R33. Administrative Services, Purchasing and General Services.
R33-4. General Procurement Provisions, Prequalifications, Specifications, and Small Purchases.
R33-4-101. Prequalification of Potential Vendors.

General procurement provisions, including prequalification of potential vendors, approved vendor lists, and small purchases shall be conducted in accordance with the requirements set forth in Sections 63G-6a-402 through 408. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-4-101a. Vendors with Exclusive Authorization to Bid.

(1) The requirements of this rule shall only apply when a procurement unit issues a prequalification for potential vendors as set forth in Utah Code 63G-6a-403 for all qualified, responsive and responsible vendors with an exclusive dealership, franchise, distributorship, or other arrangement, from a manufacturer identifying the vendor as the only one authorized to submit bids or quotes for the specified procurement item within the State of Utah or a region within the State of Utah.

(a) Under the provisions of this rule, no vendor described in (1) may be excluded from the list of prequalified vendors, unless a determination is made by the procurement unit that a vendor is not qualified, responsive or responsible.

(b) The request for statements of qualifications shall indicate that all vendors on the prequalified vendor list will be invited to submit bids or quotes.

(2) After the prequalified list has been compiled, a procurement unit may award a contract by obtaining bids or quotes from all vendors on the prequalified list taking into consideration a best value analysis that includes, as applicable:

(a) cost;

(b) compatibility with existing equipment, technology, software, accessories, replacement parts, or service;

(c) training, knowledge and experience of employees of the procurement unit and of the vendors;

(d) past performance of vendors and pertaining to the procurement item being purchased;

(e) the costs associated with transitioning from an existing procurement item to a new procurement item; or

(f) other factors determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority.

(3) Procurement units must follow the requirements in R33-4-110 when obtaining quotes and the requirements in Part 6 of the Utah Procurement Code when obtaining bids.

(4) An exception to the requirements of this rule may be authorized by the chief procurement officer or head of a procurement unit with independent procurement authority.

R33-4-102. Thresholds for Approved Vendor Lists.

(1) Public entities may establish approved vendor lists in accordance with the requirements of Sections 63G-6a-403 and 63G-6a-404.

(a) Contracts or purchases from an approved vendor list may not exceed the following thresholds:

(i) Construction Projects: $2,500,000 per contract, for direct construction costs, including design and allowable furniture or equipment costs, awarded using an invitation for bids or a request for proposals;

(ii) Professional and General Services, including architectural and engineering services: $100,000; and

(iii) Information Technology: $500,000

(b) Thresholds for other approved vendor lists may be established by the Chief Procurement Officer, or as applicable, the head of a procurement unit with independent procurement authority.

R33-4-103. Specifications.

(1) Public entities shall include in solicitation documents specifications for the procurement item(s).

(2) Specifications shall be drafted with the objective of clearly describing the procurement unit's requirements and encouraging competition.

(a) Specifications shall emphasize the functional or performance criteria necessary to meet the needs of the procurement unit.

(3) Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. Procurement units may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However the person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.

(a) Rule R33-4-104(3) does not apply to the following:

(i) a design build construction project; and

(ii) other procurements determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.

(b) Violations of this Rule R33-4-104(3) may result in:

(i) the bidder or offeror being declared ineligible for award of the contract;

(ii) the solicitation being canceled;

(iii) termination of an awarded contract; or

(iv) any other action determined to be appropriate by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.

(4) Brand Name or Equal Specifications.

(a) Brand name or equal specifications may be used when:

(i) "or equivalent" reference is included in the specification; and,

(ii) as many other brand names as practicable are also included in the specification.

(b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.

(c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the procurement unit shall name at least three manufacturer's specifications.

(5) Brand Name Sole Source Requirements.

(a) If only one brand can meet the requirement, the procurement unit shall conduct the procurement in accordance with 63G-6a-802 and shall solicit from as many providers of the brand as practicable; and.

(b) If there is only one provider that can meet the requirement, the procurement unit shall conduct the procurement in accordance with Section 63G-6a-802.

R33-4-104. Small Purchases.

Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-408. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) "Small Purchase" means a procurement conducted by a procurement unit that does not require the use of a standard

procurement process.

(2) Small Purchase thresholds:

(a) The "Individual Procurement" threshold is a maximum amount of $1,000 for a procurement item;

(i) For individual procurement item(s) costing up to $1,000, an entity subject to these rules may select the best source by direct award and without seeking competitive bids or quotes.

(a) The single procurement aggregate threshold is a maximum amount of $5,000 for multiple procurement item(s) purchased from one source at one time; and

(b) The annual cumulative threshold from the same source is a maximum amount of $50,000.

(3) Whenever practicable, the Division of Purchasing and General Services and entities subject to these rules shall use a rotation system or other system designed to allow for competition when using the small purchases process.

R33-4-105. Small Purchases Threshold for Design Professional Services.

(1) The small purchase threshold for design professional services is a maximum amount of $100,000.

(2) Design professional services may be procured up to a maximum of $100,000, by direct negotiation after reviewing the qualifications of a minimum of three design professional firms.

(3) Procurement units that are subject to these rules shall include minimum specifications when using the small purchase threshold for design professional services.

(4) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-403, the approved vendor list process described under Section 63G-6a-404, and the evaluation and fee negotiation process described in Part 15 of the Utah Procurement Code in the procurement of design professional services.

(5) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-408 (8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

R33-4-106. Small Purchases Threshold for Construction Projects.

(1) The small construction project threshold is a maximum of $2,500,000 for direct construction costs, including design and allowable furniture or equipment costs;

(2) Procurement units subject to these rules shall include minimum specifications when using the small purchases threshold for construction projects.

(3) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-403, the approved vendor list process described under Section 63G-6a-404, and the obtaining of quotes, bids or proposals in the procurement of small construction projects.

(4) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure small construction projects up to a maximum of $25,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements are met. The awarded contractor must certify that it is capable of meeting the minimum specifications of the project.

(5) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure small construction projects costing more than $25,000 up to a maximum of $100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.

(6) Under this Rule, the chief procurement officer or head of a procurement unit with independent procurement authority shall procure small construction projects costing more than $100,000 up to a maximum of $2.5 million through a two-stage process. Stage one, qualify vendors under Section 63G-6a-403 and develop an Approved Vendor List under Section 63G-6a-404. Stage two, issue to all vendors, qualified and approved in stage one, an invitation for bids or request for proposals and use the procedures set forth therein to award a contract.

(7) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-408 (8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

R33-4-107. Quotes for Small Purchases from $1,001 to $50,000.

(1) For procurement item(s) where the cost is greater than $1,000 but up to a maximum of $5,000, an entity subject to these rules shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(2) For procurement item(s) where the cost is greater than $5,000 up to a maximum of $50,000, a procurement unit with independent procurement authority that is subject to these rules or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(3) For procurement item(s) costing over $50,000, a procurement unit with independent procurement authority that is subject to these rules or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.

(4) Limited Purchasing Delegation for Small Purchases. The Division of Purchasing and General Services may delegate limited purchasing authority for small purchases costing more than $5,000 up to a maximum of $50,000, to an executive branch procurement unit provided that the executive branch procurement unit enters into an agreement with the Division outlining the duties and responsibilities of the unit to comply with applicable laws, rules, policies and other requirements of

the Division.

(5) The names of the vendors offering quotations and bids and the date and amount of each quotation or bid shall be recorded and maintained as a governmental record.

(6) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-408 (8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

R33-4-108. Small Purchases of Professional Service Providers and Consultants.

(1) The small purchase threshold for professional service providers and consultants is a maximum amount of $100,000.

(2) After reviewing the qualifications of a minimum of two professional service providers or consultants, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may obtain professional services or consulting services:

(a) up to a maximum of $50,000 by direct negotiation; or

(b) over $50,000 up to a maximum of $100,000 by obtaining a minimum of two quotes.

(3) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing at the beginning of the quote or solicitation process, in the procurement of professional services or consulting services.

(4) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-408 (8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions;

(f) R33-4-103(3) -- Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications; and

(g) All other applicable laws and rules.

R33-4-109. Procedures When Two Bids, Quotes, or Statement of Qualifications Cannot Be Obtained.

(1) The requirement that a procurement unit obtain a minimum of two bids, quotes, or statements of qualifications is waived when only one vendor submits a bid, provides a quote, or submits a statement of qualifications under the following circumstances:

(a) A solicitation meeting the public notice requirements of Utah Code 63G-6a-406 results in only one vendor willing to bid, provide quotes, or submit a statement of qualifications;

(b) Vendors on a multiple award contract, prequalification, or approved vendor list fail to bid, provide quotes, or submit statements of qualifications; or

(c) A procurement unit makes a reasonable effort to invite all known vendors to bid, provide quotes, or submit statements of qualifications and all but one of the invited vendors contacted fail to bid, provide quotes, or submit statements of qualifications.

(i) Reasonable effort shall mean:

(A) Public notice under Utah Code 63G-6a-406;

(B) An electronic or manual search for vendors within the specific industry, fails to identify any vendors willing to submit bids or provide quotes;

(C) Contacting industry-specific associations or manufacturers for the names of vendors within that industry; or

(D) A determination by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority that a reasonable effort has been made.

(2) Before accepting a bid or quote from only one vendor, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall consider:

(a) whether pricing is fair and reasonable as set forth in R33-6-109(1);

(b) canceling the procurement as set forth in R33-9-103; and

(c) bid security requirement as set forth in R33-11-202.

(3) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall maintain records documenting the circumstances and reasons why fewer than two bids, quotes, or statements of qualifications were obtained.

R33-4-110. Use of Electronic, Telephone, or Written Quotes.

(1) Quote means an informal purchasing process which solicits pricing information from several sources.

(2) Quotation means a statement of price, terms of sale, and description of goods or services offered by a vendor to a procurement unit; and

(a) A quotation is nonbinding and does not obligate a procurement unit to make a purchase or a vendor to make a sale.

(3) Electronic quote means a price quotation provided by a vendor through electronic means such as the internet, online sources, email, an interactive web-based market center, or other technology.

(4) A procurement unit may use electronic, telephone, or written quotes to obtain pricing and other information for a procurement item within the small purchase or approved vendor threshold limits established by rule provided:

(a) Quotations are for the same procurement item, including terms of sale, description, and quantity of goods or services;

(b) It is disclosed to the vendor that the quote is for a governmental entity and an inquiry is made as to whether the vendor is willing to provide a price discount to a governmental entity; and

(c) The procurement unit maintains a public record that includes:

(i) The name of each vendor supplying a quotation; and

(ii) The amount of each vendor's quotation.

(5) An executive branch procurement unit, subject to this rule:

(a) May obtain electronic, telephone, or written quotations for a procurement item costing less than $5,000;

(b) Shall send a request to obtain quotations for a procurement item costing more than $5,000 to the division of state purchasing;

(i) The division shall obtain quotations for executive branch procurement units for procurement items costing more than $5,000; and

(c) May not obtain quotations for a procurement item available on state contract unless otherwise specified in the terms of a solicitation or contract or authorized by rule or statute.

KEY: government purchasing, general procurement provisions, specifications, small purchases
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R33. Administrative Services, Purchasing and General Services.
R33-7. Request for Proposals.
R33-7-101. Conducting the Request for Proposals Standard Procurement Process.

Request for Proposals shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-711, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-7-102. Content of the Request for Proposals.

(1) In addition to the requirements set forth under Section 63G-6a-703, the request for proposals solicitation shall include:

(a) a description of the format that offerors are to use when submitting a proposal including any required forms; and

(b) instructions for submitting price.

(2) The conducting procurement unit is responsible for all content contained in the request for proposals solicitation documents, including:

(a) reviewing all schedules, dates, and timeframes;

(b) approving content of attachments;

(c) providing the issuing procurement unit with redacted documents, as applicable;

(d) assuring that information contained in the solicitation documents is public information; and

(e) understanding the scope of work, all evaluation criteria, requirements, factors, and formulas to be used in determining the scoring of proposals; and

(f) for executive branch procurement units the requirements of Section 63G-6a-402(6).

R33-7-103. Multiple Stage RFP Process.

(1) In addition to the requirements set forth under Section 63G-6a-710, the multiple stage request for proposals solicitation shall include:

(a) a description of the stages and the criteria and scoring that will be used to evaluate proposals at each stage; and

(b) the methodology used to determine which proposals shall be disqualified from additional stages.

R33-7-104. Exceptions to Terms and Conditions Published in the RFP.

(1) Offerors requesting exceptions and/or additions to the Standard Terms and Conditions published in the RFP must include the exceptions and/or additions with the proposal response.

(2) Exceptions and/or additions submitted after the date and time for receipt of proposals will not be considered unless there is only one offeror that responds to the RFP, the exceptions and/or additions have been approved by the Attorney General's Office or other applicable legal counsel, and it is determined by the head of the issuing procurement unit that it is not beneficial to the procurement unit to republish the solicitation.

(3) Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL

(4) A procurement unit may refuse to negotiate exceptions and/or additions:

(a) that are determined to be excessive;

(b) that are inconsistent with similar contracts of the procurement unit;

(c) to warranties, insurance, indemnification provisions that are necessary to protect the procurement unit after consultation with the Attorney General's Office or other applicable legal counsel;

(d) where the solicitation specifically prohibits exceptions and/or additions; or

(e) that are not in the best interest of the procurement unit.

(5) If negotiations are permitted, a procurement unit may negotiate exceptions and/or additions with offerors, beginning in order with the offeror submitting the fewest exceptions and/or additions to the offeror submitting the greatest number of exceptions and/or additions. Contracts may become effective as negotiations are completed.

(6) If, in the negotiations of exceptions and/or additions with a particular offeror, an agreement is not reached, after a reasonable amount of time, as determined by the procurement unit, the negotiations may be terminated and a contract not awarded to that offeror and the procurement unit may move to the next eligible offeror.

R33-7-105. Protected Records.

(1) The following are protected records and may be redacted by the vendor subject to the procedures described below in accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code. (a) Trade Secrets, as defined in Section 13-24-2 of the Utah Code.

(b) Commercial information or non-individual financial information subject to the provisions of Section 63G-2-305(2).

(c) Other Protected Records under GRAMA.

(2) Process For Requesting Non-Disclosure. Any person requesting that a record be protected shall include with the proposal or submitted document:

(a) a written indication of which provisions of the proposal or submitted document are claimed to be considered for business confidentiality or protected (including trade secrets or other reasons for non-disclosure under GRAMA); and

(b) a concise statement of the reasons supporting each claimed provision of business confidentiality or protected.

R33-7-106. Notification.

(1) A person who complies with Rule R33-7-105 shall be notified by the procurement unit prior to the public release of any information for which a claim of confidentiality has been asserted.

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under Rule R33-7-105 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This Rule R33-7-106 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

(3) Any allowed disclosure of public records submitted in the request for proposal process will be made only after the selection of the successful offeror(s) has been made public in compliance with Section 63G-6a-709.5.

R33-7-107. Process for Submitting Proposals with Protected Business Confidential Information.

(1) If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals:

(a) One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and

(b) One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."

(i) Pricing may not be classified as business confidential and will be considered public information.

(ii) An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the offeror removes the designation.

R33-7-201. Pre-Proposal Conferences and Site Visits.

(1) Mandatory pre-proposal conferences and site visits may be held to explain the procurement requirements in accordance with the following:

(a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits must require mandatory attendance by all offerors.

(b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits allowing optional attendance by offerors are not permitted.

(c) A pre-proposal conference may be attended via the following:

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(d) Mandatory site visits must be attended in person.

(e) All pre-proposal conferences and site visits must be attended by an authorized representative of the person or vendor submitting a proposal and as may be further specified in the procurement documents.

(f) The solicitation must state that failure to attend a mandatory pre-proposal conference shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory pre-proposal conference.

(g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory site visit.

(h) At the discretion of the conducting procurement unit, audio or video recordings of pre-proposal conferences and site visits may be used.

(i) Listening to or viewing audio or video recordings of a mandatory pre-proposal conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all offerors that do not have an authorize representative in attendance for the entire pre-proposal conference or site visit to review any audio or video recording made.

(2)(a) If a pre-proposal conference or site visit is held, the conducting procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-proposal conference or site visit; and

(iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-proposal conference or site visit.

(b) The issuing procurement unit shall publish as an addendum to the solicitation:

(i) the attendance log;

(ii) minutes of the pre-proposal conference or site visit;

(iii) copies of any documents distributed to attendees at the pre-proposal conference or site visit; and

(iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

R33-7-301. Addenda to Request for Proposals.

Addenda to the Request for Proposals may be made for the purpose of:

(a) making changes to:

(i) the scope of work;

(ii) the schedule;

(iii) the qualification requirements;

(iv) the criteria;

(v) the weighting; or

(vi) other requirements of the Request for Proposal.

(b) Addenda shall be published within a reasonable time prior to the deadline that proposals are due, to allow prospective offerors to consider the addenda in preparing proposals. Publication at least 5 calendar days prior to the deadline that proposals are due shall be deemed a reasonable time. Minor addenda and urgent circumstances may require a shorter period of time.

(2) After the due date and time for submitting a response to Request for Proposals, at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority, addenda to the Request for Proposals may be limited to offerors that have submitted proposals, provided the addenda does not make a substantial change to the Request for Proposals that, in the opinion of the chief procurement officer or head of a procurement unit with independent procurement authority likely would have impacted the number of Offerors responding to the original publication of the Request for Proposals.

R33-7-401. Modification or Withdrawal of Proposal Prior to Deadline.

A proposals may be modified or withdrawn prior to the established due date and time for responding.

R33-7-402. Proposals and Modifications, Delivery and Time Requirements.

Except as provided in Rule R33-7-402(3), the following shall apply:

(1) proposals and modifications to a proposal submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason.

(2) When submitting a proposal or modification to a proposal electronically, offerors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If an offeror is in the middle of uploading a proposal when the closing time arrives, the system should stop the process and the proposal or modification to a proposal will not be accepted.

(3) When submitting a proposal or modification to a proposal by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) offerors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal or modification to a proposal being late.

(a) All proposals or modifications to proposals received by physical delivery will be date and time stamped by the procurement unit.

(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a proposal or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal shall be accepted as being on time.

R33-7-403. Errors in Proposals.

The following shall apply to the correction or withdrawal

of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the chief procurement officer or head of a procurement unit with independent procurement authority.

(1) Mistakes attributed to an offeror's error in judgment may not be corrected.

(2) Unintentional errors not attributed to an offeror's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the error maintains the fair treatment of other offerors.

(a) Examples include:

(i) missing signatures,

(ii) missing acknowledgement of an addendum;

(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the chief procurement officer or head of a procurement unit with independent procurement authority to correct this mistake;

(iv) typographical errors;

(v) mathematical errors not affecting the total proposed price; or

(vi) other errors deemed by the chief procurement officer or head of a procurement unit with independent procurement authority to be immaterial or inconsequential in nature.

