) Definitions in this rule are found in Subsection 41-12a-802.

R708-50-4. Procedure.

(1) In accordance with Section 41-12a-806, a person may request a hearing with the Utah Driver License Division to determine if the person's vehicle was wrongfully impounded and meets the requirements for the Department to reimburse the person for the costs of towing and storing the impounded vehicle:

(a) the person requesting a hearing shall complete and submit to the division the Impound Fee Refund Hearing Request form or a written request that includes the required information listed in Section 63G-4-201(3)(a).

(b) the person requesting a hearing is ineligible for reimbursement if the division receives the request later than six months from the date the vehicle was impounded.

(c) the person requesting a hearing shall provide the division at the time of the hearing the following documentation:

(i) proof the vehicle was impounded on or after January 1, 2015, which includes the costs for towing and storing the vehicle; and

(ii) proof of owner's or operator's security indicating the impounded vehicle was insured at the time it was impounded;

(2) The hearing officer shall make a recommendation based on their findings of fact whether the applicant is eligible for a reimbursement under Section 41-12a-806.

(3) The Driver Improvement Manager or designee will review the recommendation and documentation to approve, deny, or remand to the hearing officer for further review.

KEY: impound fee reimbursement
February 9, 2015 41-12a-806

R708. Public Safety, Driver License.
R708-51. Mobility Vehicle Permit.
R708-51-1. Authority.

This rule is authorized by Subsection 41-6a-1118.

R708-51-2. Purpose.

The purpose of the rule is to set forth the provisions for the issuance of a Mobility Vehicle Permit.

R708-51-3. Definitions.

(1) Definitions used in this rule are found in Sections 41-6a-1118 and 53-3-102.

(2) In addition:

(a) A Mobility Vehicle Permit "means" evidence that an individual may operate a vehicle certified by the Division within the restriction listed on the permit.

(b) Mobility Vehicle Permit Statement of Disability "means" a document approved by the Division and signed by a Health Care Professional as defined in Subsection 53-3-302(2) affirming:

(i) the applicant has a physical disability as defined in Section 41-6a-1118; and

(ii) the issuance of a Mobility Vehicle Permit would not constitute a public safety hazard.

R708-51-4. Permit Provisions.

(1) A person who has a physical disability and does not qualify for a motor vehicle operator license may apply for a Mobility Vehicle Permit. To qualify, the applicant shall:

(a) be a U.S. Citizen, Legal Permanent Resident Alien, or U.S. National;

(b) submit an application approved by the Division for a Mobility Vehicle Permit accompanied by the applicants Mobility Vehicle Permit Statement of Disability;

(c) provide acceptable documentation of the individual's identity and citizenship or lawful presence status as established in Utah Admin. Code R708-41;

(d) pay the required application fee;

(e) meet the minimum knowledge test requirement set forth by the Division; and

(f) meet the minimum skills test standards to safely operate an approved Mobility Vehicle.

(3) Upon receiving a Mobility Vehicle Permit, a person may operate an approved Mobility Vehicle on a Highway within the restrictions stated on the permit and in compliance with all traffic rules under Title 41 Chapter 6a.

(4) The authorization to operate a Mobility Vehicle is subject to Withdrawal, Denial, Suspension, and Revocation of the privilege in accordance with Title 53 Chapter 3 of Utah Code.

(5) Upon annual review, the Division shall determine whether:

(a) the vehicle operated by the permit holder continues to meet the requirements provided in this rule;

(b) the applicant has a physical disability as defined in Section 41-6a-1118; and

(c) the issuance of a Mobility Vehicle Permit would not constitute a public safety hazard.

R708-51-5. Mobility Vehicle Provisions.

(1) An approved Mobility Vehicle shall be equipped with:

(a) two headlamps;

(b) two tail lamps;

(c) two stop lamps on the rear;

(d) amber or red electric turn signals, one on each side of the front and rear;

(e) a braking system, other than a parking brake, that meets the requirements established in Section 41-6a-1623;

(f) a horn or other warning device that meets the requirements of Section 41-6a-1625;

(g) rearview mirrors on the right and left side of the driver in accordance with Section 41-6a-1627;

(h) a rearview mirror mounted centrally on the windshield;

(j) a windshield and windshield wipers;

(k) a speedometer, illuminated for nighttime operation;

(l) a seat designed for passengers, including a footrest and handhold for each passenger;

(m) seat belts for each vehicle occupant in vehicles with side-by-side seating;

(n) tires that have at least 2/32 inches or greater tire tread;

(o) a Mobility Vehicle placard, decal, or emblem displayed on the rear of the vehicle.

(p) four or more wheels, which shall remain in contact with the ground while the vehicle is in operation, and

(q) a cab enclosure or roll over protection system.

(2) An approved Mobility Vehicle may be operated upon a Utah street or highway by a permit holder within the restriction stated on the permit, unless the highway is an interstate freeway or a limited access highway as defined in Section 41-6a-102.

(3) A Mobility Vehicle may not be used to tow any unit while being operated by a Mobility Vehicle Permit holder.

(4) The operation of a Mobility Vehicle is subject to compliance with all traffic rules under Title 41 Chapter 6a.

R708-51-6. Denial.

(1) The Division may deny an individual the authorization to operate a Mobility Vehicle when it is determined by the Division that it is not in the best interest of public safety to issue or continue authorization of a Mobility Vehicle Permit.

R708-51-7. Administrative Proceedings.

All adjudicative proceedings for Mobility Vehicle Permits, including but not limited to, the application for and denial, suspension or revocation of authorization to operate a Mobility Vehicle, shall be conducted according to applicable rules for administrative proceedings as specified in Rules R708-14 and R708-35.

KEY: disability, mobility vehicles, mobility vehicle permits
February 25, 2015 41-6a-1118
53-3-102

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-370. Firearm Safety Program.
R722-370-1. Authority.

This rule is authorized by Subsection 53-10-202(18).

R722-370-2. Definitions.

(1) "Bureau" means the Utah Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201.

(2) "Firearm dealer" means a firearms dealer who is licensed as defined in Subsection 76-10-501(7).

R722-370-3. Firearm Safety Packet.

(1)(a) The bureau shall produce a firearm safety brochure as described in Subsection 53-10-202(18)(a).

(b) The bureau shall make the firearm safety brochure available to all firearm dealers within the State of Utah.

(c) At the end of each fiscal year, the bureau shall review the firearm safety brochure described in Subsection 53-10-202(18)(a), verify the information is correct and current, and update any incorrect information.

(2)(a) At the end of each fiscal year, the bureau shall assess the funds appropriated by the Legislature for the management of the firearm safety program and determine the amount of cable-style gun locks that may be purchased for the next fiscal year.

(b) After determining the amount of cable-style gun locks that may be purchased, the bureau shall purchase such locks through the state purchasing process.

(3) The bureau shall distribute firearm safety packets as described in Subsection 53-10-202(18)(a)(iii) to persons described in Subsection 53-10-202(18)(b) upon request, subject to the availability of such packets.

R722-370-4. Redeemable Coupon Program.

(1)(a) Subject to funding appropriated by the Legislature for the management of the redeemable coupon program, the bureau shall implement and administer the Redeemable Coupon Program as described in Subsections 53-10-202(18)(c) and 76-10-526(15).

KEY: firearm safety, gun locks, redeemable coupon program
February 24, 2015

53-10-202
53-10-201
76-10-501(7)
76-10-526(15)

R765. Regents (Board of), Administration.
R765-609. Regents' Scholarship.
R765-609-1. Purpose.

The Regents' Scholarship encourages Utah high school students to prepare for college academically and financially by taking a core course of study in grades 9-12 and saving for college. This statewide scholarship is aligned with the Utah Scholars Core Course of Study which is based on national recommendations as outlined by the State Scholars Initiative. The courses required by the scholarship are proven to help students become college and career ready. In addition, this scholarship encourages high school students to complete meaningful course work through their senior year.

R765-609-2. References.

2.1. Utah Code Ann. Section 53B-8-108 et seq., Regents' Scholarship Program.

2.2. Utah Admin. Code Section R277-700-6, High School Requirements (Effective for graduating students beginning with the 2010-2011 School Year).

2.3. Regents' Policy and Procedures R604, New Century Scholarship.

R765-609-3. Definitions.

3.1. "Applicant" means a student who is in their last term in high school and on track to complete the high school graduation requirements of a public school established by the Utah State Board of Education and the student's school district or charter school or a private high school in the state that is accredited by a regional accrediting body approved by the Utah State Board of Regents.

3.2. "Base award" means a one-time scholarship to be awarded to applicants who complete the eligibility requirements of section 4.1 of this policy.

3.3. "Board" means the Utah State Board of Regents.

3.4. "Core Course of Study" means the Utah Scholars Core Course of Study taken during grades 9-12, which includes:

3.4.1. 4.0 credits of English;

3.4.2. 4.0 credits of mathematics taken in a progressive manner (at minimum Algebra I, Geometry, Algebra II, and a class beyond Algebra II or Math 3);

3.4.3. 3.5 credits of social studies;

3.4.4. 3.0 credits of lab-based natural science (one each of Biology, Chemistry, and Physics); and

3.4.5. 2.0 credits of the same world or classical language, other than English, taken in a progressive manner.

3.5 "Eligible Institutions" means USHE, or at any private, nonprofit institution of higher education in Utah accredited by the Northwest Association of Schools and Colleges.

3.6. "Exemplary Academic Achievement award" means a renewable scholarship to be awarded to students who complete the eligibility requirements of section 4.2 of this policy.

3.7. "High school" means a public school established by the Utah State Board of Education or private high school within the boundaries of the State of Utah. If a private high school, it shall be accredited by a regional accrediting body approved by the Board.

3.8. "Home-schooled" refers to a student who has not graduated from a Utah high school and received letter grades for the Core Course of Study in grades 9-12.

3.9. "Recipient" means an applicant who receives an award under the requirements set forth in this policy.

3.10. "Regents' Diploma Endorsement" means a certificate or transcript notation that may be awarded to students who qualify for the Exemplary Academic Achievement award of the Regents' Scholarship.

3.11. "Reasonable progress" means enrolling and completing at least fifteen credit hours during Fall and Spring semesters and earning a 3.3 grade point average (GPA) or higher each semester.

3.12. "Renewal Documents" means a college transcript demonstrating that the recipient has met the required semester GPA and a detailed schedule providing proof of enrollment in fifteen credit hours for the semester which the recipient is seeking award payment.

3.13. "Scholarship Review Committee" means the committee approved to review Regents' Scholarship applications and make final decisions regarding awards.

3.14. "Two years of full-time equivalent enrollment" means the equivalent of four semesters of full-time enrollment (minimum of twelve credit hours per semester).

3.15. "UESP" means the Utah Educational Savings Plan.

3.16. "USHE" means the Utah System of Higher Education, which includes the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie State University, Utah Valley University, and Salt Lake Community College.

R765-609-4. Conditions of the Regents' Scholarship Program and Program Terms.

4.1. Base Award: To qualify for the Regents' Scholarship Base award, the applicant shall satisfy the following criteria:

4.1.1. Complete the Core Course of Study as defined in section 3.4 of this policy.

4.1.2. GPA: The applicant shall demonstrate completion of the Core Course of Study with a cumulative high school GPA of at least 3.0.