(3) Unintentional errors discovered after the award of a contract may only be corrected if, after consultation with the chief procurement officer or head of a procurement unit with independent procurement authority and the attorney general's office or other applicable legal counsel, it is determined that the correction of the error does not violate the requirements of the Utah Procurement Code or these administrative rules.

R33-7-501. Evaluation of Proposals.

(1) The evaluation of proposals shall be conducted in accordance with Part 7 of the Utah Procurement Code.

(2) An evaluation committee may ask questions of offerors to clarify proposals provided the questions are submitted and answered in writing. The record of questions and answers shall be maintained in the file.

(3)(a) The evaluation of cost in an RFP shall be based on the entire term of the contract, excluding renewal periods.

(b) Unless an exception is authorized in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, cost should not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

(c) Whenever practicable, the evaluation of cost should include maintenance and service agreements, system upgrades, apparatuses, and other components associated with the procurement item.

R33-7-501a. Minimum Score Thresholds.

(1) An executive branch conducting procurement unit shall establish minimum score thresholds to advance proposals from one stage in the RFP process to the next, including contract award.

(2) Minimum score thresholds must be set forth in the RFP and clearly describe the minimum score threshold that proposals must achieve in order to advance to the next stage in the RFP process or to be awarded a contract.

(3)(a) Thresholds may be based on:

(i) Minimum scores for each evaluation category;

(ii) The total of each minimum score in each evaluation category based on the total points available; or

(iii) A combination of (i) and (ii).

(b) Thresholds may not be based on:

(i) A natural break in scores that was not defined and set forth in the RFP; or

(ii) A predetermined number of offerors.

R33-7-502. Correction or Withdrawal of Proposal.

(1) In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the chief procurement officer or head of a procurement unit with independent procurement authority may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with Section 63G-6a-706.

(2) Offerors may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsible, not responsive, or that does not meet the mandatory minimum requirements stated in the request for proposals in accordance with Section 63G-6a-704.

R33-7-503. Interviews and Presentations.

(1) Interviews and presentations may be held as outlined in the RFP.

(2) Offerors invited to interviews or presentations shall be limited to those offerors meeting minimum requirements specified in the RFP.

(3) Representations made by the offeror during interviews or presentations shall become an addendum to the offeror's proposal and shall be documented. Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal.

(4) The chief procurement officer or head of a procurement unit with independent procurement authority shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.

R33-7-601. Best and Final Offers.

Best and Final Offers shall be conducted in accordance with the requirements set forth in Section 63G-6a-707.5, or the Utah Procurement Code. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) The best and final offers (BAFO) process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals.

(a) An evaluation committee may request best and final offers when:

(i) no single proposal addresses all the specifications;

(ii) all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;

(iii) additional information is needed in order for the evaluation committee to make a decision;

(iv) the differences between proposals in one or more categories are too slight to distinguish;

(v) all cost proposals are too high or over the budget;

(vi) multiple contract awards are necessary to achieve regional or statewide coverage for a procurement item under an RFP and there are insufficient cost proposals within the budget to award the number of contracts needed to provide regional or statewide coverage.

(2) Only offerors meeting the minimum qualifications or scores described in the RFP are eligible to respond to best and final offers.

(3) Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the RFP described in the request for best and final offers.

(a) Offerors may not use the best and final offers process to correct deficiencies in their proposals not addressed in the request for best and final offers issued by the procurement unit.

(4) When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemize cost proposals clearly indicating the tasks or scope reductions that can be accomplished to bring costs within the available budget.

(a) The cost information of one offeror may not be disclosed to competing offerors during the best and final offers process and further, such cost information shall not be shared with other offerors until the contract is awarded.

(b) A procurement unit shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.

(5) The best and final offers process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the RFP process.

(6) A procurement unit may not use the best and final offers process to allow offerors a second opportunity to respond to the entire request for proposals.

(7) If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.

(8) A request for best and final offers issued by a procurement unit shall:

(a) comply with all public notice requirements provided in Section 63G-6a-406;

(b) include a deadline for submission that allows offerors a reasonable opportunity for the preparation and submission of their responses;

(c) indicate how proposal modifications in response to a request for best and final offers will be evaluated;

(9) If an offeror does not submit a best and final offer, its immediately previous proposal will be considered its best and final offer;

(10) Unsolicited best and final offers will not be accepted from offerors.

R33-7-701. Cost-benefit Analysis Exception: CM/GC.

(1) A cost-benefit analysis is not required if the contract is awarded solely on the qualifications of the construction manager/general contractor and the management fee described in Section 63G-6a-708 provided:

(a) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide , at a minimum:

(i) a management plan;

(ii) references;

(iii) statements of qualifications; and

(iv) a management fee.

(b) the management fee contains only the following:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(c) the evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.

(d) the contract awarded must be in the best interest of the procurement unit.

R33-7-701a. Cost-Benefit Analysis.

(1) A cost-benefit analysis conducted under Utah Code 63G-6a-708 shall be based on the entire term of the contract, excluding any renewal periods.

R33-7-702. Only One Proposal Received.

(1) If only one proposal is received in response to a request for proposals, the evaluation committee shall score the proposal and:

(a) conduct a review to determine if:

(i) the proposal meets the minimum requirements;

(ii) pricing and terms are reasonable as set forth in R33-12-603 and R33-12-604; and

(iii) the proposal is in the best interest of the procurement unit.

(b) if the evaluation committee determines the proposal meets the minimum requirements, pricing and terms are reasonable, and the proposal is in the best interest of the procurement unit, the procurement unit shall issue a justification statement as set forth in 63G-6a-708 and may make an award.

(c) If an award is not made, the procurement unit may either cancel the procurement or resolicit for the purpose of obtaining additional proposals.

R33-7-703. Evaluation Committee Procedures for Scoring Criteria Other Than Cost.

(1)(a) In accordance with Utah Code 63G-6a-704, the conducting procurement unit shall conduct an initial review of any applicable pass/fail minimum requirements set forth in the RFP to determine whether proposals are responsive and responsible or in violation of the Utah Procurement Code prior to submitting proposals to the evaluation committee. Examples of pass/fail minimum requirements include:

(i) Timeliness of receipt of proposals

(ii) Qualifications;

(iii) Certifications;

(iv) Licensing;

(v) Experience;

(vi) Compliance with State or Federal regulations;

(vii) Services provided;

(viii) Product availability;

(ix) Equipment;

(x) Other pass/fail minimum requirements set forth in the RFP.

(b) The evaluation committee may not evaluate proposals deemed non-responsive, nonresponsible or disqualified for violations of the Utah Procurement Code under (1)(a).

(c) In accordance with Utah Code 63G-6a-704, an evaluation committee may, after the initial pass/fail review by the conducting procurement unit or at any time during the RFP process, reject a proposal if it is determined that the person submitting the proposal is not responsible or the proposal is not responsive.

(2) In accordance with Utah Code 63G-6a-707, the evaluation committee shall evaluate each responsive and responsible proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals using the following procedures:

(a) Prior to the scoring of proposals, a procurement officer from the issuing procurement unit will meet with the evaluation committee and any staff that will have access to the proposals to:

(i) discuss the evaluation and scoring process to ensure that each committee member has a clear understanding of the scoring process and how points will be assigned;

(ii) discuss requirements regarding conflicts of interests, the appearance of impropriety, and the importance of confidentiality;

(iv) discuss the scoring sheet and evaluation criteria set forth in the RFP; and

(v) provide a copy of Administrative Rule R33-7-703 to the evaluation committee and any staff that will have access to the proposals.

(b) Once the proposals have been received and it is clear which offerors are involved in the RFP process, all members of the evaluation committee must sign a written statement

certifying that they do not have a conflict of interest as set forth in Utah Code 63G-6a-707 and administrative rule R33-24-107

(3) Unless an exception is authorized by the head of the issuing procurement unit, in order to avoid cost influencing the evaluation committee's scoring of non-price criteria, in accordance with Utah Code 63G-6a-707, costs may not be revealed to the evaluation committee until after the committee has finalized its scoring on all other technical non-price criteria in the RFP.

(4) After receipt of proposals, each committee member shall independently, as described in R33-7-705, read and score each proposal based on the technical non-price criteria set forth in the RFP to assess the completeness, quality, and desirability of each proposal.

(a) proposals must be evaluated solely on the stated criteria listed in the RFP.

(i) past performance ratings and references may be considered if listed as evaluation criteria in the RFP;

(ii) personal bias based on prior experience with a procurement item or the offeror cannot be considered in scoring proposals, except as provided in the RFP;

(iii) personal favoritism for a vendor or bias against a vendor cannot be considered in scoring proposals; and

(iv) subsections (ii) and (iii) shall not be construed to prevent a committee member from having a bias based on their review of a proposal in regard to the criteria in the solicitation. Evaluators are encouraged to request technical support from the conducting procurement unit or the issuing procurement unit when conducting their independent assessments and scoring.

(a) any request for technical support shall be submitted in writing to the conducting procurement unit or the issuing procurement unit.

(b) After the proposals have been evaluated and scored by individual committee members, the entire committee shall meet to discuss the proposals, if applicable conduct interviews, resolve any factual disagreements, and arrive at the final scoring. All committee members must be present to take any official action.

(i) If a committee member does not attend an evaluation committee meeting, the member shall be removed from the evaluation committee and the remainder of the committee may proceed with the evaluation, provided there are at least three evaluation committee members remaining.

(c) During committee discussions, each member may change their initial scoring. If additional information or clarification is needed from an offeror, the committee may, with approval by the issuing procurement unit, request information or clarification from an offeror. Such request will only be approved if it can be done in a manner that is fair to all offerors.

(d) At any time during the evaluation process, the evaluation committee may, with the approval of the issuing procurement unit, request best and final offers from responsible and responsive offerors and evaluate those offers in accordance with Utah Code 63G-6a-708 and Administrative Rule R33-7-601.

(5) The evaluation committee may tally the final scores for criteria other than cost to arrive at a consensus score by the following methods:

(a) total of all of the points given by individual committee members; or

(b) an average of the individual scores.

(c) The evaluation committee shall turn in a completed sheet, signed and dated by each evaluation committee member.

(6) The evaluation committee shall submit its final recommended scores for all criteria other than cost to the issuing procurement unit.

(7) The issuing procurement unit shall follow the procedures set forth in Utah Code 63G-6a-707(5) pertaining to the following:

(a) reviewing the evaluation committee's final recommended scores for each proposal for all criteria other than cost;

(b) scoring cost based on the applicable scoring formula; and

(c) calculating the total combined score for each responsive and responsible proposal.

(8) The evaluation committee and the conducting procurement unit shall prepare the cost justification statement and any applicable cost-benefit analysis in accordance with Utah Code 63G-6a-708.

(9) The issuing procurement unit's role as a non-voting member of the evaluation committee will be to facilitate the evaluation process within the guidelines of the Utah procurement code and administrative rule.

(10) The issuing procurement unit may replace any member on the committee or reconstitute the committee in any way the issuing procurement unit deems appropriate to cure any impropriety. If the impropriety cannot be cured by replacing a member, then a new committee may be appointed or the procurement cancelled.

R33-7-704. Scoring of Evaluation Criteria, Other Than Cost, for Proposals Meeting Mandatory Minimum Requirements.

(1) The scoring of evaluation criteria, other than cost, for proposals meeting the mandatory minimum requirements in an RFP shall be based on a one through five point scoring system.

(2) Points shall be awarded to each applicable evaluation category as set forth in the RFP, including but not limited to:

(a) Technical specifications;
(b) Qualifications and experience;
(c) Programming;
(d) Design;
(e) Time, manner, or schedule of delivery;
(f) Quality or suitability for a particular purpose;
(g) Financial solvency;
(h) Management and methodological plan; and
(i) Other requirements specified in the RFP.

(3) Scoring Methodology:

(a) Five points (Excellent): The proposal addresses and exceeds all of the requirements described in the RFP;

(b) Four points (Very Good): The proposal addresses all of the requirements described in the RFP and, in some respects, exceeds them;

(c) Three points (Good): The proposal addresses all of the requirements described in the RFP in a satisfactory manner;

(d) Two points (Fair): The proposal addresses the requirements described in the RFP in an unsatisfactory manner; or

(e) One point (Poor): The proposal fails to addresses the requirements described in the RFP or it addresses the requirements inaccurately or poorly.

R33-7-705. Evaluation Committee Members Required to Exercise Independent Judgment.

(1)(a) Evaluators are required to exercise independent judgment in a manner that is not dependent on anyone else's opinions or wishes.

(b) Evaluators must not allow their scoring to be inappropriately influenced by another person's wishes that additional or fewer points be awarded to a particular offeror.

(c) Evaluators may seek to increase their knowledge before scoring by asking questions and seeking appropriate information from the conducting procurement unit or issuing procurement unit. Otherwise, evaluators should not discuss proposals or the scoring of proposals with other persons not on the evaluation committee.

(2)(a) The exercise of independent judgment applies not

only to possible inappropriate influences from outside the evaluation committee, but also to inappropriate influences from within the committee. It is acceptable for there to be discussion and debate within the committee regarding how well a proposal meets the evaluation criteria. However, open discussion and debate may not lead to coercion or intimidation on the part of one committee member to influence the scoring of another committee member.

(b) Evaluators may not act on their own or in concert with another evaluation committee member to inappropriately steer an award to a favored vendor or to disfavor a particular vendor.

(c) Evaluators are required to report any attempts by others to improperly influence their scoring to favor or disfavor a particular offeror.

(d) If an evaluator feels that the evaluator's independence has been compromised, the evaluator must recuse himself or herself from the evaluation process.

R33-7-802. Publicizing Awards.

(1) In addition to the requirements of Section 63G-6a-709.5, the following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under Rule R33-7-105;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Rule R33-7-105;

(c) the rankings of the proposals;

(d) the names of the members of any selection committee (reviewing authority);

(e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings.

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under Rule R33-7-105.

(2) After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:

(a) the names of individual scorers/evaluators in relation to their individual scores or rankings;

(b) any individual scorer's/evaluator's notes, drafts, and working documents;

(c) non-public financial statements; and

(d) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement; it is subject to public disclosure.

KEY: government purchasing, request for proposals, standard procurement process
August 7, 2015 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Division of Purchasing and General Services.
R33-16. Controversies and Protests.
R33-16-101. Conduct.

Controversies and protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through 13G-6a-604. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-16-101a. Grounds for a Protest.

(1) This Rule shall apply to all protests filed under Section 63G-6a-1602 of the Utah Procurement Code.

(2) In accordance with the requirements set forth in Section 63G-6a-1602(2)(b), a person filing a protest must include a concise statement of the grounds upon which the protest is made.

(a) A concise statement of the grounds for a protest should include the relevant facts leading the protestor to contend that a grievance has occurred, including but not limited to specifically referencing:

(i) An alleged violation of Utah Procurement Code 63G-6a;

(ii) An alleged violation of Administrative Rule R33 or other applicable rule;

(iii) A provision of the request for proposals, invitation for bids, or other solicitation allegedly not being followed;

(iv) A provision of the solicitation alleged to be:

(A) ambiguous;

(B) confusing;

(C) contradictory;

(D) unduly restrictive;

(E) erroneous;

(F) anticompetitive; or

(G) unlawful;

(v) An alleged error made by the evaluation committee or conducting procurement unit;

(vi) An allegation of bias by the evaluation committee or an individual committee member; or

(vii) A scoring criteria allegedly not being correctly applied or calculated.

(b) "Relevant Facts" as referred to in (2)(b), in addition to being relevant, must be specific enough to enable the protest officer to determine, if such facts are proven to be true, whether a legitimate basis for the protest exists.

(c) None of the following qualify as a concise statement of the grounds for a protest:

(i) claims made after the opening of bids or closing date of proposals that the specifications, terms and conditions, or other elements of a solicitation are ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive;

(ii) vague or unsubstantiated allegations that do not reference relevant or specific facts including, but not limited to, vague or unsubstantiated allegations by a bidder, offeror, or prospective contractor that:

(A) a bidder, offeror, or prospective contractor should have received a higher score or that another bidder, offeror, or prospective contractor should have received a lower score;

(B) a service or product provided by a bidder, offeror, or prospective contractor is better than another bidder's, offeror's, or prospective contractor's service or product;

(C) another bidder, offeror, or prospective contractor cannot provide the procurement item for the price bid or perform the services described in the solicitation; or

(D) any item listed in Section (2)(b) of this Rule has occurred that is not relevant or specific;

(iii) Filing a protest requesting:

(A) a detailed explanation of the thinking and scoring of evaluation committee members, beyond the official justification statement described in Section 63G-6a-708,

(B) protected information beyond what is provided under the disclosure provisions of the Utah Procurement Code; or

(C) other information, documents, or explanations reasonably deemed to be not in compliance with the Utah Code or this Rule by the protest officer.

(d) In accordance with Section 63G-6a-1603(3)(a), a protest officer may dismiss a protest if the concise statement of the grounds for filing a protest does not comply with this Rule.

R33-16-201. Verification of Legal Authority.

A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association.

R33-16-301. Intervention in a Protest.

(1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.

(2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule will be considered timely. The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.

(3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.

(4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person's interest in sufficient factual detail to demonstrate that:

(a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

(i) consumer;

(ii) customer;

(iii) competitor;

(iv) security holder of a party; or

(v) the person's participation is in the public interest.

(5) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.

(6) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

R33-16-401. Protest Officer May Correct Noncompliance,

Errors and Discrepancies.

(1) At any time during the protest process, if it is discovered that a procurement is out of compliance with any part of the Utah Procurement Code or Administrative Rules established by the applicable rule making authority, including errors or discrepancies, the protest officer, chief procurement officer, or head of a procurement unit with independent procurement authority, may take administrative action to correct or amend the procurement to bring it into compliance, correct errors or discrepancies or cancel the procurement.

KEY: conduct, controversies, government purchasing, protests
August 21, 2015 63G-6a

R33. Administrative Services, Purchasing and General Services.
R33-26. State Surplus Property.
R33-26-101. State Surplus Property - General.

This rule sets forth policies and procedures which govern the acquisition and disposition of state and federal surplus property, vehicles, and firearms. It applies to all state and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with state surplus property and the state surplus property contractor.

R33-26-102. Requirements.

Under the provisions of Section 63A, Chapter 2, Section 103, the division shall:

(1) Except when a state surplus property contractor administers the state's program for disposition of state surplus property operate, manage, and maintain the state surplus property program;

(2) When a state surplus property contractor administers the state's program for disposition of state surplus property, oversee the state surplus property contractor's administration of the state surplus property program.

(3) Manage the federal surplus property program as the Utah State Agency for Surplus Property and in compliance with 41 CFR 102-37 and Public Law 94-519 through a State Plan of Operation. The standards and procedures governing the contract between the state and the federal government are contained in the Plan of Operation.

(4) Manage the disposition of state owned vehicles.

(5) Control the sale or transfer of firearms from state agencies and participating local agencies, as authorized in Section 63A, Chapter 2, Section 4.

(6) Handheld devices/technology (not transferred from state agencies to public schools).

R33-26-103. Definitions.

(1) Terms used in the Surplus Property Rules are defined in Section 63A-2-101.5.

(2) In addition:

(a) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain;

(b) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (11), or (22), designed for or capable of travel over unimproved terrain and includes a class A side-by-side vehicle. "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(3) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(4) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

(5) "Division" means the Division of Purchasing and General Services within the Department of Administrative Services created under Section 63A-2-101.

(6) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(7) "Firearm" means any state owned firearm, including any confiscated or seized firearm over which the state has disposal authority, and any firearm declared to be surplus property by a local subdivision.

(8) "Handgun" means any pistol or revolver.

(9) "Hunting or sporting rifle" means any long barreled shotgun or rifle manufactured for hunting or sporting purposes.

(10) "Licensed firearm dealer" means a firearms dealer licensed by the Federal Bureau of Alcohol, Tobacco and Firearms.

(11) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(12) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

(13) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(14) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(15) As used in this section "Personal handheld electronic device":

(a) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and,

(b) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

(16) "Personal Watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

(17)(a) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.

(b) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.

(18) "Reconstructed vehicle" means every vehicle type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(19)(a) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.

(b) "Recreational vehicle" includes:

(i) a travel trailer;

(ii) a camping trailer;

(iii) a motor home;

(iv) a fifth wheel trailer; and

(v) a van.

(20) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry and load either independently or any part of the weight of a vehicle or load this is drawn.

(21) "Sailboat" means any vessel having one or more sails and propelled by wind.

(22) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.

(23)(a) "Special mobile equipment" means every vehicle:

(i) not designed or used primarily for the transportation of persons or property;

(ii) not designed to operate in traffic; and

(iii) only incidentally operated or moved over the highways.

(b) "special mobile equipment" includes:

(i) farm tractors;

(ii) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers;

(iii) ditch-digging apparatus; and

(iv) forklifts, warehouse equipment, golf carts, electric carts, etc.

(24) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(25) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.

(26) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(27) "USASP" means Utah State Agency for Surplus Property.

(28) "Vehicle" means the items identified and defined in Rule R33-26-103,except items (5), (7),(8), (9) (15), and (27), and includes all auxiliary equipment and components associated or attached to the vehicle and equipment used by the vehicle for its intended purpose. Examples of auxiliary equipment and components include snow plow blades, spreaders, sanders, vehicle fire extinguishers, emergency equipment, radios, truck bed racks and truck bed covers, generators, mounted welders, non-OEM, lights and light bars, etc.

(29) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

R33-26-201. Non-vehicle Disposition Procedures.

(1) State-owned non-vehicle personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of unless the procedures set forth in this Rule are followed. State-owned non-vehicle personal property shall not be processed by the division.

(2) This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

(3) When a department or agency of state government determines that state-owned non-vehicle personal property is in excess to current needs, it will:

(a) transfer the non-vehicle surplus property directly to another department or agency of the state without involvement of the division; or

(b) notify the state surplus property contractor that the department or agency has surplus property.

R33-26-202. Disposal of State-Owned Surplus Electronic Data Devices.

(1) For the purpose of this rule, Electronic Data Device means an electronic device capable of downloading, storing or transferring State-owned data. Electronic Data Devices include:

(a) Computers;

(b) Tablets (iPads, Surface Pro, Google Nexus, Samsung Galaxy, etc.);

(c) Smart phones;

(d) Personal Digital Assistants (PDAs);

(e) Digital copiers and multifunction printers;

(f) Flash drives and other portable data storage devices; and

(g) Other similar devices.

(2) The State has determined that the security risk of a potential data breach resulting from the improper disposal or sale of an electronic data device, as defined in this rule, outweigh the potential revenue that may be received by the State from the sale of an electronic data device deemed surplus property. Therefore, the State has adopted this Administrative Rule regarding the proper disposal of State-owned surplus electronic data devices:

(a) Each State agency shall ensure that all surplus State-owned electronic data devices are disposed of in accordance with the following procedures.

(b) Surplus State-owned electronic devices defined under this Rule may not be sold or gifted by any means.

(i) An exception for directors and other State officials may be granted by the Director of the Division of Purchasing after receiving documentation from:

(A) the Executive Director of Department of Technology Services certifying that all connectivity to sensitive, confidential, protected, and classified State data has been removed from the State-owned electronic data device and that the State-owned electronic data device no longer has access to the State's network; and

(B) the State Surplus Property Manager regarding the market value of the State-owned electronic data device.

(c) Surplus State-owned electronic data devices must be disposed of through the vendor under contract with the State, unless a separate contractual agreement has been entered into with the manufacturer or supplier of the device for proper destruction and disposal.

(d) The Division of Purchasing shall enter into a contract with a vendor for the destruction and proper disposal of all State-owned surplus electronic data devices.

(e) Proper disposal includes:

(i) Recycling components and parts after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved;

(ii) Disposal in a landfill approved for electronic waste after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved; or

(iii) Computers, digital copiers and multifunction printers that have had the hard drive destroyed may be resold by the contractor.

(f) State agencies shall request assistance from the Department of Technology Services (DTS) to destroy the hard drives of computers and other State-owned surplus electronic data devices purchased through DTS prior to the agency transferring the devices to the vendor under contract with the State.

(g) State agencies shall contact the vendor under contract with the State to destroy and properly dispose of all other State-owned surplus electronic data communication devices.

R33-26-203. Information Technology Equipment.

(1) Subject to Subsections R33-26-202(1) and (2), State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries, by the owning agency.

(2) Subject to Subsections R33-26-202(1) and (2), pursuant to the provisions of Section 63A-2-407, state-owned information technology equipment may be transferred directly to non-profit entities for distribution to, and use by, persons with a disability as defined in Subsection 62A-5-101(9). However, interagency transfers and sales of surplus property to state and local agencies shall have priority over transfers under this subsection.

(3) Prior to submitting information technology equipment to the state surplus property contractor, another department or agency, or donating it directly to public institutions or non-profit entities, agencies shall comply with the provisions of Section R33-26-202.

(4) Subject to Subsections R33-26-202(1) and (2), except

as it relates to a vehicle or federal surplus property, the transfer of surplus property from one agency directly to another does not require approval by the division, the director of the division, or any other person.

R33-26-204. Federal Surplus Property.

(1) Federal Surplus Property is not available for sale to the general public. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program.

(2) Public auctions of federal surplus property are authorized under certain circumstances and conditions. The division shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.

R33-26-205. Related Party Transactions.

(1) The division has a duty to the public to ensure that State-owned surplus property is disposed of in accordance with Section 63A-2. A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.

(2) A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:

(a) has purchasing authority;

(b) has maintenance authority;

(c) has disposition or signature authority;

(d) has authority regarding the disposal price;

(e) has access to restricted information; and

(f) has perceived to be a related party using other criteria which may prohibit independence.

R33-26-206. Priorities.

(1) Public agencies are given priority for the purchase of state-owned surplus property.

(2) Property that is determined by the Division to be unique, in short supply or in high demand by public agencies may be held for a period of up to 30 days before being offered for sale to the general public through the state surplus property contractor.

(3) For this Rule, the entities listed below, in priority order, are considered to be public agencies:

(a) state Agencies;

(b) state Universities, Colleges, and Community Colleges;

(c) other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies;

(d) other tax supported educational entities; then

(e) non-profit health and educational institutions.

(4) State-owned personal property that is not purchased by or transferred to public agencies may be offered for public sale.

(5) The division shall make the determination as to whether property is subject to hold period. The decision shall consider the following:

(a) the cost to the state;

(b) the potential liability to the state;

(c) the overall best interest of the state.

R33-26-301. Accounting and Reimbursement Procedures.

(1) The division will record and maintain records of all transactions related to the acquisition and sale of all federal surplus property.

(2) The division will require regular and detailed accounting by the state surplus property contractor of:

(a) the receipt and sale of state surplus property;

(b) the receipt and payment of any and all funds; and

(c) ensure public transparency regarding the sale of state surplus property.

(3) The division may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the division accumulates funds in excess of the allowable working capital reserve, they will reduce the Retained Earnings balance accordingly. The only exception is where the division is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the division must obtain the written approval of the Executive Director of the Department of Administrative Services.

R33-26-302. Reimbursement.

(1) After paying the amount owed to the state surplus property contractor, the division shall transfer the remaining money to the agency that requested the sale of the particular item in accordance with Title 63J, Budgetary Procedures Act.

(2) Vehicle reimbursements to state agencies from the sale of their vehicles will be made through the Division of Finance on interagency transfers or warrant requests. The division is authorized to deduct operating costs from the selling price of all vehicles. In all cases property will be priced to sale for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.

(3) Payment for vehicles, information technology equipment, federal surplus property, personal handheld devices, and firearms shall be as follows:

(a) payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank credit cards, and personal checks. Personal checks may not be accepted for amounts exceeding $200. Two-party checks shall not be accepted;

(b) payment received from governmental entities, school districts, special districts, and higher education institutions shall be in the form of agency or subdivision check or purchasing card;

(c) payment made by governmental entities, school districts, special districts, and higher education institutions shall be at the time of purchase and prior to removal of the property purchased; or

(d) the division director or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

(i) the cost to the state;

(ii) the potential liability to the state; and

(iii) the overall best interest of the state.

(4) The division shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the division for "insufficient funds":

(a) in the event that a check is returned to the division is returned for "insufficient fund," the division may:

(i) prohibit the debtor from making any future purchases from the division until the debt is paid in full; and

(ii) have the division accountant send a certified letter to the debtor stating that the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and if the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

(b) debts for which payments have not been received in full within the 15 day period referred to above, shall be assigned to the Office of State Debt Collection in accordance with statute.

R33-26-401. Public Sale of State-Owned Vehicles.

(1) State-owned excess vehicles may be purchased at any

time by the general public, subject to any holding period that may be assigned by the division and subject to the division's operating days and hours.

(2) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

(3) The frequency of public auctions, for either State-owned vehicles or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory by the division, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

(4) State-owned vehicles available for sale may not have any ancillary or component parts or equipment removed, destroyed, or detached, from the vehicle prior to sale without the approval of the division.

(5) State agencies are prohibited from removing ancillary or component parts or equipment from vehicles intended for surplus unless:

(a) the state agency intends on using the ancillary or component parts or equipment on other agency vehicles;

(b) the state agency in possession of the vehicle intends to transfer the ancillary or component parts or equipment to another state agency; or

(c) the state agency has obtained prior approval from the division to remove ancillary or component parts or equipment from the vehicle intended for surplus.

R33-26-501. Surplus Firearms.

This subsection sets forth policies and procedures for disposing of surplus firearms from state agencies and participating local agencies, as authorized in Section 63A-2-4. This rule governs the destruction, sale, transfer, or donation of surplus firearms to any agency or to the general public.

R33-26-502. Procedures.

(1) All state owned firearms shall be disposed of under the general provisions of this Rule.

(a) The sale of firearms directly to the general public by the division is prohibited.

(b) Hunting and sporting rifles meeting Federal Firearms regulations may be sold only to firearms dealers licensed by the Federal Bureau of Alcohol, Tobacco and Firearms.

(c) Except as provided in this subsection (c), handguns shall be transferred to the Utah State Public Safety Crime Lab for use or to be destroyed.

(i) The owning agency may trade a handgun into a licensed firearm dealer for credit toward the current purchase of a new handgun.

(ii) The division may authorize the sale of a handgun to a legally constituted law enforcement agency.

(iii) The division may authorize the sale of a handgun to a POST certified individual if the owning agency submits a signed request that includes:

(A) the individual's name;

(B) the serial number of the handgun to be sold; and

(C) the signature of an authorized agent of the owning agency.

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

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

(3) All firearms retained by the division shall be in good working condition.

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

R33-26-601. Utah State Agency for Surplus Property Adjudicative Proceedings.

As required by the Utah Administrative Procedures Act, this Rule provides the procedures for adjudicating disputes brought before the division under the authority granted by Section 63A-2-401 and Section 63G-4, et seq.

R33-26-602. Proceedings to Be Informal.

All matters over which the division has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, will be informal in nature for purposes of adjudication. The Director of the Division of Purchasing and General Services or his designee will be the presiding officer.

R33-26-603. Procedures Governing Informal Adjudicatory Proceedings.

(1) No response need be filed to the notice of agency action or request for agency action.

(2) The division may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.

(3) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.

(4) A hearing will be held only after timely notice of the hearing has been given.

(5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.

(6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

(7) Any hearing held under this rule is open to all parties.

(8) Within thirty days after the close of any hearing, the director of the Division of Purchasing and General Services or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(9) The decision rendered by the Director of the Division of Purchasing and General Services or his designee shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.

(10) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.

(11) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order and then may be appealed to the appropriate district court.

R33-26-701. State Surplus Property Contractor.

(1) The state surplus contractor must be selected through a Request for Proposals that results in a term contract.

(2) The contractor may sell state surplus property by auction, bid or other manner designed to get the best price available for the state surplus property.

(3) The contractor may not engage in the sale of state surplus property in a manner that would constitute a conflict of interest.

(4) The contractor must submit regular and detailed accounting to the division of:

(a) the receipt and sale of state surplus property; and,

(b) the receipt and payment of funds by the contractor.

(5) The contractor must ensure public transparency regarding the sale of state surplus property and is required to:

(a) post online information related to a sale or attempted

sale of state surplus property that includes:

(i) a detailed description of the item or items;

(ii) the name of the state agency that requested the sale;

(iii) the price at which the state surplus property was sold; and,

(iv) post the information within a period of time established by the division.

(6) The division may, through the contract with the state surplus contractor, require the state surplus contractor:

(a) to store the state surplus property; or,

(b) charge for the storage of state surplus property.

R33-26-801. Donation, Disposal, or Destruction of State Surplus Property.

(1) A state agency or department may donate to a charitable organization, destroy, or dispose of as waste any state surplus property that is worth less than $30.00 without involvement of the division or state surplus property contractor if:

(a) the state surplus property fails to sell at auction;

(b) the cost of selling the state surplus property is greater or equal to the value of the state surplus property;

(c) the state surplus property is no longer usable;

(d) the state surplus property is damaged and either cannot be repaired or the cost of repair is greater than or equal to the value of the state surplus property in a repaired state; or

(e) the state surplus property can be replaced for less than the cost of repairing the state surplus property.

KEY: government purchasing, procurement rules, state surplus property, general procurement provisions
August 21, 2015 63A-2

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

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

(2) It is the intent of these rules to eliminate or reduce the spread of diseases among animals by providing standards to be met in the movement of animals within the State of Utah (INTRASTATE) and the importation of animals into the state (INTERSTATE).

R58-1-2. Definitions.

(1) "Accredited Veterinarian" means a veterinarian approved by the Deputy Administrator of Veterinary Services (VS), Animal and Plant Health Inspection Services (APHIS), United States Department of Agriculture (USDA), in accordance with the provisions of 9 CFR 161 to perform functions required by cooperative State-Federal disease control and eradication programs.

(2) "Animal identification number (AIN)" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States or a unique country code for any U.S. territory that has such a code and elects to use it in place of the 840 code).

(3) "Animals" means all vertebrates, except humans.

(4) "Approved livestock facility" means a stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary inspection where livestock are assembled and that has been approved by the Department.

(5) "Approved Livestock Market" means a livestock market that is licensed by the Department under Title 4, Chapter 30, Livestock Markets.

(6) "Approved Slaughter Establishment" means a State or Federally inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by State or Federal inspectors.

(7) "Approved tagging site" means a premises, authorized by Department, where livestock may be officially identified on behalf of their owner or the person in possession, care, or control of the animals when they are brought to the premises.

(8) "Brand Inspection Certificate" means an official form, issued by a government agency or other agency responsible for animal identification in the state of origin, used to transfer title of livestock; listing the identification marks of the animals(s) as well as the consignor and consignee contact information.

(9) "Camelidae" means a term referring to members of the family of animals which for the purposes of these rules includes camels (Camelus dromedarius and Camelus bactrianus), llamas (Lama glama), alpacas (Vicugna pacos) , guanacos (Lama guanicoe), and vicunas (Vicugna vicugna).

(10) "Captive Cervidae" means a term referring to members of the family of animals which for the purposes of these rules includes captive bred Caribou (Reindeer (Rangifer tarandus)), captive bred Elk (Cervus canadensis nelsoni), and captive bred Fallow deer (Dama dama) or any other captive bred cervidae allowed with permission from the State Veterinarian and the Utah Division of Wildlife Resources.

(11) "Certificate of Veterinary Inspection" means an official paper or electronic form completed by an accredited veterinarian that has examined the animal or animals listed on the certificate and has completed all disease testing or vaccinations as required.

(12) "Commuter herd" means a herd of cattle located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of cattle interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual.

(13) "Commuter herd agreement" means a written agreement between the owner(s) of a herd of cattle and the animal health officials for the States or Tribes of origin and destination specifying the conditions required for the interstate movement from one premises to another in the course of normal livestock management operations and specifying the time period, up to 1 year, that the agreement is effective. A commuter herd agreement may be renewed annually.

(14) "Dairy cattle" means all cattle, regardless of age or sex or current use, that are of a breed(s) used to produce milk or other dairy products for human consumption, including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, Milking Shorthorn, and Red and Whites.

(15) "Department" means the Utah Department of Agriculture and Food.

(16) "Designated brucellosis surveillance area" means an area within a state that has been designated by the animal health official of that state as an area of increased disease risk for bovine brucellosis.

(17) "Direct Movement" means the movement in which the animals are not unloaded enroute to their final destination, except for stops of less than 24 hours to feed, water, or rest the animals being moved, and not commingled with another producer's animals.

(18) "Exotic animal" means a rare or unusual animal pet or an animal, not commonly thought of as a pet, kept within a human household. For this chapter, rodents, reptiles, and amphibians are considered exotic animals.

(19) "Exposed Animal" means an animal that has been in contact with or on the same premises of or within a quarantine zone where animals with a contagious or communicable disease are present.

(20) "Farm of Origin" means the farm where the animal was born and remain prior to importation into the state.

(21) "Flock-based number system" means the flock-based number system that combines a flock identification number (FIN) with a producer's unique livestock production numbering system to provide a nationally unique identification number for an animal.

(22) "Flock identification number (FIN)" means a nationally unique number assigned by a State, Tribal, or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership.

(23) "Group/lot identification number (GIN)" means the identification number used to uniquely identify a "unit of animals" of the same species that is managed together as one group throughout the preharvest production chain.

(24) "Import Permit" means a number given by the Department to the issuing veterinarian that is recorded on the certificate of veterinary inspection and is required before movement of the animals into the state.