4.1.3. Minimum Grade requirement: the applicant shall have no individual core course grade lower than a "C" on a transcript. Certain courses may receive a weighted grade as outlined under subsection 9.5 of this policy.

4.1.4. ACT Score: The applicant shall submit at least one verified ACT score.

4.1.5. Utah High School Graduation: The applicant shall have graduated from a Utah high school.

4.1.6. Citizenship Requirement: A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.

4.1.7. No Criminal Record Requirement: A recipient shall not have a criminal record; with the exception of a misdemeanor traffic citation.

4.1.8. Mandatory Fall Term Enrollment: A recipient shall enroll in fifteen credit hours at an eligible institution by Fall semester immediately following the student's high school graduation date or receive an approved deferral from the Board under subsection 7.2.

4.1.9. New Century Scholarship: A recipient shall not receive a Regents' Scholarship and the New Century Scholarship established in Utah Code Section 53B-8-105 and administered in R604.

4.2. Exemplary Academic Achievement award: To qualify for the Regents' Scholarship Exemplary Academic Achievement award, the applicant shall satisfy all requirements for the Base award, and additionally meet all of the following requirements:

4.2.1. Required GPA: The applicant shall have a cumulative high school GPA of at least 3.5.

4.2.2. Minimum Grade requirement: the applicant earns a course grade on a transcript of "B" or above in each individual course listed in Utah Code 53B-8-109(1)(d)(i). Certain courses may receive a weighted grade as outlined under subsection 9.5 of this policy.

4.2.3 Required ACT Score: The applicant shall submit a verified composite ACT score of at least 26.

4.2.4. Duty of Student to Report Reasonable Progress Toward Degree Completion: In order to renew the Exemplary Academic Achievement Award, the recipient shall submit renewal documents providing evidence of reasonable progress toward degree completion.

4.2.4.1. If the recipient fails to maintain a 3.3 GPA in a single semester the recipient is placed on probation and shall earn a 3.3 GPA or better the following semester to maintain eligibility. If the recipient again at any time earns less than a 3.3 GPA or fails to enroll and complete fifteen credit hours, except as outlined in section 7.2 of this policy, the scholarship may be revoked.

4.2.4.2. Each semester, the recipient shall submit renewal documents to the Scholarship Review Committee providing evidence of making reasonable progress, by the deadlines listed below:

4.2.4.2.1. For Fall semester renewal documents shall be submitted by September 30.

4.2.4.2.2. For Spring/Winter semester renewal documents shall be submitted by February 15.

4.2.4.2.3. For Summer semester renewal documents shall be submitted by June 30.

4.2.4.2.4. If the recipient is attending Brigham Young University during Spring term renewal documents shall be submitted by May 30.

4.2.5. A recipient will not be required to enroll in fifteen credit hours if the student can complete his/her degree program with fewer credits.

4.3. Replacing Low Grades by Retaking a Course: An applicant may retake a course to replace a low grade received. When retaking courses to replace a grade the following subsections apply:

4.3.1. The Entire Course: The applicant shall either (1) retake the entire original course, or (2) complete an approved course equal to or greater in credit value in the same subject-area. The math and foreign language requirement of progression shall be shown. This is true even if the applicant only received a lower grade in a single semester, term, trimester, or quarter.

4.3.2. The Higher of Two Grades: The higher of two grades in the same or an approved course will count towards meeting the scholarship requirements.

4.3.3. Approved Courses and Progression Determined by the Regents' Scholarship Review Committee: The Regents' Scholarship Review Committee reserves the right to determine if the repeated course qualifies as an approved course in the same subject-area and if progression is required and demonstrated.

4.4. Student Transfer: A scholarship may be transferred to a different eligible institution upon request of the student.

4.5. "P" and "I" Grades not Accepted: Pass/fail or incomplete grades do not meet the minimum grade requirement, nor do they qualify toward the scholarship renewal requirements.

R765-609-5. Application Procedures.

5.1. Application Deadline: Applicants shall submit a scholarship application to the Scholarship Review Committee no later than February 1 of the year that they graduate from high school. A priority deadline may be established each year. Applicants who meet the priority deadline may be given first priority or consideration for the scholarship.

5.2. Required Documentation: Scholarship awards may be denied if all documentation is not complete and submitted by the specified deadlines. If any documentation demonstrates that the applicant did not satisfactorily fulfill all course and GPA requirements, or if any information, including the attestation of criminal record or citizenship status, proves to be falsified the scholarship award may be denied. Required documents that shall be submitted with a scholarship application include:

5.2.1. the official online application;

5.2.2. an official high school paper or electronic transcript, official college transcript(s) when applicable, and any other miscellaneous transcripts demonstrating all completed courses and GPA. A final transcript showing the last semester of coursework will be requested if the student is found conditionally approved, meaning that the student appears to be on track to receive the scholarship;

5.2.3. verified ACT score(s); and

5.2.4. a class schedule form, provided by the Board, demonstrating the courses and credits that the student will complete during grade twelve. Simply submitting a high school transcript does not satisfy this requirement.

5.3. Incomplete Documentation: Applications or other submissions that have missing information or missing documents are considered incomplete, and will not be reviewed.

R765-609-6. Amount of Awards and Distribution of Award Funds.

6.1. Funding Constraints of Awards: The Board may limit or reduce the Base award and/or the Exemplary Academic Achievement award, as well as supplemental awards granted, depending on the annual legislative appropriations and the number of qualified applicants.

6.2. Amount of Awards.

6.2.1. Base Award: The Base award of up to $1,000 may be adjusted annually by the Board in an amount up to the average percentage tuition increase approved by the Board for USHE institutions.