(25) "Interstate movement" means movement of animals from one State into or through any other State.

(26) "Livestock Market Veterinarian" means a Utah licensed and USDA accredited veterinarian appointed by the Utah Department of Agriculture and Food to work at approved livestock markets.

(27) "Location identification (LID) number" means a nationally unique number issued by a State, Tribal, and/or Federal animal health authority to a location as determined by the State or Tribe in which it is issued. The LID number may be used in conjunction with a producer's own unique livestock production numbering system to provide a nationally unique

and herd-unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN).

(28) "National Uniform Eartagging System (NUES)" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

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

(30) "Official eartag" means an identification tag approved by the Department that bears an official identification number for individual animals. The official eartag must be tamper-resistant and have a high retention rate in the animal.

(31) "Official eartag shield" means the shield shaped graphic of the U.S. Route Shield with "U.S." or the State postal abbreviation or Tribal alpha code imprinted within the shield.

(32) "Official identification device or method" means a means approved by the Department of applying an official identification number to an animal of a specific species or associating an official identification number with an animal or group of animals of a specific species or otherwise officially identifying an animal or group of animals.

(33) "Official identification number" means a nationally unique number that is permanently associated with an animal or group of animals.

(34) "Officially identified" means identified by means of an official identification device or method approved by the Department.

(35) "Poultry" means domestic fowl (chickens, turkeys, ducks, geese, and guinea and pea fowl), pigeons and doves, pheasants and other gamebirds, and ratites.

(36) "Premises identification number (PIN)" means a nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority a geographically distinct location from other premises.

(37) "Qualified Feedlot" means a feedlot approved by the Utah Department of Agriculture and Food to handle heifers, cows or bulls which are either official calfhood vaccinated, or brucellosis unvaccinated animals confined to a drylot area which is used to upgrade or finish feeding animals going only to slaughter or another qualified feedlot. All such animals must be kept separate from other animals not destined for slaughter.

(38) "Quarantine" means a verbal or written restriction of movement of animals into or out of an area or premise, issued by a State Animal Health Official.

(39) "Reactor" means any animal that has been determined by a designated brucellosis epidemiologist to be infected with brucellosis based on test results, herd/flock history, and/or culture results.

(40) "Suspect" means any animal that may be infected with a contagious, infectious, or communicable disease based on test results and/or herd/flock history.

(41) "Test Eligible Cattle and Bison" means all cattle or bison six months of age or older, except:

1. Steers, spayed heifers;

2. Official calfhood vaccinates of any breed under 24 months of age which are not parturient, springers, or post parturient.

(42) "United States Department of Agriculture (USDA) approved backtag" means a backtag issued by APHIS that provides a temporary unique identification for each animal.

(43) "Zoological animal" means an animal kept at a zoological garden (zoo) or other exhibition that is inspected on a regular basis by the United States Department of Agriculture.

R58-1-3. Official Identification Devices and Methods.

(1) Any State, Tribe, accredited veterinarian, or other person or entity who distributes official identification devices must maintain for 5 years a record of the names and addresses of anyone to whom the devices were distributed.

(2) An official identification number is a nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems:

(a) National Uniform Eartagging System (NUES).

(b) Animal identification number (AIN).

(c) Location-based number system.

(d) Flock-based number system.

(e) Any other numbering system approved by the animal health official of the state of origin for the official identification of animals.

(3) The Department has approved the following official identification devices or methods for the species listed.

(a) The Department may authorize the use of additional devices or methods for a specific species if the Department determines that such additional devices or methods will provide for adequate traceability.

(4) Cattle and bison that are required to be officially identified for interstate movement must be identified by means of:

(a) An official eartag; or

(b) Brands registered with a recognized brand inspection authority and accompanied by an official brand inspection certificate, when agreed to by the shipping and receiving State or Tribal animal health authorities; or

(c) Tattoos and other identification methods acceptable to a breed association for registration purposes, accompanied by a breed registration certificate, when agreed to by the shipping and receiving State or/Tribal animal health authorities; or

(d) Group/lot identification when a group/lot identification number (GIN) may be used.

(5) Horses and other equine species that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) A description sufficient to identify the individual equine including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (e.g., brands, tattoos, scars, cowlicks, blemishes or biometric measurements); or

(b) Electronic identification that complies with ISO 11784/11785; or

(c) Non-ISO electronic identification injected to the equine on or before June 30, 2013; or

(d) Digital photographs sufficient to identify the individual equine.

(6) Poultry that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Sealed and numbered leg bands; or

(b) Group/lot identification when a group/lot identification number (GIN) may be used.

(7) Sheep and goats that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Electronic implants when accompanied by a certificate or owner statement that includes the electronic implant numbers and the name of the chip manufacturer; or

(b) Official eartags, including tags approved for use in the Scrapie Flock Certification Program or APHIS-approved premises identification number eartags when combined with a unique animal identification number; or

(c) United States Department of Agriculture backtags or official premises identification backtags that include a unique animal identification number, when used on sheep or goats moving directly to slaughter and when applied within 3 inches of the poll on the dorsal surface of the head or neck; or

(d) Legible official registry tattoos that have been recorded in the book of record of a sheep or goat registry association when the animal is accompanied by either a registration certificate or a certificate of veterinary inspection.

(i) These tattoos may also be used as premises identification if they contain a unique premises prefix that has been linked in the National Scrapie Database with the assigned premises identification number of the flock of origin; or

(e) Premises identification eartags or tattoos, if the premises identification method includes a unique animal number or is combined with a flock eartag that has a unique animal number and the animal is accompanied by an owner statement; or

(f) Premises identification when premises identification is allowed and the animal is accompanied by an owner statement; or

(g) Any other official identification method or device approved by the animal health official of the state of origin.

(8) Swine that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Official eartags; or

(b) United States Department of Agriculture backtags, when used on swine moving to slaughter; or

(c) Official swine tattoos, when used on swine moving to slaughter; or

(d) Ear notching when used on any swine, if the ear notching has been recorded in the book of record of a purebred registry association; or

(e) Tattoos on the ear or inner flank of any swine, if the tattoos have been recorded in the book of record of a swine registry association;

(f) For slaughter swine and feeder swine, an eartag or tattoo bearing the premises identification number assigned by the State animal health official to the premises on which the swine originated; or

(g) Any other official identification device or method that is approved by the animal health official of the state of origin; or

(h) Group/lot identification when a group/lot identification number (GIN) may be used.

(9) Captive cervids that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Official eartag; and

(b) A tattoo that is placed peri-anally or inside the right ear and consist of a number assigned by the animal health official of the state of origin; or

(c) A microchip that has been placed in the right ear.

R58-1-4. Intrastate Cattle Movement - Rules - Brucellosis.

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

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

R58-1-5. Interstate Importation Standards.

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

(a) Failure to obtain written permission may result in a citation.

(2) An official Certificate of Veterinary Inspection issued by an accredited veterinarian is required for importation of all animals.

(3) A copy of the certificate shall be immediately forwarded to the Utah Department of Agriculture and Food by the issuing veterinarian or the animal health official of the state of origin within 7 calendar days from date on which the Certificate of Veterinary Inspection or other document is received or issued.

(4) Import permits for livestock, poultry and other animals may be obtained by telephone or via the internet to the accredited veterinarian responsible for issuing a Certificate of Veterinary Inspection.

(5) Certificates of Veterinary Inspection are considered valid for 30 days from the date of inspection.

R58-1-6. Cattle and Bison.

(1) A Certificate of Veterinary Inspection and an import permit must accompany all cattle and bison imported into the state.

(2) All cattle and bison must carry some form of individual identification as listed in R58-1-3(4).

(a) Individual identification must be listed on the Certificate of Veterinary Inspection.

(i) Official individual identification used for testing purposes must be shown on the Certificate of Veterinary Inspection; or

(ii) A copy of the official brucellosis or tuberculosis test sheets must be stapled to each copy of the Certificate of Veterinary Inspection.

(b) All cattle and bison imported into Utah from Canada, except those imported directly to slaughter, must be permanently branded with the letters CAN, not less than two (2) inches high nor more than three (3) inches high, placed high on the right hip.

(3) The import permit number must be listed on the Certificate of Veterinary Inspection.

(4) The following cattle are exempted from (1) above:

(a) Cattle consigned directly to slaughter at an approved slaughter establishment; or

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

(c) Movements under Subsections R58-1-5(4)(a), and R58-1-5(4)(b) must be in compliance with state and federal laws and regulations and must be accompanied by a weighbill, brand certificate, or similar document showing some form of positive identification, signed by the owner or shipper stating the origin, destination, number and description of animals and purpose of movement.

(d) Commuter cattle are exempt as outlined in Subsection R58-1-5(6).

(5) A brand inspection certificate or proof of ownership, which indicates the intended destination, is required for cattle entering the state.

(6) Commuter cattle may enter Utah or return to Utah after grazing if the following conditions are met.

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

(i) All cattle shall meet testing requirements as to State

classification for interstate movements as outlined in 9 CFR 1-78, which is incorporated by reference; USDA, Animal and Plant Health Inspection Services, Brucellosis Eradication, Uniform Methods and Rules, October 1, 2003, and approved by cooperating States.

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

(iii) All bulls used in the commuter herd must be tested annually for trichomoniasis as required by the State of Utah.

(b) No quarantined, exposed or reactor cattle shall enter Utah.

(7) Prior to importation of cattle or bison into Utah the following health restrictions must be met.

(a) Bison and cattle heifers of vaccination age between four and 12 months must be officially calfhood vaccinated for brucellosis prior to entering Utah, unless;

(i) going directly to slaughter, or

(ii) qualified feedlot to be sold for slaughter, or

(iii) to an approved livestock market to be sold for slaughter or for vaccination.

(iv) Bison and cattle heifers of vaccination age may be vaccinated upon arrival by special permit from the State Veterinarian.

(b) All female bison and cattle over 12 months of age imported to Utah must have evidence of a brucellosis calfhood vaccination tattoo to be imported or sold into the State of Utah, unless;

(i) going directly to slaughter, or

(ii) qualified feedlot to be sold for slaughter, or

(iii) to an approved livestock market to be sold for slaughter, or

(iv) tested negative for Brucella abortus within 30 days prior to entry.

(c) Test eligible cattle imported from states designated as brucellosis free, but are coming from a designated brucellosis surveillance area within that state, must be tested negative for brucellosis within 30 days prior to entry.

(i) Test eligible cattle may enter the state prior to testing with approval from the State Veterinarian but must be tested immediately upon arrival and the cattle must be kept isolated away from other cattle until tested negative.

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

(e) Exceptions to the above testing requirements include exhibition animals and test eligible cattle imported to Utah and moving directly to:

(i) an approved livestock market, or

(ii) to a "qualified feedlot", or

(iii) for immediate slaughter to an approved slaughter establishment.

(f) No reactor cattle, or cattle from herds under quarantine for brucellosis will be allowed to enter the state except when consigned to an approved slaughter establishment. An import permit and a Veterinary Services Form 1-27 prior to shipment are also required.

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

(h) A negative tuberculosis test is required within 60 days prior to shipment for all dairy cattle 2 months of age and older and bison 6 months of age and older.

(i) Breeding cattle originating within a quarantined area or from reactor or exposed herds and all cattle from an area which is not classified as Tuberculosis Free are required to be tested for tuberculosis within 60 days prior to entry to Utah.

(j) Rodeo bulls and roping steers must be tested annually during the calendar year for tuberculosis prior to entry to Utah.

(k) No cattle infested with, or exposed to scabies shall be moved into Utah. Cattle from a county where scabies has been diagnosed during the past 12 months must be officially treated within 10 days prior to shipment into Utah. The date of treating and products used must be shown on the Certificate of Veterinary Inspection.

(l) No cattle infested with ticks that can transmit splenic or tick fever, or exposed to tick infestations shall be imported into the State of Utah for any purpose.

(m) All bulls imported to Utah shall be in compliance with R58-21-3(A), which requires testing of all bulls over twelve months of age for trichomoniasis prior to entry, with some exceptions which are for slaughter, rodeo, exhibition, and bulls kept in confinement.

R58-1-7. Horses, Mules, Asses, and Other Equidae.

(1) Equidae may be imported into the State of Utah when accompanied by an official Certificate of Veterinary Inspection.

(2) The Certificate of Veterinary Inspection must show a negative Equine Infectious Anemia (EIA)(Coggins - AGID or ELISA) test within one year previous to the time the certificate was issued.

(a) Entry of equidae into Utah shall not be allowed until the EIA test has been completed and reported negative.

(b) Equidae which test positive to the EIA test shall not be permitted entry into Utah, except by special written permission from the State Veterinarian.

(c) A nursing foal less than six (6) months of age accompanied by its EIA negative dam and equidae moving directly to an approved livestock market are exempt from the test requirements.

(3) Utah horses returning to Utah as part of a commuter livestock shipment are exempted from the Certificate of Veterinary Inspection requirements; however, a valid Utah horse travel permit as outlined under Sections 4-24-22 or 4-24-23 and Section R58-9-4 is required for re-entering Utah.

(4) An import permit issued by the Department must accompany all stallions or semen.

(5) All stallions used for breeding that enter Utah or stallions whose semen will be shipped to Utah shall be tested for Equine Viral Arteritis (EVA) by an accredited veterinarian within 30 days prior to entry.

(a) Exceptions are stallions that have proof of negative EVA status prior to vaccination and proof of subsequent yearly vaccination.

(b) The EVA test or vaccination status must be recorded on the Certificate of Veterinary Inspection.

(c) Breeding stallions and semen infected with Equine Arteritis Virus must be handled only on an approved facility as required by R58-23.

R58-1-8. Swine.

(1) Swine may be shipped into the state if the following requirements are met:

(a) All swine must be accompanied by an approved Certificate of Veterinary Inspection stating they have not been fed raw garbage.

(i) The Certificate of Veterinary Inspection must show individual identification, ear tags, tattoos, registration numbers, microchips or other permanent means.

(b) An import permit issued by the Department must accompany all swine imported into the state.

(c) All breeding and exhibition swine over the age of three months shipped into Utah shall be tested negative for brucellosis within 30 days prior to movement into the state or originate from a validated brucellosis free herd or brucellosis free state.

(i) A validated brucellosis free herd number and date of

last test is required to be listed on the Certificate of Veterinary Inspection.

(ii) Swine from states with serious disease occurrences or known populations of feral or wild hogs may be required to be tested for Brucellosis prior to entry to Utah.

(d) All breeding, feeding and exhibition swine shall be tested negative for pseudorabies within thirty days unless they originate from a recognized qualified pseudorabies free herd or pseudorabies Stage V state.

(i) Swine that have been vaccinated with any pseudorabies vaccine shall not enter the state.

(ii) Swine which are infected or exposed to pseudorabies may not enter the state, except swine consigned to a slaughterhouse for immediate slaughter and must be moved in compliance with 9 CFR 71, which is incorporated by reference.

(iii) Swine from states with known populations of feral or wild hogs may be required to be tested for Pseudorabies prior to entry to Utah.

(2) Prohibition of Non-domestic and Non-native Suidae and Tayassuidae

(a) Javelina or Peccary, and feral or wild hogs such as Eurasian or Russian wild hogs (Sus scrofa) are considered invasive species in Utah, capable of establishing wild reservoirs of disease such as brucellosis and pseudorabies.

(b) These animals are prohibited from entry to Utah except when approved by special application only for purposes of exhibition and after meeting the above testing requirements.

(c) Any person who imports Javelina, Peccary or feral or wild hogs such as Eurasian or Russian wild hogs (Sus scrofa) into Utah without prior approval by the Department shall be subject to citation and fines as prescribed by the Department or may be called to appear before an administrative proceeding by the department.

R58-1-9. Sheep.

(1) All sheep imported must be accompanied by a Certificate of Veterinary Inspection and an import permit.

(a) No sheep exhibiting clinical signs of blue tongue may enter Utah.

(b) Sheep must be thoroughly examined for evidence of foot rot and verified that they are free from foot rot.

(c) Sheep entering Utah must comply with federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.

(d) Sheep from scrapie infected, exposed, quarantined or source flocks may not be permitted to enter the state unless an official post-exposure flock eradication and control plan has been implemented.

(e) Breeding rams six months of age or older shall test negative for Brucella ovis within 30 days of entry or originate from a certified brucellosis free flock.

(i) Rams entering Utah for exhibition purposes only and returning immediately to their home state are exempt from the testing requirement.

R58-1-10. Poultry.

(1) All poultry and hatching eggs being imported into Utah must meet the following requirements:

(a) All poultry and hatching eggs must have an import permit from the Department.

(b) All poultry and hatching eggs entering Utah must have a Certificate of Veterinary Inspection or a National Poultry Improvement Plan VS Form 9-3.

(c) All poultry and hatching eggs shall originate from flocks or hatcheries that have a Pullorum-Typhoid Clean rating given by the official state agency of the National Poultry Improvement Plan (NPIP) of the state, or

(d) All poultry entering Utah from a flock or hatchery which does not have a clean rating through NPIP certification must have been tested negative for Pullorum-Typhoid within the last 30 days.

R58-1-11. Goats and Camelids.

(1) Goats being imported into Utah must meet the following requirements:

(a) Dairy goats must have an import permit from the Department and an official Certificate of Veterinary Inspection showing a negative tuberculosis test within 60 days, and a negative brucellosis test within 30 days prior to entry or be from a certified brucellosis free herd and accredited tuberculosis free herd. Thereto; there must be no evidence of caseous lymphadenitis (abscesses).

(b) Meat type goats must have an import permit from the Department and an official Certificate of Veterinary Inspection indicating they are free from any communicable diseases or exposure and that there is no evidence of caseous lymphadenitis (abscesses).

(c) Goats entering Utah must comply with Federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.

(d) Goats for slaughter may be shipped into Utah directly to an approved slaughter establishment or to an approved auction market without an official Certificate of Veterinary Inspection and an import permit but must comply with Federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.

(2) Camelids being imported into Utah must have an import permit from the Department and an official Certificate of Veterinary Inspection showing a negative tuberculosis test within 60 days, and a negative brucellosis test within 30 days prior to entry or be from a certified brucellosis free herd and accredited tuberculosis free herd.

(3) Test eligible age for both brucellosis and tuberculosis shall be 6 months of age or older for both goats and camelids.

(4) Dairy goats and camelids entering Utah for exhibition purposes only and returning immediately to their home state are exempt from the testing requirement.

R58-1-12. Psittacine and Passerine Birds and Raptors.

(1) No psittacine or passerine birds or raptors shall be shipped into the State of Utah unless an official Certificate of Veterinary Inspection accompanies the birds.

(2) The number and kinds of birds to be shipped into Utah, their origin, date to be shipped and destination must be listed on the Certificate of Veterinary Inspection.

R58-1-13. Dogs, Cats, and Ferrets.