6.2.2. Exemplary Academic Achievement Award: The Exemplary Academic Achievement award is up to the amount provided by law and as determined each spring by the Board based on legislative funding and the number of applicants. The Exemplary Academic Achievement award may be renewed for the shortest of the following:

6.2.2.1. Four semesters of enrollment in fifteen credit hours;

6.2.2.2. Sixty-five credit hours; or

6.2.2.3. Until the student meets the requirements for a baccalaureate degree.

6.3. Distribution of Award Funds.

6.3.1. Enrollment Documentation: The award recipient shall submit to the Scholarship Review Committee a copy of the college class schedule verifying that the recipient is enrolled in fifteen credit hours or more at an eligible institution. Documentation shall include the recipient's name, the semester the recipient will attend, the name of the institution they are attending and the number of credits for which the recipient is enrolled.

6.3.2. Award Payable to Institution: The award will be made payable to the institution. The institution may pay over to the recipient any excess award funds not required for tuition payments. Award funds shall be used for any qualifying higher education expense including: tuition, fees, books, supplies, equipment required for course instruction, or housing.

6.3.3. Credit Hours Dropped After Award Payment: If a recipient drops credit hours after having received the award which results in enrollment below fifteen credit hours, the scholarship will be revoked.

6.4. UESP Supplemental Award to Encourage College Savings: Subject to available funding, an applicant who qualifies for the Base award is eligible to receive up to an additional $400 in state funds to be added to the total scholarship award.

6.4.1. For each year the applicant is 14, 15, 16, or 17 years of age and had an active UESP account, the Board may contribute, subject to available funding, $100 (i.e., up to $400 total for all four years) to the recipient's award if at least $100 was deposited into the account for which the applicant is named the beneficiary.

6.4.2. If no contributions are made to an applicant's UESP account during a given year, the matching amount will likewise be $0.

6.4.3. If contributions total more than $100 in a given

year, the matching amount will cap at $100 for that year.

6.4.4. Matching funds apply only to contributions, not to transfers, earnings, or interest.

R765-609-7. Time Constraints and Continuing Eligibility.

7.1. Time Limitation: A Regents' Scholarship recipient shall use the award in its entirety within five years after his/her high school graduation date.

7.2. Deferral or Leave of Absence: A recipient shall apply for a deferral or leave of absence if they do not continuously enroll in fifteen credit hours.

7.2.1. Deferrals or leaves of absence may be granted, at the discretion of the Scholarship Review Committee, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

7.2.2. An approved deferral or leave of absence will not extend the time limits of the scholarship. The scholarship may only be used for academic terms which begin within five years after the recipient's high school graduation date.

7.3. No Guarantee of Degree Completion: Neither a Base award nor an Exemplary Academic Achievement award guarantees that the recipient will complete his or her associate or baccalaureate program within the recipient's scholarship eligibility period.

R765-609-8. Scholarship Determinations and Appeals.

8.1. Scholarship Determinations: Submission of a scholarship application does not guarantee a scholarship award. Individual scholarship applications will be reviewed, and award decisions made, at the discretion of a Scholarship Review Committee. Awards are based on available funding, applicant pool, and applicants' completion of scholarship criteria. Each applicant will receive a letter informing the applicant of the decision on his/her application.

8.2. Appeals: Applicants and recipients have the right to appeal an adverse decision.

8.2.1. Appeals shall be (postmarked) within 30 days of date of notification by submitting a completed Appeal Application found on the program Web site.

8.2.2. An appeal filed before the applicant/recipient receives official notification from the Scholarship Review Committee regarding their application, will not be considered.

8.2.3. The appeal shall provide evidence that an adverse decision was made in error, such as that in fact, the applicant/recipient met all scholarship requirements and submitted all requested documentation by the deadline.

8.2.4. Appeals are not accepted for late document submission.

8.2.5. A submission of an appeal does not guarantee a reversal of the original decision.

8.2.6. It is the applicant/recipient's responsibility to file the appeal, including all supplementary documentation. All documents shall be mailed to the Regents' Scholarship address.

8.2.7. Appeals will be reviewed and decided by an appeals committee appointed by the Commissioner of Higher Education.

R765-609-9. Rules for Completing Course Work.

9.1. Although a course may meet state and individual district high school graduation requirements, the course may not meet the scholarship requirements. If a required course is not taught at the school the student attends they can elect to enroll in the Utah Electronic High School, distance education concurrent enrollment, or a course offered at another accredited Utah high school or college. Course work found at additional online sources shall be from an accredited institution approved by the Board.

9.2. Applicants are required to complete the entire curriculum for a course. For example, if a course is designed to be taken as a full year or for one full credit, the student shall complete the entire course in order to have it count toward the completion of a requirement for the scholarship.

9.3. Course work that is "tested out" of is not accepted for the Regents' Scholarship.

9.4. In each content area, the courses completed shall be unique.

9.4.1. Students cannot take a standard course and then enroll in the honors version of the same class and count both toward meeting the credit requirement and, in cases, the requirement of progression.

9.4.2. Repeated course work does not count toward the credit fulfillment.

9.5. Weighted Grade: The grade earned in any course designated on the student's high school transcript as Advanced Placement (AP) International Baccalaureate (IB), or a college course concurrent enrollment shall be weighted (only if a college transcript is provided) according to the Scholarship Review Committee's standard procedures.

9.6. College Course Work: The Scholarship Review Committee reserves the right to apply a 3:1 ratio in relation to college course work. If an applicant enrolls in and completes a college course worth three or more college credits, this may be counted as one full credit toward the scholarship requirements. However, the student then is evaluated on the college grade earned, with the weight added to the college grade earned.