(1) All dogs, cats and ferrets shall be accompanied by an official Certificate of Veterinary Inspection.

(2) All dogs, cats and ferrets over three months of age must be currently vaccinated against rabies before entering Utah.

(a) The date of vaccination, name of product used, and expiration date must be written on the Certificate of Veterinary Inspection.

(3) No puppies or kittens less than 8 weeks of age shall be imported into the state unless accompanied by the mother.

R58-1-14. Exotic Animals.

(1) It is unlawful for any person to import into the State of Utah any species of exotic animal that is prohibited for importation or possession as listed in Utah Administrative Code R657-3.

(2) All exotic animals (birds, mammals, and reptiles) must be accompanied by an official Certificate of Veterinary Inspection.

(3) All aquatic animals (fish, mollusk, crustacean, or amphibians) must fulfill all requirements of Utah Administrative

Code R58-17 prior to importation into the State of Utah.

R58-1-15. Game and Fur-Bearing Animals.

(1) No game or fur bearing animals will be imported into Utah without an import permit being obtained from the Department.

(2) Each shipment shall be accompanied by an official Certificate of Veterinary Inspection.

(3) All mink entering Utah shall have originated on ranches where mink viral enteritis has not been diagnosed or exposed to within the past three years.

R58-1-16. Captive Cervidae.

(1) All captive cervidae entering Utah must meet the following requirements:

(a) No captive elk will be imported into Utah unless the destination premises is licensed with the Utah Department of Agriculture and Food.

(b) No captive caribou or fallow deer will be imported into Utah unless a Certificate of Registration (COR) has been obtained from the Utah Division of Wildlife Resources.

(c) No captive cervidae will be allowed to be imported into Utah that have originated from or have ever been east of the 100 degree meridian.

(d) All captive elk imported into Utah must meet the genetic purity requirement as referenced in Title 4, Chapter 39, Section 301, Utah Code Unannotated.

(e) All captive elk must meet the following Chronic Wasting Disease (CWD) requirements:

(i) Elk must come from a state with a USDA approved herd certification program.

(ii) Elk must originate from a herd that is not affected with or is a trace back or forward herd for CWD.

(iii) Elk must originate from a herd that has had a CWD herd surveillance program for 5 years prior to movement.

(f) All captive cervidae must be permanently identified using either a microchip or tattoo.

(g) All captive cervidae must have an import permit from the Department.

(h) All captive cervidae must have an official Certificate of Veterinary Inspection showing the following:

(i) A negative tuberculosis test within 60 days of import.

(ii) Negative Brucella abortus test results from a single sample that has been tested by two USDA approved tests.

(iii) Two forms of individual animal identification.

(iv) A statement the that animals listed on the certificate are not known to be infected with Johne's Disease (Paratuberculosis)or Malignant Catarrhal Fever and have never been east of the 100 degree meridian.

R58-1-17. Zoological Animals.

(1) The entry of zoological animals to be kept in zoological gardens, or shown at exhibitions is authorized when an import permit, subject to requirements established by the State Veterinarian, has been obtained from the Department and the animals are accompanied by an official Certificate of Veterinary Inspection.

(2) Movement of these animals must also be in compliance with the Federal Animal Welfare Act, 7 USC 2131-2159.

R58-1-18. Wildlife.

(1) It is unlawful for any person to import into the State of Utah any species of live native or exotic wildlife except as provided in Title 23, Chapter 13 and Utah Administrative Code R657-3.

(2) All wildlife imports shall meet the same Department requirements as required for the importation of domestic animals.

R58-1-19. Duties of Carriers.

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

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

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

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

KEY: disease control, import requirements
August 12, 2015 4-31
Notice of Continuation January 18, 2012 4-2-2(1)(I)

R58. Agriculture and Food, Animal Industry.
R58-2. Diseases, Inspections and Quarantines.
R58-2-1. Authority.

Promulgated Under the Authority of Sections 4-31-115, 4-31-118, 4-2-2(1)(c)(ii), and 4-2-2(1)(i).

R58-2-2. Definitions.

A. "Animal exhibition" - An event where animals are congregated for the purpose of exhibition and judging.

B. "Animals" - For the purpose of this chapter animals means poultry, rabbits, cattle, sheep, goats and swine.

C. "Terminal show" - A fair or livestock judging exhibition with designated species of animals that are declared "at risk animals" which at the conclusion of the event must be transported directly to slaughter.

R58-2-3. Reportable and Quarantinable Animal Diseases.

A. Reporting of Diseases. It shall be the responsibility of veterinary diagnostic laboratories, veterinary practitioners, livestock inspectors, and livestock owners to report immediately by phone or written statement to the Department of Agriculture and Food any of the diseases listed on the Utah Department of Agriculture and Food Reportable Disease list, available at the Utah Department of Agriculture and Food, Division of Animal Health, PO Box 146500, 350 North Redwood Road, Salt Lake City, UT 84114-6500.

1. All swine moving within the State of Utah shall be identifiable to determine the farm of origin as per 9 CFR,1,71.19, January 1, 2010, edition which is hereby adopted and is incorporated by reference within this rule.

2. All sheep and goats moving within the State of Utah shall, upon change of ownership, comply with federal Scrapie identification requirements as listed in 9 CFR Part 79, January 1, 2014, requiring official identification to determine the farm of origin.

3. Sheep and goats from Scrapie infected, exposed, quarantined or source flocks may not be permitted to move into or within the state, except to slaughter, unless a flock eradication and control plan, approved by the State Veterinarian in Utah, has been implemented in the flock where the diseased animal resides.

4. Any live scrapie-positive, suspect, or high-risk sheep or goat of any age and any sexually intact exposed sheep or goat of more than one year of age shall be required to possess official individual identification as listed in 9 CFR Part 79, January 1, 2014.

B. Quarantines. The Department of Agriculture and Food or its agent may issue quarantines on:

1. Any animal infected with diseases listed on the reportable disease list or any infectious or dangerous entity which is determined to be a threat to other animals or humans.

2. Any animal which it believes may jeopardize the health of other animals, or humans.

3. Any area within the State of Utah to prevent the spread of infectious or contagious diseases.

a. Quarantines shall be deemed issued to owners or caretakers of animals affected with or exposed to infectious, contagious, or communicable diseases by serving an official notice of quarantine to the owner or caretaker in person, by phone, by public meetings, or by registered mail to his last known address.

b. On and after the effective date of quarantine no animals shall be moved or allowed to be moved from or onto the quarantined premises without the owner or caretaker of the quarantined livestock having first obtained a written permit from the Utah Department of Agriculture and Food or its authorized agent to move the animals.

c. Quarantines shall be released upon compliance with Section 4-31-17; as well as with 9 CFR 71.2, January 1, 2014, edition; and the Utah Health Code Sections 26-6, 19-4 and 19-5.

R58-2-4. Disease Control at Animal Exhibitions and Livestock Auctions.

A. To reduce potential spread of disease from animal exhibitions and livestock auctions the Utah Department of Agriculture and Food may:

1. Specify an animal exhibition a terminal show for designated species coming to the event when the Utah Department of Agriculture and Food is aware that a disease risk exists in that local area or the state.

2. Give each county in the state the authority to designate a terminal show for any animal exhibition or fair being held within the county.

3. Give the specific show that is a member of the Junior Livestock Show Association the authority to designate a terminal show.

4. Restrict movement of livestock into and out of a livestock auction or temporary livestock sale when the Utah Department of Agriculture and Food is aware of a disease risk exists in that local area or the state.

KEY: quarantines

August 12, 2015	**4-31-15**
Notice of Continuation June 23, 2011	**4-31-17**
	4-2-2(1)(c)(ii)

R58. Agriculture and Food, Animal Industry.
R58-12. Record Keeping and Carcass Identification at Meat Exempt (Custom Cut) Establishments.
R58-12-1. Authority.

Promulgated Under Authority of Section 4-32-7.

R58-12-2. Records.

Accurate records of each animal slaughtered by its owner which enters a meat exempt (custom cut) establishment must be kept on approved Department cards. These records shall include:

A. The date,
B. The owner's name, address and telephone number,
C. Name and address of exempt establishment,
D. Kind of animal.

R58-12-3. Carcass Slaughtered at Home.

Upon receiving an animal which was slaughtered by its owner into an exempt establishment, the proprietor, manager or employee of the exempt establishment shall:

A. See that the appropriate Department cards and tags are filled out:

1. One card shall be sent into the Department. (These cards must be sent in by the 10th of the month for owner slaughtered animals received during the preceding month.)

2. One card shall remain in the exempt establishment file for at least one year.

B. "Not for Sale" tags must be affixed to each quarter of the animal. Two of these tags shall be affixed to the achilles tendon of each of the rear quarters and the two others tags shall be affixed under the flexor tendons of the forearm of each of the forequarters.

C. A legible "Not for Sale" stamp with letters at least 3/8" in height shall be applied directly on each quarter of the carcass.

R58-12-4. Uninspected Carcass.

If an uninspected carcass is found in an exempt establishment that has not been properly identified as required above, or as outlined for Farm Custom Slaughtered carcasses, the Commissioner of Agriculture and Food or his representative shall embargo and hold the carcass until proof of ownership has been determined.

KEY: food inspection
1987 4-32-7
Notice of Continuation August 12, 2015

R58. Agriculture and Food, Animal Industry.
R58-15. Collection of Annual Fees for the Wildlife Damage Prevention Act.
R58-15-1. Authority.

A. This rule is promulgated under authority of Subsection 4-2-2(1)(j) and Section 4-23-7.

B. This rule defines the policies by which the board shall implement the collection and non-collection exemption of annual fees assessed under the Wildlife Damage Prevention Act, Section 4-23-7.

C. This rule provides a uniform and fair method for the collection of wildlife damage fees as provided in Section 4-23-7.

R58-15-2. Exempt Owners.

The Utah State Department of Agriculture and Food may exempt owners from payment of imposed fees when the Commissioner determines that:

A. Livestock as defined in the Agricultural and Wildlife Damage Prevention Act are permanently confined within pens or corrals within incorporated city limits where animal damage control activity by state or federal agencies is prohibited or severely restricted.

B. Cattle which originate in Utah and leave to another state on commuter permits are exempt.

C. Annual fees which do not exceed $30.00, may be allowed when the commissioner finds enough extenuating circumstances to show that the livestock owner may not receive sufficient benefits from the predator control program, or

D. Owners may file an exemption for the portion of the fee that is used for predator control, but would still be required to pay the sheep promotion portion of the fee. All sheep owners would be required to file for the exemption annually. Proceeds collected from wool sales or brand inspections from exempt animals for predator control will be refunded to the owner provided an exemption request is filed with the department prior to December 31 of the calendar year corresponding to the exemption, and the exemption request is approved by the commissioner. Forms for submitting the exemption request can be obtained from the department.

R58-15-3. Fees Collection.

The department will adhere to the following procedures to avoid collecting multiple fees on cattle by brand inspection.

A. (1) Cattle that have been fee brand inspected and have a certificate indicating collection of predator control will not require further fee collection after consignment to feedlots within the state.

(2) When cattle are produced in state, and ownership is retained by that producer at a feedlot, a predator-control fee will normally be assessed when such cattle are marketed in this state.

(3) If conditions in R58-15-3-A(2) apply, but the cattle are shipped interstate, predator control fees shall be paid on the fee brand inspection prior to shipment interstate.

(4) Cattle which originate in another state and are brought in-state for grazing will be charged a predator fee on the brand inspection certificate when exiting the state.

B. Dairy cattle are subject to the predator control fee when those animals are consigned to a slaughter facility or auction barn. Special designated dairy replacement sales or dairy replacement auctions are exempt.

C. Pursuant to a memorandum of understanding between the Department of Agriculture and Food and wool marketing agencies or dealers, titled "Wool Fee Collection" is available at the Predator Fee Collection, Utah Department of Agriculture and Food, P.O. Box 146500, 350 N. Redwood Road, Salt Lake City, UT 84114-6500, the collection of wool fees is hereby established. On forms provided by the department, the marketing agency will record the following information:

name of company
year and quarter
the name and address of the producer
pounds of wool
number of sheep
amount deducted

Records and fee payments will be furnished to the department no later than April 30, July 30, October 30, and January 30 of each year. These dates correspond to a 30-day period following a quarterly collection of fees. (January to March; April to June; July to September; and October to December.)

D. Movement of sheep from out of state producers into Utah will be subject to fees imposed for predator control. These fees will be collected commensurate with forms delivered to such producers prior to January 1 of each calendar year, which are returned to the department no later than April 1 of each year.

E. Movement of livestock from in-state producers to other states to graze, and in cases where cattle are marketed out of state, or sheep that are shorn of wool that is marketed in other states, and which products are not subject to the collection methods described in Title 4, Chapter 23, the producers will be required to submit to the department on forms provided by the department such fees as are applicable, prior to April 1 of each calendar year.

R58-15-4. Imposed Fees.

The commissioner may determine the following fees after an owner's failure to file completed reporting forms and prior-fees owed and citations may be issued to persons found not in compliance, based on the following provisions:

A. A minimum fee of $25.00 for failure of owner to file the completed report as required under Section 4-23-6;

B. A fee calculated at a rate of one percent per month (twelve percent APR) applied to the unpaid balance of the amount due that is not paid as required under Title 4, Chapter 23.

C. A fee to compensate for costs of collection: including court costs, reasonable attorney's fees, and applicable administrative costs.

R58-15-5. Predator Control Services.

In accordance with the "Utah Animal Damage Control Program", the State Department of Agriculture and Food may elect to provide various degrees of predator control services to individual landowners, lessors, or administrators, as per separately negotiated agreements. Those who fail to pay annual fees as required under Section 4-23-7 may only receive minimal levels of service.

KEY: administrative procedure, enforcement
August 14, 1995 4-2-2(1)(j)
Notice of Continuation August 13, 2015 4-23-7

R58. Agriculture and Food, Animal Industry.
R58-22. Equine Infectious Anemia (EIA).
R58-22-1. Authority.

Promulgated under authority of 4-31, 4-2-2(1)(c), and 4-2-2(1)(i).

The intent of these rules is to eliminate or reduce the spread of Equine Infectious Anemia among equines by providing for a protocol for testing and handling of equines infected and exposed to Equine Infectious Anemia.

R58-22-2. Definitions.

Accredited Veterinarian - means a veterinarian approved by the Deputy Administrator of USDA, APHIS, VS in accordance with provisions of 9 CFR Part 161.

Coggins test - means a common name for the Agar Gel Immuno-diffusion (AGID) test for diagnosis of EIA.

Equine - means any animal in the family Equidae, including horses, asses, mules, ponies, and Zebras.

Equine Infectious Anemia (EIA) - means an infectious disease of equines caused by a lentivirus, equine infectious anemia virus (EIAV). The disease is characterized by three distinct clinical forms: acute, chronic and inapparent.

Identification - means permanent notation of equines that are determined to be EIA reactors by application of a hot iron, or freeze marking using the National Uniform Tag code number for the State of Utah (87), followed by the letter "A" on the left side of the neck or left shoulder.

Official test - means any test for the laboratory diagnosis of EIA that utilizes a diagnostic product that is (1) produced under license from the Secretary of Agriculture, and found to be efficacious for that diagnosis, under the Virus-Serum- Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 et seq.); and (2) conducted in a laboratory approved by the Administrator of APHIS.

Reactor - means any equine that has been subjected to an official laboratory test whose result is positive for EIA.

Exposed Animals - means all equines that have been exposed to EIA by reason of association with the affected animal.

R58-22-3. Equine Infectious Anemia - Rules - Prevention and Control.

The State Veterinarian shall have authority to conduct or supervise testing at an official laboratory to diagnose EIA and to quarantine and order disposition of any individuals or herds that are found to be positive for EIA, at such time as may be deemed necessary for the control and elimination of EIA., as granted under Section 4-31-16.

Personnel authorized to submit samples, approved laboratories, and official tests shall be those identified in the Uniform Methods and Rules, USDA, APHIS 91-55-037 Part II, B, C, and D, effective January 1, 1998, or subsequent revisions.

Procedures for handling equines which are classified as reactors:

Quarantine - When an equine has a positive result on an official test for EIA, the animal shall be placed under quarantine within 24 hours after positive test results are known and a second, confirmatory, test shall be performed under the direction of the state veterinarian. The equine shall remain in quarantine until final classification and disposition is made. Equines which have been located within 200 yards of the infected animal shall be quarantined and tested also.

Repeat testing and removal of reactors - When a reactor is disclosed in a herd, and removed, testing of all exposed equines for EIA must be repeated at no less than 45 day intervals until all remaining equines on the premise test negative, at which time the quarantine may be removed.

Identification of reactor equines - Equines that are determined to be reactors must be permanently identified using the National Uniform Tag code number for Utah (87) followed by the letter "A". Markings must be permanently applied using a hot iron, or freeze marking by an APHIS representative, State representative, or accredited veterinarian. The marking shall be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. Official identification is not necessary if the reactor is moved directly to slaughter under a permit and is in a conveyance sealed with an official seal.

Euthanasia and disposal - Once an equine has been classified as a reactor, it must be removed from the herd. This can be accomplished by euthanasia or removal to slaughter. If slaughter is chosen, the equine must be moved either to a federally or state inspected slaughtering establishment per the Code of Federal Regulations, Part 75.4. If euthanasia is chosen, the animal must be properly buried six feet underground.

R58-22-4. Importation of Equines.

A. Equines imported to Utah shall be in compliance with R58-1-6.

KEY: inspections
August 12, 2015 **4-2-2(1)(c)**
Notice of Continuation January 18, 2012 **4-2-2(1)(j)**

R63. Agriculture and Food, Chemistry Laboratory.
R63-1. Fee Schedule.
R63-1-1. Authority.

Promulgated under authority of Section 4-2-10.

R63-1-2. Analytical Service Fees.

Analytical service fees shall be charged as determined by the department pursuant to 4-2-2(2). A current list of approved fees may be obtained, upon request from the Utah Department of Agriculture and Food, 350 North Redwood Road, PO Box 146500, Salt Lake City, UT 84114-6500. Phone (801)538-7168. Website: ag.utah.gov, Chemistry Division.

KEY: chemical testing
December 16, 2005 4-2-2
Notice of Continuation August 24, 2015

R68. Agriculture and Food, Plant Industry.
R68-1. Utah Bee Inspection Act Governing Inspection of Bees.
R68-1-1. Authority.

Promulgated under the authority of Section 4-11-3.

R68-1-2. Registration.

Every owner or person coming into possession of one or more colonies of bees within the State of Utah shall register with the Department of Agriculture and Food in accordance with the provisions in Section 4-11-4.

R68-1-3. Apiary Identification.

Each apiary location whether permanent or temporary shall be identified by a sign showing the owner's registration number issued by the Utah Department of Agriculture and Food at least one inch in height, easily readable and displayed in a conspicuous location in the apiary; or similar identification conspicuously displayed on one or more hive bodies within the apiary. Any apiary not so identified shall be considered abandoned and shall be subject to seizure and destruction as provided for in Section 4-11-14.

R68-1-4. Assistance in Locating Apiaries.

All beekeepers shall personally assist the department or county bee inspectors in locating their apiaries, or provide accurate and detailed information as to location of all bee hives under their control or possession.

R68-1-5. Salvage Operations.

All salvage operations with respect to wax, hives and appliances from diseased colonies shall be performed in a tightly screened enclosure to prevent the entrance of bees according to the following procedure:

A. Frames and comb from the diseased hives shall be held for at least 30 minutes in boiling water (212 degrees F) before any wax is removed.

B. After removal from the boiling water the frames must be destroyed or boiled for a minimum of 20 minutes in a solution of lye water containing no less than 10 pounds of lye (Sodium Hydroxide) for each 100 gal. of water.

C. Hive bodies, supers, covers and bottom boards must be thoroughly scorched or boiled for a minimum of 20 minutes in the lye water solution.

KEY: beekeeping
1987 **4-11-3**
Notice of Continuation August 24, 2015

R70. Agriculture and Food, Regulatory Services.
R70-610. Uniform Retail Wheat Standards of Identity.
R70-610-1. Authority.

Promulgated under Sections 4-5-6, 4-2-2, and 4-5-17.

R70-610-2. Definitions.

A. "Field Wheat" shall mean the grain of common wheat, club wheat, and durum wheat which before the removal of inert and foreign material (dockage) consists of 50 percent of one of these wheats and not more than 10 percent of other grains for which standards have been established by the United States Grain Standards Act and which, after removal of inert and foreign material contains 50 percent or more of whole kernels of one or more of these wheats.

B. "Rough Cleaned Wheat" shall mean field wheat which has been cleaned and contains not more than 2.0 percent inert and foreign material, not more than 5.0 percent shrunken and broken kernels and no poisonous or deleterious substance or other material that would render wheat unwholesome or harmful to health.

C. "Cleaned Wheat" shall mean field wheat which has been cleaned and contains not more than 1.0 percent inert and foreign material, not more than 5.0 percent shrunken and broken kernels and no poisonous or deleterious substance or other material that would render wheat unwholesome or harmful to health.

D. "Table Cleaned Wheat" shall mean field wheat which has been cleaned and contains not more than .5 percent inert and foreign material, not more than 5.0 percent shrunken and broken kernels and no poisonous or deleterious substance or other material that would render wheat unwholesome or harmful to health.

E. "Hard Red Winter Wheat" shall mean all subclasses and varieties of hard red winter wheat with not more than 3 percent other classes of wheat.

F. "Hard Winter Wheat" shall mean all subclasses and varieties of hard red and white winter wheats with not more than 3 percent other classes of wheat.

G. "Hard Red Spring Wheat" shall mean all subclasses and varieties of hard red spring wheat with not more than 3 percent other classes of wheat.

H. "Soft Red Winter Wheat" shall mean all subclasses and varieties of soft red winter wheat, with not more than 3 percent other classes of wheat.

I. "Hard Red Wheat or Hard Red Wheat Blend" shall mean blended wheat of all subclasses and varieties of hard red winter wheat and hard red spring wheat, with not more than 3 percent other classes.

J. "Wheat Mix" shall mean all subclasses and varieties of hard red winter wheat and hard red spring wheat mixed with soft wheats.

K. "White Wheat" shall mean all subclasses and varieties of white wheat with not more than 3 percent other classes of wheat.

L. "Hard Red and White Wheat Blend" shall mean all subclasses and varieties of hard red wheat mixed with any subclass and variety of hard white wheat.

M. "Damaged Kernels" shall mean kernels and pieces of kernels of wheat which are heat damaged, sprouted, frosted, badly ground damaged, badly weather damaged, moldy, diseased, or otherwise materially damaged.

N. "Inert and Foreign Material or Dockage" shall mean all weed seeds, weed stems, shaff, straw, grain other than wheat, sand, dirt, dead insects or any other material that can be readily removed from wheat by the use of sieves and cleaning devices.

O. "Poisonous or Deleterious Substances" shall mean all smuts, ergots, poisonous weed seeds, pesticides, live insects, rodent excreta, or other material or substances that would render wheat unwholesome or harmful to health.

P. "Adulteration" shall be defined as outlined in the Utah Wholesome Food Act, Section 4-5-7.

Q. "Misbranded" shall be defined as outlined in the Utah Wholesome Food Act, Section 4-5-8.

R. "Shrunken and Broken Kernels" shall mean all kernels and pieces of kernels of wheat and other matter that will readily pass through a 0.064 x 3/8 oblong hole sieve.

S. "F.P.L.A." shall mean the Fair Packaging and Labeling Act.

R70-610-3. Labeling.

Packaged wheat that is intended for sale directly to consumers and not intended for further processing, labeling, or repackaging in a food processing establishment must be labeled according to 21 USC 343, known as F.P.L.A., the Nutrition Labeling and Education Act of 1990.

R70-610-4. Special Labeling Standards for Wheat.

Wheat that is intended for sale directly to consumers and not intended for processing, labeling, or repacking in a food processing establishment must be labeled in addition to F.P.L.A. labeling with

A. Class of Wheat, i.e., hard red winter wheat, hard winter wheat, hard red spring wheat, hard spring wheat, soft red winter wheat, white wheat, hard red wheat or hard red blend wheat mix, and hard red and white wheat blend.

B. The type of Cleaning Standard Met, i.e. field wheat (no cleaning), rough cleaned wheat, cleaned wheat, or table cleaned wheat.

R70-610-5. General.

A. If the wheat contains less than 11 percent moisture, it may be labeled low moisture wheat.

B. If the germination of the wheat is 85 percent or more, the term "germination not impaired" may be used.

C. All claims made on the label must be met by the processor.

D. Wheat must be processed, packaged, and stored in such a manner that the product will not become adulterated.

E. Wheat cleaning facilities and products must be in compliance with Title 4, Chapter 5 and R70-530.

KEY: food inspection

1987	**4-5-6**
Notice of Continuation August 5, 2015	**4-5-17**
	4-2-2

R70. Agriculture and Food, Regulatory Services.
R70-620. Enrichment of Flour and Cereal Products.
R70-620-1. Authority.

A. Promulgated under authority of 4-6-3.

B. The Utah Department of Agriculture and Food adopts and incorporates by reference the Code of Federal Regulations, April 1, 2000 edition Title 21, parts 137 and 139, as its enrichment standards and labeling requirements governing the identity and quantity of vitamins and minerals to be added to flour and cereal manufactured or sold in Utah.

R70-620-2. Enrichment Standards.

The following flour and cereal products have identity and enrichment standards as prescribed in 21 CFR parts 137 and 139.

A. Enrichment standards for flour and cereals produced from small grain and corn include enriched bromated flour, enriched self-rising flour, instantized - instant blending and quick-making forms of the same, enriched farina, enriched cornmeals, enriched corn grits and enriched rice.

B. Food products containing 25 percent or more of flour produced from small grain and corn include enriched white bread and rolls, enriched macaroni products, enriched noodle products, enriched vegetable macaroni products, enriched vegetable noodle products, enriched macaroni products made with non-fat milk, and enriched macaroni products with fortified protein.

R70-620-3. Labeling.

A. The flour and cereal products listed in R70-620-2A and B in the above enrichment standard shall be labeled in accordance with the Code of Federal Regulation Title 21, definitions and standards of identity.

B. The unenriched counterpart of the flour and cereal products listed in R70-620-2A of the above enrichment standards may be sold at retail in Utah only if there is prominently shown on the principle display panel the word "unenriched" in type no smaller than one-half the height of the name of the product on the principle display panel.

R70-620-4. Certificate.

A. Any flour sold to a distributor or processor must be certified, assuring the seller that the flour or any flour or cereal product derived from the flour when offered for retail sale will conform to the enrichment standards and labeling requirements.

B. The required certificate shall be in the following form:

Date

The following flour is unenriched. I hereby certify that the final product made from this flour will meet the enrichment standards prescribed for flour.

Signature and Title of Distributor or Processor

Address of Distributor or Processor

KEY: food inspection
March 6, 2001 **4-6-3**
Notice of Continuation August 5, 2015

R70. Agriculture and Food, Regulatory Services.
R70-910. Registration of Servicepersons for Commercial Weighing and Measuring Devices.
R70-910-1. Authority.

Promulgated under Section 4-9-2.

R70-910-2. Policy.

(1) It shall be the policy of the Division of Regulatory Services, Weights and Measures Program, of the Utah Department of Agriculture and Food to accept registration of an individual who:

(a) Provides acceptable evidence of all business licenses required by the applicable cities, counties or states to conduct business, if self-employed, or his employer's if not self-employed; provides acceptable evidence as demonstrated by attending Department of Agriculture and Food provided training and successfully passing an exam administered by the department, that she is fully qualified to install, service, repair, or recondition a commercial weighing or measuring device and has a thorough working knowledge of all appropriate weights and measures laws, orders, rules, and regulations; and

(b) has possession of, or has accessible for his use, weights and measures standards and testing equipment certified by the Department of Agriculture and Food to be appropriate in design and capacity.

(2) It shall be unlawful for any individual to place into public or commercial service any weighing or measuring device prior to being tested and sealed by a registered serviceperson.

R70-910-3. Definitions.

(1) "Registered Serviceperson" means any individual who for hire, award, commission, or any other payment of any kind, installs, services, repairs, reconditions, calibrates or places into service a commercial weighing or measuring device, and who is registered by the Department of Agriculture and Food to perform these services.

(2) "Service Agency" means any agency, firm, company, or corporation which, for hire, award, commission, or any other payment of any kind, installs, services, repairs, reconditions, calibrates or places into service a commercial weighing or measuring device.

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

(4) "Security Seal" means a uniquely identifiable physical seal, such as a lead-and-wire seal or other type of locking seal, or similar apparatus attached to a weighing or measuring device for protection against or indication of access to adjustment.

(5) "Placed in service report" means a report, completed on a department form for declaring that a commercial weighing or measuring device has been put into service.

R70-910-4. Reciprocity.

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

R70-910-5. Registration Fee.

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

R70-910-6. Registration.

(1) An individual may apply for registration to place into service commercial weighing or measuring devices on the Department of Agriculture and Food's application form. An applicant also shall submit appropriate evidence of having passed a department approved exam that measures the applicant's knowledge of device installation, service, repair and maintenance and applicable laws, orders, rules and regulations.

(2) The department shall provide a device service training class and administer a proficiency examination. The proficiency examination will test the basic knowledge required for competency as a serviceperson. The passing score on the examination shall be above 80%.

(3) An examinee who fails the device service proficiency examination shall retake the training class in order to retake the examination.

(4) The department may revise the examination to address knowledge of changes in the law or technology.

(5) Training class attendance and successful completion of the examination may be used to apply for a Certificate of Registration for three successive registration cycles.

(6) Servicepersons who are employed by a service agency that provides training shall notify the department and shall have up to 30 days to become registered.

(a) Beginning January 1, 2009, the department shall provide a class and examination opportunity for new servicepersons within two weeks of notification.

R70-910-7. Certificate of Registration.

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

R70-910-8. Privileges of a Registrant.

The bearer of a Certificate of Registration shall have the authority to:

(1) Remove an official rejection tag or mark placed on a weighing or measuring device by the authority of the Department of Agriculture and Food; and

(2) Place in service, until such time as an official examination can be made, a commercial weighing or measuring device that has been newly installed, routinely calibrated or officially rejected.

R70-910-9. Place in Service Report.

The Department of Agriculture and Food shall make available to each registered serviceperson the official Placed in Service Report form. A placed in service report shall be submitted within 24 hours to the department by the serviceperson for each rejected device restored to service and for each newly installed device placed in service. All official rejection tags or marks removed from the device shall be mailed to the Department of Agriculture and Food, the Division of Regulatory Services, Weights and Measures Program, 350 North Redwood Rd, PO Box 146500, Salt Lake City, UT 84114-6500. A duplicate copy of the report shall be retained by the owner or operator of the device, and a duplicate copy of the report shall be retained by the registered serviceperson or her

employer.

R70-910-10. Standards and Testing Equipment.

(1) A registered serviceperson shall submit, at least biennially to the Department of Agriculture and Food, for examination and certification, any testing equipment and standards that are used, or are to be used, in calibrating or placing into service a commercial weighing and measuring device.

(2) A registered serviceperson may not use, in officially servicing commercial weighing or measuring devices, any standards or testing equipment that have not been certified by the Department of Agriculture and Food.

R70-910-11. Security Seals Required to be Submitted.

(1) A registered serviceperson shall submit to the department the seal that she will use.

(A) If the seal belongs to the registered serviceperson's employer, the serviceperson shall identify the employer.

(2) When a registered serviceperson changes his seal, he shall submit the seal and employer's identification to the department prior to it being used.

(3) A registered serviceperson who uses their own seal shall submit that seal to the department.

(4) When a registered serviceperson changes their own seal, he or she shall submit the seal to the department prior to it being used.

R70-910-12. Qualification to Service Heavy Capacity Scales.

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

R70-910-13. Unlawful Acts Specified.

(1) It shall be unlawful for any non-registered individual to:

(a) place into public or commercial service a weighing or measuring device; or

(b) to represent themselves as being registered as a serviceperson by the department.

R70-910-14. Suspension or Revocation of Certificate of Registration.

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

R70-910-15. Publication of Lists of Service Agencies and Registered Servicepersons.

The Department of Agriculture and Food shall publish, and may supply upon request, lists of registered servicepersons and those service agencies which commit to using registered servicepersons to calibrate commercial weighing and measuring devices or place them in service. The department may remove from the lists a service agency found to have used a non-registered service person to calibrate or place into service a commercial weighing or measuring device.

R70-910-16. Notification of Service Agency.

Whenever the voluntary registration of a service person is suspended or revoked, the department shall notify the known employing service agency within three working days.

R70-910-17. Notification of Changed Equipment.

Whenever a voluntarily registered serviceperson changes any testing equipment and standards that are used, or are to be used, in calibrating or placing into service a commercial weighing and measuring device, the serviceperson shall notify and provide proof to the department that the testing equipment or standard has been approved by an official state metrologist.

KEY: inspections, weights and measures
December 8, 2008 4-9-2
Notice of Continuation August 5, 2015

R70. Agriculture and Food, Regulatory Services.
R70-950. Uniform National Type Evaluation.
R70-950-1. Authority.

A. Promulgated under authority of Section 4-9-2.

B. Application. This rule shall apply to all classes of devices and/or equipment as covered in National Institute of Standards and Technology (N.I.S.T) Handbooks 44, 105-1, 105-2, and 105-3. (The department has a complete set of the publications mentioned, additional copies may be obtained from the U.S. Government Printing Office.)

R70-950-2. Definitions.

A. National Type Evaluation Program.

The term "National Type Evaluation Program" means a program of cooperation between the National Institute of Standards and Technology (N.I.S.T), the National Conference on Weights and Measures, the States, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of National Institute of Standards and Technology (N.I.S.T) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," National Institute of Standards and Technology (N.I.S.T) Handbook 105-1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Weights (N.I.S.T Class F)," National Institute of Standards and Technology (N.I.S.T) Handbook 105-2, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Measuring Flask," or National Institute of Standards and Technology (N.I.S.T) Handbook 105-3, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards."

B. Type Evaluation.

The term "type evaluation" means the testing, examination, and/or evaluation of a type by a Participating Laboratory under the National Type Evaluation Program.

C. Type.

The term "type" means a model or models of a particular measurement system, instrument, element, or a field standard that positively identifies the design. A specific type may vary in its measurement ranges, size, performance, and operating characteristics as specified in the Certificate of Conformance.

D. Participating Laboratory.

The term "Participating Laboratory" means any State Measurement Laboratory that has been certified by the National Institute of Standards and Technology (N.I.S.T), in accordance with its program for the Certification of Capability of State Measurement Laboratories, to conduct a type evaluation under the National Type Evaluation Program.

E. Certificate of Conformance.

The term "Certificate of Conformance" means a document issued by the National Institute of Standards and Technology (N.I.S.T) or National Conference on Weights and Measures (NCWM) based on testing in participating laboratories, said document constituting evidence of conformance of a type with the requirements of National Institute of Standards and Technology (N.I.S.T) Handbooks 44, 105-1, 105-2, and 105-3.

F. Director.

The term "Director" means the Director of Regulatory Services, Utah Department of Agriculture and Food.

R70-950-3. Certificate of Conformance.

The Director may require any weight or measure, or any weighing or measuring instrument or device to be issued a Certificate of Conformance prior to use for commercial or law enforcement purposes.

R70-950-4. Participating Laboratory.

The Director is authorized to operate a Participating Laboratory as part of the National Type Evaluation Program. In this regard, the Director is authorized to charge and collect fees for type evaluation services.

KEY: inspections
1987 4-9-2
Notice of Continuation August 5, 2015

R81. Alcoholic Beverage Control, Administration.
R81-2. State Stores.
R81-2-1. Reserved.
Reserved.

R81-2-2. Liquor Returns, Refunds and Exchanges.
(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.
(2) Application of Rule.
(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The department will accept for refund or exchange liquor merchandise that is unsaleable subject to the following conditions and restrictions:
(i) Returns of unsaleable merchandise are subject to approval by the store manager to verify that the product is indeed defective.
(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the department may not be returned.
(iii) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.
(b) Saleable Product. Store managers are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:
(i) Returns of saleable merchandise are subject to approval by the store manager. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the store manager.
(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition. Returns of $50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of $50.00 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.
(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the store manager has personal knowledge of how they have been handled and stored.
(iv) If the total amount of the return is more than $500 the store manager shall fill out a A Returned Merchandise Acknowledgment Receipt (LQ-45), and submit a copy to the office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.
(v) If the total value of the returned merchandise is more than $1,000, a 10% restocking fee shall be charged on the total amount.
(c) Unreturnable Products. The following items may not be returned:
(i) All limited item wines - wines that are available in very limited quantities.
(ii) Any products that have been chilled, over-heated, or label-damaged.
(iii) Outdated (not listed on the department's product/price list) and discontinued products.
(iv) Merchandise purchased by catering services.
(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

R81-2-3. Warning Sign.
All state stores shall display in a prominent place a "warning sign" as defined in R81-1-2.

R81-2-4. Identification Guidelines to Purchase Liquor.
The department accepts only four forms of identification to establish proof of age for the purchase of liquor by customers:
(1) A current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;
(2) A current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, Identification Card Act, or issued by another state that is substantially similar to this state's identification card;
(3) A current valid military identification card that includes date of birth and has a picture affixed; or
(4) A current valid passport.
If a person's age is still in question after presenting proof of age, the department may require the person to also sign a "statement of age" form as provided in 32B-1-405. The form shall be filed alphabetically by the close of the business day, and shall be maintained on file for a period of three years.