KEY: higher education, scholarships, secondary education
July 8, 2013 53B-8-108
Notice of Continuation February 25, 2015

R765. Regents (Board of), Administration.
R765-611. Veterans Tuition Gap Program.
R765-611-1. Purpose.

To provide Board of Regents ("the Board") policy and procedures for implementing the Veterans Tuition Gap Program, Utah Code Title 53B, Chapter 13b, enacted in S.B. 16 by the 2014 General Session of the Utah Legislature.

R765-611-2. References.

2.1. Post 9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252.

2.2. Utah Code Section 53B-8-106 (Resident tuition - Requirements - Rules)

2.3. Utah Code Section 53B-8-102 (Definition of Resident Student)

2.4. Utah Code Section 53B-13b-101 to 104 (Veterans Tuition Gap Program Act)

2.5. Policy and Procedures R512, Determination of Resident Status

R765-611-3. Effective Date.

These policies and procedures are effective July 1, 2014.

R765-611-4. Policy.

4.1. Program Description: The Veterans Tuition Gap Program (VeT Gap) is a State supplement grant to provide tuition assistance for veterans who are recipients of Federal Post-9/11 Veterans Educational Assistance Act (Federal program) benefits who are attending institutions of higher education in Utah and whose benefits under the Federal program have been exhausted. This program is only available to higher education institutions that grant baccalaureate degrees.

4.2. Award Year: The award year for VeT Gap is the twelve-month period coinciding with the State fiscal year beginning July 1 and ending June 30.

4.3. Institutions Eligible to Participate: Eligible institutions include those located within the State of Utah which are accredited by a regional or national accrediting organization recognized by the Board.

4.4. Students Eligible to Participate: To be eligible for assistance from VeT Gap funds, a student must:

4.4.1. be a resident student of the State of Utah under Utah Code Section 53B-8-102 and Board Policy R512 or exempt from paying the nonresident portion of total tuition under Utah Code Section 53B-8-106; and

4.4.2. be a veteran using the post 9/11 Veterans Assistance Program funds; and

4.4.3. be unconditionally admitted and currently enrolled in an eligible program leading to a bachelor's degree at an eligible institution on at least a half-time basis as defined by the institution; and

4.4.4. be maintaining satisfactory academic progress, as defined by the institution, toward the degree in which enrolled; and

4.4.5. has exhausted the Federal benefit under the post 9/11 Veterans Assistance Program; and

4.4.6. has not completed a bachelor's degree; and

4.4.7. be in the final year of his or her academic baccalaureate program.

4.5. Program Administrator: The program administrator for the VeT Gap is the Associate Commissioner for Student Financial Aid, or a person designated in a formal delegation of authority by the Associate Commissioner, under executive direction of the Commissioner of Higher Education.

4.6. Availability of Funds for the Program: Funds available for VeT Gap allocations to institutions may come from specifically earmarked State appropriations, or from other sources such as private contributions. Amounts available for allocations each year shall be allocated as follows:

4.7. Allocation of Program Funds to Institutions

4.7.1. Annually, the participating institution will provide the following required data, for the most recently completed academic year, by March 1st. The director of financial aid of an eligible institution, in consultation with the institution's veterans affairs officer, will demonstrate intention to continue participation in VeT Gap by submitting to the program administrator a certification, subject to audit, of (a) the total number of veterans using Post 9/11 Veterans Assistance Program funds attending the institution who were resident students of the State of Utah under Utah Code Section 53B-8-102 and Board Policy R512 and (b) the total number of such students who have graduated from the institution with a baccalaureate degree in the most recently completed academic year.

4.7.2. Failure to submit the certification required in 4.7.1 by the requested date constitutes an automatic decision by an eligible institution not to participate in the program for the next fiscal year.

4.7.3. Allocation of program funds to participating institutions will be based on the total number of an institution's Utah resident students who graduated with a baccalaureate degree in the most recently completed academic year and used their Post 9/11 Veterans Assistance Program funds in the State of Utah and the proportion of each participating institution's number of those students to the total population of such students. For example:

4.7.3.1. A participating institution's number of Utah resident students who graduated with a baccalaureate degree during the most recently completed academic year using Post 9/11 Veterans Assistance Program funds / Total number of Utah resident students who graduated from all participating institutions with a baccalaureate degree during the most recently completed academic year using Post 9/11 Veterans Assistance Program funds = % of VeT Gap funds allocated to the participating institution

4.7.4. The program administrator will send official notification of each participating institution's allocation to the director of financial aid each fiscal year.

4.7.5. The program administrator will send a blank copy of the format for the institutional VeT Gap performance report, to be submitted within 30 days of the end of the applicable fiscal year, to the director of financial aid of each participating institution each fiscal year.

4.8. Institutional Participation Agreement: Each participating institution will enter into a written agreement with the program administrator or assigned designee agreeing to abide by the program policies, accept and disburse funds per program rules, provide the required report each year and retain documentation for the program to support the awards and actions taken. By accepting the funds, the participating institution agrees to the following terms and conditions:

4.8.1. Use of Program Funds Received by the Institution

4.8.1.1. The institution may at its discretion place up to, but in no case more than, 3.0% of the total amount of program funds allocated to it for the award year in a budget for student financial aid administrative expenses of the institution.

4.8.1.2. The institution may not carry forward or carry back from one fiscal year to another any of its VeT Gap allocation for a fiscal year. Any unused funds will be returned to the program administrator as directed. Returned funds will be re-distributed to eligible institutions as regular VeT Gap allocations for disbursement the next award year.

4.8.1.3. The institution may establish processes to determine the distribution of funds to students so long as it does so in accordance with provisions established in this policy.