R81-2-5. Advertising.
The advertising or promotion of liquor products within state stores is prohibited. An employee may inform the customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.

R81-2-6. Refusal of Service.
An employee of the store may refuse to sell liquor to any person whom the employee has reason to believe is purchasing or attempting to purchase liquor in violation of Utah Alcoholic Beverage Control laws. The employee may also detain the person and hold the person's form of identification in a reasonable manner and for a reasonable length of time for the purpose of informing a peace officer of a suspected violation.

R81-2-7. Minors on Premises.
No person under the age of 21 years may enter a state liquor store unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the state liquor store.

R81-2-8. Payment for Liquor.
(1) Accepting Licensee Payments: Pursuant to 32B-5-303(1)(c), this rule requires that payments collected from licensees for the purchase of liquor come from the licensee and authorizes the agency to make internal department policies in accordance with 32B-2-206(1), (2) and (5) for the acceptance of payments for liquor.

R81-2-9. Reserved.
Reserved.

R81-2-10. State Store Hours.
(1) Sale or delivery of liquor may not be made on the premises of any state store, nor may any state store be kept open

for the sale of liquor:

(a) on any day prohibited by 32B-2-503(5);

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

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

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

An industry member, as defined in 32B-4-702, shall be limited to the customer areas of a state store except as follows:

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

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

R81-2-12. Store Site Selection.

This rule is promulgated pursuant to Section 32B-2-202(1)(c)(ii) which requires that criteria and procedures be established for determining the location of a state store: Prior to the commission establishing a new state store, the Operations and Procurement Subcommittee will determine the feasibility of a new site, weigh options and consider the investigation and recommendation of the department as outlined in 32B-2-502 then make its recommendation to the commission.

KEY: alcoholic beverages
August 25, 2015 **32B-2-202**
Notice of Continuation May 10, 2011

R105. Attorney General, Administration.
R105-3. White Collar Crime Registry.
R105-3-1. Purpose.

The purpose of this rule is to establish procedures to efficiently administer the Utah White Collar Crime Offender Registry. These rules are made pursuant to the rulemaking authority granted by Utah Code Ann. Section 77-42-107(1).

R105-3-2. Definitions.

(1) Attorney General: The Attorney General of the State of Utah and any Assistant Attorney General.

(2) Attorney General's Office: The Office of the Attorney General of the State of Utah, and its employees acting within the scope of their employment.

(3) Conviction: A conviction occurs, for purposes of this Rule, as soon as a plea is entered and accepted by the court, or a trial concludes with a verdict of guilty. The Registry shall note cases in which an Offender has been convicted but is still awaiting sentencing or has appealed the conviction, so long as the appeal is pending.

(4) Dates: When a day of the month or a date that is specified in this rule falls on a weekend or an official state holiday, the deadline shall be the end of the next regular business day.

(5) Harassment: Harassment is any action that is designed to intimidate, humiliate, coerce, or threaten an individual, including stalking an individual. Persons who use the Registry are prohibited from harassing any Offender listed on the Registry, or any person related to any Offender. Persons who use the Registry are also prohibited from engaging in indirect harassing behavior against an Offender through harassing contact with any person who employs any Offender, any person who provides housing to any Offender, or any person who is a religious or spiritual advisor to any Offender. For example, a person using the Registry may not coerce or threaten a landlord in an effort to cause the landlord to cease renting to an Offender. However, it is not harassment for a person who uses the Registry to accurately inform any person that an Offender is listed on the Registry, or to provide information on the Registry to any person. It is not harassment for a person who uses the Registry to suggest, advise, or recommend to any person that they not invest money with an Offender, or that they take action to recover money they may have invested with an Offender.

(6) Offender: Any person who has been convicted of a crime listed in Section 77-42-105, who is required to register pursuant to Section 77-42-106(2) and who is not exempted from that requirement pursuant to Section 77-42-106(3).

(7) Presiding Officer: The initial Presiding Officer for administrative proceedings shall be the current Director of the Markets and Financial Fraud Division, unless otherwise designated by the Attorney General in a particular proceeding.

(8) Potential Offender: Any person whom the Attorney General has reason to believe may be an Offender, during the period of time when the Attorney General's Office is investigating whether the person qualifies for listing on the Registry.

(9) Prosecutor: Any Assistant Utah Attorney General, County Attorney, Assistant County Attorney, District Attorney, Assistant District Attorney, or other individual who is authorized by law to prosecute any of the offenses listed in Section 77-42-105. A law enforcement agency may designate any Prosecutor within the agency as the person responsible for fulfilling the requirements of this Rule regarding any Offender or group of Offenders; in the absence of any such designation, it is the responsibility of the Prosecutor who obtained the conviction to comply with this Rule.

(10) Registry: The White Collar Crime Registry, as authorized by Utah Code Title 77, Chapter 42.

(11) Registry Coordinator: The Registry Coordinator is the person who is responsible for maintaining the Registry. The Attorney General shall designate a Registry Coordinator, whose name will be listed as part of the information about the Registry provided at http://www.attorneygeneral.utah.gov

(12) Repeat Offender: For purposes of Section 77-42-106(1) a person shall be deemed to have been convicted more than once and hence subject to being listed for additional time on the Registry only if all of the following conditions are met:

(a) Each conviction was the result of a separate legal proceeding;

(b) Each conviction is based upon factually distinct behavior, such as different fraudulent schemes affecting different investors;

(c) Although a person may be convicted in a single proceeding of having committed multiple offenses from among the list in Section 77-42-105 or may be convicted of multiple counts of the same offense, such a proceeding still constitutes a single conviction; and

(d) It is irrelevant whether the events for later convictions take place before or after earlier convictions, so long as they constitute separate factually distinct behavior.

(13) Review Officer: A Review Officer is an individual who makes initial determinations concerning whether a Potential Offender should be listed as an Offender on the Registry, and whether an Offender who is listed on the Registry should be removed from the Registry. The Attorney General shall designate one or more Review Officers from time to time. Individuals may obtain the name of the Review Officer in a particular case by sending an email to whitecollar@utah.gov, or by checking the information about the Registry provided at http://www.attorneygeneral.utah.gov, or by mailing a written request to White Collar Crime Registry Coordinator, Office of the Attorney General, PO Box 142320, Salt Lake City, UT 84114-2320.

(14) Victim: Any person identified as a victim, including persons to whom restitution is owed regardless of whether they testified or were identified at trial.

R105-3-3. Operation of the Registry.

(1) The Registry shall be maintained and updated by the Registry Coordinator.

(2) All communications concerning the operation of the Registry or the accuracy of information contained in the Registry, and all forms, information, and notices that are permitted or required to be sent to the Attorney General's Office under this Rule shall be sent to the Registry Coordinator by email to whitecollar@utah.gov or by mail to White Collar Crime Registry Coordinator, Office of the Attorney General, PO Box 142320, Salt Lake City, UT 84114-2320.

(3) All written communications from the Attorney General's Office to any Offender or Potential Offender shall be mailed to the likely best address in this order:

(a) The current address provided by the Offender or Potential Offender;

(b) The last known address provided by the Prosecutor; or

(c) Any other address discovered by the Attorney General's Office.

(4) The Attorney General's Office may communicate with any person by email instead of mail if that person has provided the Attorney General's Office with an email address and has either stated in writing that use of the email address instead of mail is acceptable, or has used the whitecollar@utah.gov email address to communicate with the Attorney General's Office.

(5) The Registry Coordinator shall have authority to determine that Potential Offenders are Offenders, to list Offenders on the Registry (including determining what information will be included in the listing), to correct errors in the Registry, to remove an Offender from the Registry, and to take any other acts necessary to maintain the Registry. The

Registry Coordinator shall work with the Review Officer or Officers in making these determinations.

(6) The Registry Coordinator may seek advice and assistance from the Attorney General or anyone employed by the Attorney General's Office in exercising the authority granted under this Rule.

(7) The Attorney General's Office will generally update the Registry monthly on or before the 15th day of the month. Updates will include changes that have received final approval from the Registry Coordinator prior to the 1st day of the month. Any changes receiving approval after the 1st day of the month will generally be included in the following month's update.

(8) The Registry can be accessed from this URL: http://www.attorneygeneral.utah.gov.

(9) All forms referenced in this Rule can be obtained from this URL: http://www.attorneygeneral.utah.gov.

R105-3-4. Information to be Supplied by the Prosecutor.

(1) Within 45 business days of any conviction of an Offender, the Prosecutor shall provide the Registry Coordinator with the information requested on form 105-3-4, to the extent that such information is available to the Prosecutor. The completed form and attached documentation may be emailed in PDF format to: whitecollar@utah.gov or mailed to White Collar Crime Registry Coordinator, Office of the Attorney General, PO Box 142320, Salt Lake City, UT 84114-2320.

(2) The Attorney General finds all of the information regarding the Offender requested on Form 105-3-4 to be potentially relevant identifying information, however the Attorney General reserves the right not to post information provided on that form if the Attorney General determines that it is not helpful for identifying an Offender in a particular case.

(3) The Prosecutor shall provide additional information to the Registry Coordinator or any Review Officer upon request.

R105-3-5. Information to be Supplied by the Offender or Potential Offender.

(1) When requested by the Attorney General's Office, an Offender or Potential Offender shall provide the designated Review Officer with the information requested on Form 105-3-5 located at this URL: http://www.attorneygeneral.utah.gov. The form and attached documentation may be emailed in PDF format to: whitecollar@utah.gov or mailed to White Collar Crime Registry Coordinator, Office of the Attorney General, PO Box 142320, Salt Lake City, UT 84114-2320.

(2) Each Offender or Potential Offender shall provide current address and phone number contact information to the Attorney General's Office, and shall update that information within 30 days of a change of address or phone number.

(3) When requested, an Offender or Potential Offender shall provide the Attorney General's Office with a photograph that is in the format required for a passport photograph.

(4) When requested, an Offender or Potential Offender shall appear at the Attorney General's Office in order to have his or her physical characteristics verified or his or her photograph taken.

(5) An Offender or Potential Offender shall provide such additional information as may be requested by the Attorney General's Office at any time in order to either identify any Offender or Potential Offender (including a convicted co-conspirator) or to determine whether any Offender or Potential Offender should be listed on (or remain listed on) the Registry.

R105-3-6. Adding an Offender to the Registry -- Notice to the Offender.

(1) When the Attorney General's Office learns of a Potential Offender from any source, it shall attempt to contact the Prosecutor and ask the Prosecutor to provide the information requested on Form 105-3-4.

(2) When the Attorney General's Office has received Form 105-3-4 with attachments, the Attorney General may determine from the information provided that the Potential Offender is an Offender who qualifies for listing on the Registry. Alternatively the Attorney General's Office may forward the Prosecutor's Form 105-3-4 to the Potential Offender with the Prosecutor's name, contact information and certification redacted.

(3) If requested by the Attorney General, the Potential Offender shall provide the information requested on Form 105-3-5, and shall provide any additional information requested by the Attorney General's Office.

(4) If the Attorney General's Office determines that a Potential Offender is an individual who should be listed on the Registry as an Offender, the Attorney General shall provide written notice to the Potential Offender at least 15 days before the first day of the month in which the person is to be listed as an Offender.

R105-3-7. Accuracy of the Registry.

Any person may challenge the accuracy of any information contained in the Registry, may assert that an individual who is not listed in the Registry is a Potential Offender, or that an Offender listed in the Registry should be removed. Such challenges should be directed to the Registry Coordinator by sending an email to: whitecollar@utah.gov or mailing a letter to White Collar Crime Registry Coordinator, Office of the Attorney General, PO Box 142320, Salt Lake City, UT 84114-2320. An Attorney General's Office employee will typically respond within 30 days of receipt of the challenge, and will inform the individual whether the Registry Coordinator has approved or denied the requested change, and if approved, when the change will be incorporated into the Registry.

R105-3-8. Removal of an Offender from the Registry by Passage of Time.

(1) An Offender who believes that he or she qualifies for removal from the Registry due to the passage of time shall provide notice of the same to the Review Officer assigned to that Offender. To facilitate timely removal, such notice should be provided no more than 120 nor less than 60 days prior to the first date on which the Offender is eligible to be removed.

(2) The Review Officer shall review the notice and determine whether the Offender is eligible to be removed due to the passage of time. The Attorney General's Office may require the Offender to provide additional documentation and information prior to making that determination.

(3) If the Review Officer determines that the Offender is eligible to have his or her name removed, the Offender's name shall be removed by the Registry Coordinator as part of the next regularly scheduled monthly update of the Registry following the first date on which Review Officer makes that determination.

(4) If the Review Officer determines that the Offender is not eligible for removal from the Registry due to the passage of time, the Review Officer shall inform the Offender in writing and shall briefly explain the basis for that decision.

(5) The Review Officer shall decide whether the Offender is eligible for removal from the Registry within 60 days of receiving notice, unless the Review Officer believes that additional time is necessary to investigate, in which case the Review Officer shall provide the Offender with a written explanation of the reason why additional time is necessary and an estimate of the date by which a decision shall be rendered.

R105-3-9. Removal of an Offender from the Registry by Court Order.

(1) An Offender may be removed from the Registry by petitioning the court where the Offender was convicted, and following the procedure set forth in Subsections 77-42-108(1)

through (11).

(2) Once the Attorney General's Office has received a copy of the order directing removal, the Offender shall be removed by the Registry Coordinator as part of the next regularly scheduled monthly update of the Registry.

R105-3-10. Removal of an Offender from the Registry by Direct Petition.

(1) An Offender who believes that he or she qualifies for removal from the Registry under the provisions of Section 77-42-108(12) shall petition the Attorney General by submitting Form 105-3-9 and all required supporting documents to the Review Officer assigned to that Offender's case.

(2) The Review Officer shall review the petition and determine whether the Offender is eligible to be removed due to compliance with Section 77-42-108(12). The Attorney General's Office may require the Offender to provide additional documentation and information prior to making that determination.

(3) If the Review Officer determines that the Offender is eligible to have his or her name removed, the Offender's name shall be removed by the Registry Coordinator as part of the next regularly scheduled monthly update of the Registry following the first date on which The Review Officer makes that determination.

(4) If the Review Officer determines that the Offender is not eligible for removal from the Registry due to compliance with Section 77-42-108(12), the Review Officer shall inform the Offender in writing and shall briefly explain the basis for that decision.

(5) The Review Officer shall decide whether the Offender is eligible for removal from the Registry within 60 days of receiving the petition, unless the Review Officer believes that additional time is necessary to investigate, in which case the Review Officer shall provide the Offender with a written explanation of the reason why additional time is necessary and an estimate of the date by which a decision shall be rendered.

R105-3-11. Administrative Procedures.

(1) All administrative proceedings conducted in connection with this Rule shall be conducted by the Presiding Officer and shall be initially designated as informal proceedings pursuant to Section 63G-4-202. The Presiding Officer may convert any informal proceeding to a formal proceeding.

(2) In the event of an appeal of the Presiding Officer's decision, the Agency Designee to conduct the review shall be the Presiding Officer's immediate superior, unless otherwise designated by the Attorney General in a particular proceeding.

(3) The following parties may commence an administrative proceeding:

(a) The Attorney General may issue a Notice of Agency Action in order to enforce compliance with any requirement of this Rule.

(b) A Prosecutor, Offender, Potential Offender, or Victim may file a Request for Agency Action in order to challenge any action or inaction by the Attorney General under this Rule.

(c) No other person shall have a right to initiate an administrative proceeding under this Rule.

(4) Parties that receive a Notice of Agency Action shall respond in writing within 15 business days. Failure to respond in writing shall be deemed to be a grounds for default, and a default may be issued by the Presiding Officer. The Attorney General's Office may, in its discretion, file a response to any Request for Agency Action. Any such response shall be filed and mailed or emailed to the party requesting agency action within 15 business days of receipt of the Request for Agency Action. Other than as set forth herein, no additional pleadings or responses are permitted unless authorized by the Presiding Officer in a particular proceeding. The deadlines set forth in this subsection may be extended by the Presiding Officer upon a showing of good cause by any party.

(5) The Presiding Officer shall decide the informal adjudicative proceeding on the basis of the Notice of Agency Action or Request for Agency Action, any attached documentation, and any responses submitted. No hearings are permitted unless the Presiding Officer converts the proceeding from an informal to a formal proceeding.

R105-3-12. Unlawful Acts.

(1) Failure to provide required information: An Offender who fails to provide any information required or requested under this Rule will be deemed to have not properly "Registered" as required by Section 77-42-105 and as defined in Section 77-42-102(6). An Offender's failure to register may be brought to the attention of a judge, prosecutor, Adult Probation and Parole officer, the Utah Board of Pardons, and others. In addition, a failure to provide information may violate various laws.

(2) Intentionally providing inaccurate information: An Offender who intentionally provides any false, misleading, or incomplete information required or requested pursuant to this Rule will be deemed to have not properly "Registered" as required by Section 77-42-105 and as defined in Section 77-42-102(6). Such a failure to register may be brought to the attention of a judge, prosecutor, Adult Probation and Parole officer, the Utah Board of Pardons, and others. In addition, intentionally providing false, misleading, or incomplete information may violate various laws.

(3) Using a link or other method to intentionally circumvent the disclaimer page: It is unlawful to intentionally circumvent the disclaimer page for the Registry so as to be able to access the Registry without agreeing to the disclaimer language. In particular, it is unlawful to imbed in a website, post, email, text (SMS), or otherwise use a URL that allows any person to circumvent the disclaimer page and go directly to the Registry. Such unlawful action may expose the responsible persons to criminal or civil liability, including injunctive and declaratory relief.

(4) Harassment of Offenders or their families: Harassment, as defined in this Rule, may violate criminal laws, and may be actionable under civil law, including injunctive and declaratory relief, depending upon the specific nature of the harassment.

KEY: attorney general, white collar crime registry
August 10, 2015 77-42-107(1)

R156. Commerce, Occupational and Professional Licensing.
R156-46a. Hearing Instrument Specialist Licensing Act Rule.
R156-46a-101. Title.

This rule is known as the "Hearing Instrument Specialist Licensing Act Rule."

R156-46a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 46a, as used in Title 58, Chapters 1 and 46a or this rule, "unprofessional conduct," as defined in Title 58 Chapters 1 and 46a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-46a-502.

R156-46a-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 46a.

R156-46a-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.

R156-46a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-46a-302(1)(f) and 58-46a-302.5(2)(a), the requirements for the examination of a hearing instrument intern are defined to require a minimum score of 85% on each section of the Utah Law and Rules Examination for Hearing Instrument Specialists.

R156-46a-302b. Qualifications for Licensure - Internship Supervision Requirements.