4.8.2. Determination of Awards to Eligible Students

4.8.2.1. Student cost of attendance budgets will be established by the institution, in accordance with Federal

regulations applicable to student financial aid programs under Title IV of the Higher Education Act as amended, for specific student categories authorized in the Federal regulations, and providing for the total of costs payable to the institution plus other direct educational expenses, transportation and living expenses.

4.8.2.2. The total amount of any VeT Gap funds awarded to an eligible student in an academic year will not exceed the amount of tuition (not fees) for that academic year and may be impacted by the following:

(a) An eligible student whose period of enrollment is less than the normally-expected period of enrollment within the award year (such as two semesters, three quarters, nine months, or 900 clock hours) will be awarded an amount in proportion to the normally-expected period of enrollment represented by the term, or terms, e.g. semester or quarter) for which the student is enrolled; or

(b) The minimum student award amount may be the balance of funds remaining in the institution's allocation for the award year in the case that the previous eligible student receiving a VeT Gap award for the year reduced the total available funds to an amount less than that for which an individual qualified.

4.8.2.3. VeT Gap funds will be awarded and packaged on an annual award year basis unless the remaining period of enrollment until completion of the academic program is less than one award year. Funds will be paid one quarter or semester at a time (or in thirds, if applicable to some other enrollment basis such as total months or total clock hours), contingent upon the student's maintaining satisfactory progress as defined by the institution in published policies or rules.

4.8.2.4. All awards under the program will be made in accordance with current Federal Title IV non-discrimination requirements.

4.8.2.5. Students receiving financial aid under the program will be required to agree in writing to use the funds received for expenses covered in the student's cost of attendance budget.

(a) The student's signature on the Free Application for Federal Student Aid satisfies this requirement.

(b) If the institution determines, after opportunity for a hearing on appeal according to established institutional procedures, that a student used VeT Gap funds for other purposes, the institution will disqualify the student from VeT Gap eligibility beginning with the quarter, semester or other defined enrollment period after the one in which the determination is made.

4.8.2.6. In no case will the institution initially award program funds in amounts which, with Federal Direct, Federal Direct PLUS and/or Perkins Loans and other financial aid from any source, both need and merit-based, and with expected family contributions, exceed the cost of attendance for the student at the institution for the award year.

4.8.2.7. If, after the student's aid has been packaged and awarded, the student later receives other financial assistance (for example, merit or program-based scholarship aid) or the student's cost of attendance budget changes, resulting in a later over-award of more than $300, the institution will appropriately reduce the amount of financial aid disbursed to the student so that the total does not exceed the cost of attendance.

4.8.3. Reports: The institution will submit an annual report within 30 days after completion of the award year, providing information on individual awards and such other program-relevant information as the Board may reasonably require.

4.8.4. Records Retention and Cooperation in Program Reviews: The institution will cooperate with the program administrator in providing records and information requested for any scheduled audits or program reviews, and will maintain records substantiating its compliance with all terms of the participation agreement for three years after the end of the award year, or until a program review has been completed and any exceptions raised in the review have been resolved, whichever occurs first. If at the end of the three-year retention period, an audit or program review exception is pending resolution, the institution will retain records for the award year involved until the exception has been resolved.

KEY: financial aid, higher education, veterans benefits
February 25, 2015 **53B-13b**
53B-8-102
53B-8-106
Pub. L. No. 110-252

R918. Transportation, Operations, Maintenance.
R918-7. Highway Sponsorship Programs.
R918-7-1. Authority.

This rule is authorized by Utah Code Section 72-6-403 and is promulgated pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act and Transportation Code Section 72-1-201.

R918-7-2. Purpose and Background.

Sections 72-6-401, 72-6-402, and 72-6-403 enact the "Highway Sponsorship Programs", and define the parameters around which sponsorship programs may be operated by the Department. Section 72-6-403 directs the Department to make and enforce rules governing certain aspects of such programs. Sponsorship programs allow for private sponsorship of Department operational activities, facilities or highway-related services and programs. The purpose of the sponsorship of a roadside facility or traveler service program is to provide a product, service, or monetary contribution which will generate an ongoing revenue stream or cost savings to support the operation and maintenance of the Department's network of roadside facilities and/or of its traveler service programs.

R918-7-3. Definitions.

(1) "Acknowledgement plaque" means a plaque that is intended only to inform the traveling public that a highway-related service, product, or monetary contribution has been sponsored by a person, firm, or entity. Acknowledgment plaques are installed only in the same sign assembly below a primary sign that provides the road user specific information on accessing the service being sponsored. Consistent with the MUTCD, a plaque legend is displayed on a separate substrate from that of the sign below which it is mounted.

(2) "Acknowledgement Sign" has the same meaning as defined in Section 72-6-402.

(3) "Advertisement/advertising sign" means a sign or other device that promotes commercial products or services through slogans, information on where to obtain the products and services, or other means.

(4) "Department" and "UDOT" both mean the Utah Department of Transportation.

(5) "Facility within a Rest Area" means an enclosed building, or freestanding bulletin board or partial enclosure within a Rest Area or Welcome Center, constructed by the Department for the purpose of providing specific information to the motorist as to services, places of interest within the State and other such information as the Department may consider desirable. This definition is intended to be consistent with 23 C.F.R. 752.7, which is hereby incorporated and made a part of this Rule R918-7-3(5).

(6) "FHWA" means the Federal Highway Administration

(7) "Legend" has the same meaning as in the MUTCD.

(8) "Main Traveled Way" means the portion of the roadway for the movement of vehicles, exclusive of the shoulders, ramps, berms, sidewalks, and parking lanes.

(9) "MUTCD" means the Manual on Uniform Traffic Control Devices, most recent edition as adopted by the Department in accordance with Section 41-6a-301, and Utah Administrative Rule R920-1, commonly called the Utah MUTCD.

(10) "Recipient agency" means an organization that directly receives the highway-related service, product, or monetary contribution from the sponsor entity. The recipient agency might be the Department, or a contractor engaged by the Department to administer the highway-related service and/or manage the sponsorship program.

(11) "Roadside Facility" means a facility constructed to support the highway system. Examples include Rest Areas, Welcome Centers, View Areas, Scenic Overlooks, Ports of Entry, Chain-Up Areas, etc.

(12) "RWIS" means Road Weather Information System.

(13) "Sponsor" means a person, firm, or entity that provides a monetary contribution, or highway-related service or product, to the recipient agency, in return for recognition in some form for doing so (such as logo display on an acknowledgement sign or plaque).

(14) "Sponsorship agreement" has the same meaning as defined in Section 72-6-402.

(15) "Sponsorship program" means a program that allows a person, a firm, or an entity to sponsor an element of the Department's highway operation through the provision of highway-related services, products, or monetary contributions.

(16) "Traveler Service Programs" means systems developed to support the collection, analysis, and distribution of information about UDOT's highway network, or programs used to positively impact traffic operations and maintenance. These include systems such as UDOT's Internet web pages, UDOT Traffic Mobile Application (UDOT Traffic App), Traveler Information 511 System, Express Lanes, Zero Fatalities, and others.

(17) "Visible" means the sign legend is capable of being seen by the viewer from the main traveled way

R918-7-4. Allowable Sponsorship Programs.

(1) The following elements of the Department's operation are eligible for sponsorship:

(a) Roadside Facilities, physical facilities directly adjacent to highway infrastructure including:
(i) Rest Areas,
(ii) Welcome Centers,
(iii) View Areas,
(iv) Scenic Overlooks,
(v) Ports of Entry,
(vi) Chain-Up Areas, and
(vii) Runaway Truck ramps;
(b) Litter control;
(c) Traveler services, including:
(i) 511 Traveler Information system,
(ii) UDOT Traffic App,
(iii) UDOT Web Site,
(iv) RWIS stations,
(v) Traffic cameras; and
(vi) Express Lanes;
(d) Safety programs, including:
(i) Zero Fatalities,
(ii) Student Neighborhood Access Program (SNAP),
(iii) Bicycle Safety,
(iv) Truck Safety;
(e) Other programs that positively impact traffic operations and maintenance.

R918-7-5. Acknowledgement Signs and Plaques - Size, Placement, and Content Restrictions.

(1) The placement of acknowledgement signs or plaques for Roadside Facility sponsorship is prohibited on the main traveled way. Such acknowledgement signs or plaques are permissible within the Roadside Facility, provided that they are placed such that their legend is not visible from any main traveled way, and such that they do not pose safety risks to Roadside Facility users. Acknowledgement signs or plaques acknowledging sponsorship of Traveler Service Programs may be placed along the main traveled way, as long as they conform to the design, size, and spacing requirements set forth in this Rule.

(2) All acknowledgment signs shall meet the general principles and specific criteria prescribed in the MUTCD, including the provisions for acknowledgment signs in Section 2H.08. Furthermore, these acknowledgment signs shall not be

placed at key decision points where a driver's attention is more appropriately focused on traffic control devices, roadway geometry, or traffic conditions.

(3) Acknowledgment signs and acknowledgment plaques:

(a) Shall meet all design and placement criteria for acknowledgment signs as covered in Part 2 of the MUTCD and all sign design principles covered in the Standard Highway Signs and Markings Book;

(b) When located on a bikeway or shared-use path, should also be appropriately sized commensurate with the legibility needs of the bikeway or path user;

(c) Shall be placed near the site(s) being sponsored, consistent with the purpose and principles of traffic control devices in Parts 1 and 2 of the MUTCD;

(d) May not display any directional information, in accordance with Section 2H.08 of the MUTCD;

(e) May not display telephone numbers, Internet addresses, or other legends prohibited by the MUTCD (consistent with Section 2H.08 of the MUTCD) for the purpose of contacting the sponsoring entity or to obtain information on the sponsorship program, such as how to become a sponsor at an available site; and

(f) In accordance with the provisions of the MUTCD, the acknowledgment signs shall not be appended to any other sign, sign assembly, or other traffic control device.

(g) Acknowledgment signs and acknowledgment plaques shall remain in place only for the duration of the agreement.

(4) For sponsorship of travel service programs that are not site-specific, such as 511 Traveler Information, Radio-Weather, and Radio-Traffic, an acknowledgment plaque may be mounted in the same sign assembly below the General Service signs for these programs. The acknowledgment plaque is a horizontally oriented rectangle, with the horizontal dimension longer than the vertical dimension. The size of the acknowledgment plaque shall not exceed the lesser of 1/3 of the area of the General Service sign below which it is mounted or 24 square feet. An acknowledgment plaque shall not exceed 1/3 of the area of the largest size prescribed in the MUTCD for a specified standard sign below which the acknowledgment plaque is mounted, even where the standard sign is enlarged in accordance with Sections 2A.11 and 2I.01 of the MUTCD or where the size of a standard sign used is designated as Oversized in the MUTCD for its application. Where the legend of a standard sign is modified based on the Utah MUTCD, and results in a sign size larger than that of the standard sign in the National MUTCD, the size of the corresponding acknowledgment plaque is governed by the size of the standard sign in the National MUTCD with the standard, unmodified legend. The sponsor legend on an acknowledgment plaque shall not exceed 1/3 of the area of the plaque.

(5) The provision of highway-related services, products, or monetary contributions that occurs through naming sponsorship (sometimes referred to as "naming rights") of officially mapped named or numbered highways is, by definition, sponsorship. Consistent with Section 2H.08 of the MUTCD, an unofficial overlay or secondary designation in the name of a sponsor on the official highway name or number through proclamation, contract, agreement, or other means, may be acknowledged within the highway right-of-way only with an acknowledgment sign. An acknowledgment sign may not display a legend that states, either explicitly or by implication, that the highway is named for the sponsor.

(6) In accordance with Section 2H.08 of the MUTCD, in order to maintain the recognition value of official devices used for traffic control, acknowledgment signs and acknowledgment plaques shall only take the form of static, non-changeable, non-electronic legends.

(7) Except as provided for acknowledgment plaques in Paragraph R918-7-5(4) of this Rule, acknowledgment sign and acknowledgment plaque messages shall not be interspersed, combined, or alternated with other official traffic control messages, either in the same display space, by adjacency in the same assembly, or by adjacency of multiple assemblies whose longitudinal separation does not meet the placement criteria contained in the MUTCD, including when placed on opposite sides of the roadway facing the same direction of travel.

(8) Consistent with the provisions of Section 2H.08 of the MUTCD, due to the limit on their maximum overall size, acknowledgment signs and acknowledgment plaques may not be overhead installations. Only roadside, post-mounted installations of acknowledgment signs and acknowledgment plaques are allowed.

(9) In order that the focus remains on the service provided rather than the sponsoring entity, the sponsor logo area on an acknowledgment sign or acknowledgment plaque shall be a horizontally oriented rectangle, consistent with the MUTCD provisions on business logos in Chapter 2J of the MUTCD. The width of this rectangle shall be at least 1.67 times its height, the total area of which may not exceed the maximum referenced or specified elsewhere in this Rule and in the MUTCD. The word legend describing the activity, such as "SPONSORED BY," shall be composed of upper-case lettering of the FHWA Standard Alphabets at least 3 inches high on conventional roads and at least 4 inches high on expressways and freeways.

(10) When a graphic logo is used to represent the sponsor (instead of a word legend using the FHWA Standard Alphabets), the logo shall be the principal trademarked official logo that represents the corporate name of the sponsor. Secondary logos or representations, even if trademarked, copyrighted, or otherwise protected, are classified as promotional advertising and may not be allowed in accordance with Section 1A.01 of the MUTCD.

(11) An alternative business name whose sole or primary purpose appears to be to circumvent the provisions of the MUTCD is classified as promotional advertising rather than an acknowledgment of a sponsoring entity of a highway-related service. In accordance with Section 1A.01 of the MUTCD, promotional advertising shall not be allowed on any traffic control device or its supports.

(12) Acknowledgment signs or acknowledgment plaques that include displays mimicking advertising shall not be allowed. The determination of whether a sign mimics or constitutes advertising lies with the FHWA. In accordance with Section 2H.08 of the MUTCD, a brief Department-wide slogan may be displayed on an acknowledgment sign. The slogan displayed is that of the program name, such as "ADOPT-A-HIGHWAY." Slogans for companion, supplementary, or other programs unrelated to the service being sponsored shall not be displayed on any acknowledgment sign or acknowledgment plaque.

(13) Acknowledgement signs and acknowledgement plaques for Traveler Service Programs or safety programs, or other operational elements that are not Roadside Facilities, such as 511 Traveler Information, UDOT Traffic App, and UDOT Traffic Web Site, shall not be placed any closer than three (3) miles from any other acknowledgement sign or acknowledgement plaque in the same direction on the main traveled way. The three-mile restriction applies regardless of which travel service program or safety program sponsorship is being acknowledged, with the exception that Sponsor-A-Highway litter control recognition signs may be placed independently of signs acknowledging any other program. Sponsor-A-Highway litter control recognition signs may be placed as close as one (1) mile from each other if facing in the same direction.

(14) The acknowledgement sign or acknowledgement plaque shall not:

(a) Create a safety concern, or

(b) Interfere with the free and safe flow of traffic.

(15) No acknowledgement sign or plaque shall promote or acknowledge sponsorship of:

(a) Any substance or activity that is illegal for minors, such as alcohol, tobacco, drugs, or gambling,

(b) Any political party, candidate, purpose, or issue: or,

(c) Sexual material.

R918-7-6. Advertising - Size, Placement, and Content Restrictions.

(1) The placement of any advertising within the right of way, except in a Facility within a Rest Area or Welcome Center, is prohibited. Any advertisement within Rest Areas and Welcome Centers facilities shall meet all of the following:

(a) The advertising legend shall not be visible from the main traveled way; and,

(b) The advertisement shall not resemble any traffic control device; and,

(c) Signed advertisement shall only consist of printed or electronic media affixed within the interior of the building, or if the facility is in the form of a bulletin board or a partial enclosure, on the side facing away from any main traveled way; and,

(d) Any audio advertisement shall only be inside of a doored building so that the sound shall not be heard outside of building when the door is closed; and,

(e) Individual mounted signs and electronic displays are limited to four (4) feet by eight (8) feet in either portrait or landscape format.

(2) Any advertising sign or other advertisement shall not:

(a) Create a safety concern, or

(b) Interfere with the free and safe flow of traffic.

(3) No advertising sign or other advertisement shall promote:

(a) Any substance or activity that is illegal for minors, such as alcohol, tobacco, drugs, or gambling;

(b) Any political party, candidate, purpose, or issue; or,

(c) Sexual material.

KEY: maintenance, rest area, sponsorships, traveler services
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72-6-402
72-6-403
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