In accordance with Subsections 58-46a-102(7) and 58-1-203(1)(b), the requirements for supervision of a hearing instrument intern are defined and clarified as follows. The hearing instrument intern supervisor shall:

(1) supervise no more than one hearing instrument intern on direct supervision;

(2) supervise no more than two hearing instrument interns at one time;

(3) not begin an internship program until:

(a) the hearing instrument intern is properly licensed as a hearing instrument intern; and

(b) the supervisor is approved by the Division in collaboration with the Board; and

(4) notify the Division within ten working days if an internship program is terminated.

R156-46a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 46a is established by rule in Section R156-1-308a.

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

R156-46a-304. Continuing Education.

In accordance with Section 58-46a-304, the continuing education requirement for renewal of licensure as a hearing instrument specialist is defined and clarified as follows:

(1) Continuing education courses shall be offered in the following areas:

(a) acoustics;

(b) nature of the ear (normal ear, hearing process, disorders of hearing);

(c) hearing measurement;

(d) hearing aid technology;

(e) selection of hearing aids;

(f) marketing and customer relations;

(g) client counseling;

(h) ethical practice;

(i) state laws and regulations regarding the dispensing of hearing aids; and

(j) other areas deemed appropriate by the Division in collaboration with the Board.

(2) Continuing education courses required under this section shall be approved by the American Speech-Language-Hearing Association (ASHA) or the International Hearing Society (IHS) Licensees shall retain copies of transcripts or certificates of completion from continuing education courses approved under this section for a period of four years, during which time the Division may audit the licensee's compliance with the requirements of this section.

(4) A minimum of 20 continuing education course hours shall be obtained by a hearing instrument specialist in order to have the license renewed every two years.

R156-46a-502a. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any state or federal law applicable to persons practicing as a hearing instrument specialist or hearing instrument intern;

(2) failing to perform the minimum components of an evaluation for a hearing aid as set forth in Section R156-46a-502b;

(3) dispensing a hearing aid without the purchaser having:

(a) received a medical evaluation as required by Subsection 58-46-502(5) within the six-month period prior to the purchase of a hearing aid; or

(b) a document signed by the purchaser being a fully informed adult waiving the medical evaluation in accordance with Food and Drug Administration (FDA) required disclosures in CFR Title 21, Section 801.421, except a person under the age of 18 years may not waive the medical evaluation;

(4) engaging in unprofessional conduct specified in Subsection 58-1-501(2)(h) including:

(a) quoting prices of competitive hearing instruments or devices without disclosing that they are not the current prices or to show, demonstrate, or represent competitive models as being current when such is not the fact; and

(b) using stalling tactics, excuses, arguing or attempting to dissuade the purchaser to avoid or delay the customer from exercising the 30-day right to cancel a hearing aid purchase pursuant to Subsection 58-46a-503(1); and

(5) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Code of Ethics of the International Hearing Society, adopted March 2009, which is hereby incorporated by reference.

R156-46a-502b. Minimum Components of an Evaluation for a Hearing Aid and Dispensing of a Hearing Aid.

(1) The minimum components of a hearing aid examination are the following:

(a) air conduction tests at frequencies of 250, 500, 1000, 2000, and 4000 Hertz;

(b) appropriate masking if the air conduction threshold at any one frequency differs from the bone conduction threshold of the contralateral or nontest ear by 40 decibels at the same frequency;

(c) bone conduction tests at 500, 1000, and 2000 Hertz on every client with proper masking;

(d) speech audiometry by live voice or recorded voice, including speech discrimination testing, most comfortable loudness (MCL) measurements and measurements of uncomfortable levels of loudness (UCL); and

(e) recording and interpretation of audiograms and speech

audiometry and other appropriate tests for the sole purpose of determining proper selection and adaptation of a hearing aid.

(2) Only when the above procedures are clearly impractical may the selection of the best instrument to compensate for the loss be made by trial of one or more instruments.

(3) Tests performed by a physician specializing in diseases of the ear, a clinical audiologist or another licensed hearing instrument specialist shall be accepted if they were performed within six months prior to the dispensing of the hearing aid.

R156-46a-502c. Calibration of Technical Instruments.

The requirement in Subsection 58-46a-303(3)(c) for calibration of all appropriate technical instruments used in practice is defined, clarified, and established as follows:

(1) any audiometer used in the fitting of hearing aids shall be calibrated when necessary, but not less than annually;

(2) the calibration shall include to ANSI standards calibration of frequency accuracy, acoustic output, attenuator linearity, and harmonic distortion; and

(3) calibration shall be accomplished by the manufacturer, or a properly trained person, or an institution of higher learning equipped with proper instruments for calibration of an audiometer.

R156-46a-502d. Form of Written Informed Consent.

In accordance with Subsection 58-46a-502(4)(c), an agreement to provide hearing instrument specialist goods and services shall include the patient's informed consent in substantially the following form.

TABLE

ACKNOWLEDGEMENT OF INFORMED CONSENT

As a consumer of hearing instrument specialist goods or services, you are required to be informed of certain information as provided in Utah Code Ann. Sections 58-46a-502 and 503.
1. The list of goods and services to be provided to you include the following: (add additional lines as required)
Services: Charge:
Goods (circle as applicable: new, used, reconditioned): Charge:
These goods (circle as applicable: are, are not) covered by a warranty or guarantee. Additional information about any warranty or guarantee is attached.
2. The licensees providing these goods and services are: (add additional lines as required)
hearing instrument specialist:
name: license number:
hearing instrument specialist intern
name: license number:
3. The expected results of the goods and services are:
4. If the goods to be provided include a hearing instrument:
(a) Additional information is attached about hearing instruments that work with assisted listening systems that are compliant with ADA Standards for Accessible Design adopted by the United States Department of Justice in accordance with the American with Disabilities Act, 42 U.S.C. Sec. 12101 et seq.
(b) You have the right to receive a written receipt or written contract, which includes notice to you that you have a 30-day right to cancel the purchase and obtain a refund if you find the hearing aid does not function adequately for you.
(i) The 30-day right to cancel shall commence from either the date the hearing aid is originally delivered to you or the date the written receipt or contract is delivered to you, whichever is later. The 30-day period shall be tolled for any period during which the hearing aid seller, dealer, or fitter has possession or control of the hearing aid after its original delivery.
(ii) Upon exercise of the 30-day right to cancel a hearing aid purchase, the seller of the hearing is entitled to a cancellation fee not to exceed 15% of all fees charged to the consumer, including testing, fitting, counseling, and the purchase price of the hearing aid. The exact amount of the cancellation fee shall be stated in the written receipt or contract provided to the consumer.
5. If the goods and services provided do not substantially enhance your hearing as stated in the expected results, you are entitled to:
(a) necessary intervention to produce satisfactory recovery results consistent with the representations made above at no additional cost; or
(b) refund of the fees you paid for the hearing instrument within a reasonable period of time after finding that the hearing instrument does not substantially enhance your hearing.
I hereby acknowledge being informed of the above and consent to the receive the goods and services.
Patient's Signature and Date

KEY: licensing, hearing aids, hearing instrument specialist, hearing instrument intern

August 17, 2015 **58-1-106(1)(a)**
Notice of Continuation January 27, 2014 **58-1-202(1)(a)**
58-46a-101
58-46a-304

R162. Commerce, Real Estate.
R162-2a. Utah Housing Opportunity Restricted Account.
R162-2a-1. Utah Housing Opportunity Restricted Account.

(1) The authority to promulgate administrative rules by which an organization may apply to receive money from the account is granted by Section 61-2-204(9).

(2) As used in this section, "qualified entity" means an applicant that meets the qualifications of Section 61-2-204(6).

(3) To apply, a qualified entity shall, no later than August 1, submit to the division:

(a) contact information for the applicant;

(b) proof that the entity is tax exempt under Section 501(c)(3), Internal Revenue Code;

(c) proof that the entity provides support to organizations that create affordable housing for those in severe need as a primary part of its mission;

(d) a statement of the purpose for which the application is submitted;

(e) an explanation of how the entity proposes to use a disbursement of money to promote affordable housing for those in severe need; and

(f) an explanation of the internal management controls and financial controls of the entity that would ensure that any funds received would be used only for authorized purposes.

(4) Each year, the division shall make a disbursement to the qualified applicant that appears most likely to effectively and efficiently use the funds to promote affordable housing for those in severe need.

(5) Disbursement shall be made no later than December 31 each year.

KEY: Utah Housing Opportunity Restricted Account, application procedures
January 8, 2011 61-2-204
Notice of Continuation August 13, 2015

R162. Commerce, Real Estate.
R162-2f. Real Estate Licensing and Practices Rules.
R162-2f-101. Title and Authority.

(1) This chapter is known as the "Real Estate Licensing and Practices Rules."

(2) The authority to establish rules for real estate licensing and practices is granted by Section 61-2f-103.

(3) The authority to establish rules governing undivided fractionalized long-term estates is granted by Section 61-2f-307.

(4) The authority to collect fees is granted by Section 61-2f-105.

R162-2f-102. Definitions.

(1) "Active license" means a license granted to an applicant who:

(a) qualifies for licensure under Section 61-2f-203 and these rules;

(b) pays all applicable nonrefundable license fees; and

(c) affiliates with a principal brokerage.

(2) "Advertising" means solicitation through:

(a) newspaper;

(b) magazine;

(c) Internet;

(d) e-mail;

(e) radio;

(f) television;

(g) direct mail promotions;

(h) business cards;

(i) door hangers;

(j) signs; or

(k) any other medium.

(3) "Affiliate":

(a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f et seq. and these rules; and

(b) when used in reference to an undivided fractionalize long-term estate, means an individual or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

(4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.

(5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.

(6) "Brokerage" means a real estate sales or a property management company.

(7) "Brokerage record" means any record related to the business of a principal broker, including:

(a) record of an offer to purchase real estate;

(b) record of a real estate transaction, regardless of whether the transaction closed;

(c) licensing records;

(d) banking and other financial records;

(e) independent contractor agreements;

(f) trust account records, including:

(i) deposit records in the form of a duplicate deposit slip, deposit advice, or equivalent document; and

(ii) conveyance records in the form of a check image, wire transfer verification, or equivalent document; and

(g) records of the brokerage's contractual obligations.

(8) "Business day" is defined in Subsection 61-2f-102(3).

(9) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses approved for prelicensing education or continuing education; or

(b) function as an instructor for courses approved for prelicensing education or continuing education.

(10) "Commission" means the Utah Real Estate Commission.

(11) "Continuing education" means professional education required as a condition of renewal in accordance with Section R162-2f-204 and may be either:

(a) core: topics identified in Subsection R162-2f-206c(5)(c); or

(b) elective: topics identified in Subsection R162-2f-206c(5)(e).

(12) "Correspondence course" means a self-paced real estate course that:

(a) is not distance or traditional education; and

(b) fails to meet real estate educational course certification standards because:

(i) it is primarily student initiated; and

(ii) the interaction between the instructor and student lacks substance and/or is irregular.

(13) "Day" means calendar day unless specified as "business day."

(14)(a) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including the following:

(i) computer conferencing;

(ii) satellite teleconferencing;

(iii) interactive audio;

(iv) interactive computer software;

(v) Internet-based instruction; and

(vi) other interactive online courses.

(b) "Distance education" does not include home study and correspondence courses.

(15) "Division" means the Utah Division of Real Estate.

(16) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.

(17) "Expired license" means a license that is not renewed pursuant to Section 61-2f-204 and Section R162-2f-204 by:

(a) the close of business on the expiration date, if the expiration date falls on a day when the division is open for business; or

(b) the next business day following the expiration date, if the expiration date falls on a day when the division is closed.

(18) "Guaranteed sales plan" means:

(a) a plan in which a seller's real estate is guaranteed to be sold; or

(b) a plan whereby a licensee or anyone affiliated with a licensee agrees to purchase a seller's real estate if it is not purchased by a third party:

(i) in the specified period of a listing; or

(ii) within some other specified period of time.

(19) "Inactive license" means a license that has been issued pursuant to Sections R162-2f-202a through 202c or renewed pursuant to Section R162-2f-204, but that may not be used to conduct the business of real estate because the license holder is not affiliated with a principal broker. Pursuant to Section R162-2f-203, a license may be inactivated:

(a) voluntarily, with the assent of the license holder; or

(b) involuntarily, without the assent of the license holder.

(20) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.

(21) "Limited agency" means the representation of all principals in the same transaction to negotiate a mutually acceptable agreement:

(a) subject to the terms of a limited agency agreement; and

(b) with the informed consent of all principals to the transaction.

(22) "Net listing" means a listing agreement under which the real estate commission is the difference between the actual selling price of the property and a minimum selling price as set by the seller.

(23)(a) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to Subsection R162-2f-206c(1)(b).

(b) "Non-certified education" does not include:

(i) home study courses; or

(ii) correspondence courses.

(24) "Nonresident applicant" means a person:

(a) whose primary residence is not in Utah; and

(b) who qualifies under Title 61, Chapter 2f et seq. and these rules for licensure as a principal broker, associate broker, or sales agent.

(25) "Principal brokerage" means the main real estate or property management office of a principal broker.

(26) "Principal" in a transaction means an individual who is represented by a licensee and may be:

(a) the buyer or lessee;

(b) an individual having an ownership interest in the property;

(c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or

(d) an individual who is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor, or lessee.

(27) "Provider" means an individual or business that is approved by the division to offer continuing education.

(28) "Property management" is defined in Subsection 61-2f-102(19).

(29) "Registration" means authorization from the division to engage in the business of real estate as:

(a) a corporation;

(b) a partnership;

(c) a limited liability company;

(d) an association;

(e) a dba;

(f) a professional corporation;

(g) a sole proprietorship; or

(h) another legal entity of a real estate brokerage.

(30) "Reinstatement" is defined in Subsection 61-2f-102(22).

(31) "Reissuance" is defined in Subsection 61-2f-102(23).

(32) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees shall submit licensing information to the division.

(33) "Renewal" is defined in Subsection 61-2f-102(24).

(34) "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.

(35) "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 or vocational-technical school;

(c) any local real estate organization that has been approved by the division as a school; or

(d) any proprietary real estate school.

(36) "Sponsor" means the party that is the seller of an undivided fractionalized long-term estate.

(37) "Third party service provider" means an individual or entity that provides a service necessary to the closing of a specific transaction and includes:

(a) mortgage brokers;

(b) mortgage lenders;

(c) loan originators;

(d) title service providers;

(e) attorneys;

(f) appraisers;

(g) providers of document preparation services;

(h) providers of credit reports;

(i) property condition inspectors;

(j) settlement agents;

(k) real estate brokers;

(l) marketing agents;

(m) insurance providers; and

(n) providers of any other services for which a principal or investor will be charged.

(38) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

(39) "Undivided fractionalized long-term estate" is defined in Subsection 61-2f-102(26).

R162-2f-105. Fees.

Any fee collected by the division is nonrefundable.

R162-2f-201. Qualification for Licensure.

(1) Character. Pursuant to Subsection 61-2f-203(1)(c), an applicant for licensure as a sales agent, associate broker, or principal broker shall evidence honesty, integrity, truthfulness, and reputation.

(a) An applicant shall be denied a license for:

(i) a felony that resulted in:

(A) a conviction occurring within the five years preceding the date of application;

(B) a plea agreement occurring within the five years preceding the date of application; or

(C) a jail or prison term with a release date falling within the five years preceding the date of application; or

(ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within the three years preceding the date of application; or

(B) a jail or prison term with a release date falling within the three years preceding the date of application.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's honesty, integrity, truthfulness, and reputation. In evaluating an applicant for these qualities, the division and commission may consider:

(i) criminal convictions or plea agreements other than those specified in this Subsection (1)(a);

(ii) past acts related to honesty or truthfulness, with particular consideration given to any such acts involving the business of real estate, that would be grounds under Utah law for sanctioning an existing license;

(iii) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(iv) court findings of fraudulent or deceitful activity;

(v) evidence of non-compliance with court orders or conditions of sentencing; and

(vi) evidence of non-compliance with:

(A) terms of a diversion agreement not yet closed and dismissed;

(B) a probation agreement; or

(C) a plea in abeyance.

(c)(i) An applicant who, as of the date of application, is serving probation or parole for a crime that contains an element of violence or physical coercion shall, in order to submit a complete application, provide for the commission's review current documentation from two licensed therapists, approved by the division, stating that the applicant does not pose an ongoing threat to the public.

(ii) For purposes of applying this rule, crimes that contain an element of violence or physical coercion include, but are not

limited to, the following:
(A) assault, including domestic violence;
(B) rape;
(C) sex abuse of a child;
(D) sodomy on a child;
(E) battery;
(F) interruption of a communication device;
(G) vandalism;
(H) robbery;
(I) criminal trespass;
(J) breaking and entering;
(K) kidnapping;
(L) sexual solicitation or enticement;
(M) manslaughter; and
(N) homicide.
(iii) Information and documents submitted in compliance with this Subsection (1)(c) shall be reviewed by the commission, which may exercise discretion in determining whether the applicant qualifies for licensure.
(2) Competency. In evaluating an applicant for competency, the division and commission may consider evidence including:
(a) civil judgments, with particular consideration given to any such judgments involving the business of real estate;
(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
(c) suspension or revocation of a professional license;
(d) sanctions placed on a professional license; and
(e) investigations conducted by regulatory agencies relative to a professional license.
(3) Age. An applicant shall be at least 18 years of age.
(4) Minimum education. An applicant shall have:
(a) a high school diploma;
(b) a GED; or
(c) equivalent education as approved by the commission.

R162-2f-202a. Sales Agent Licensing Fees and Procedures.
(1) To obtain a Utah license to practice as a sales agent, an individual who is not currently and actively licensed in any state shall:
(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
(c)(i) successfully complete 120 hours of approved prelicensing education;
(ii) evidence current membership in the Utah State Bar; or
(iii) apply to the division for waiver of all or part of the education requirement by virtue of:
(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or
(B) completing other equivalent real estate education within the 12-month period prior to the date of application;
(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
(ii) pay a nonrefundable examination fee to the testing center;
(e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;
(f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
(i) documentation indicating successful completion of the required prelicensing education;
(ii) a report of the examination showing a passing score for each component of the examination; and
(iii) the applicant's business, home, and e-mail addresses;
(g) if applying for an active license, affiliate with a principal broker; and
(h) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.
(2) To obtain a Utah license to practice as a sales agent, an individual who is currently and actively licensed in another state shall:
(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
(c)(i) successfully complete 120 hours of approved prelicensing education;
(ii) evidence current membership in the Utah State Bar; or
(iii) apply to the division for waiver of all or part of the education requirement by virtue of:
(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree;
(B) completing other equivalent real estate education within the 12-month period prior to the date of application; or
(C) having been licensed in a state that has substantially equivalent prelicensing education requirements;
(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
(ii) pay a nonrefundable examination fee to the testing center;
(e)(i) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination; or
(ii) if actively licensed during the two years immediately preceding the date of application in a state that has substantially equivalent licensing examination requirements:
(A) take and pass the state component of the licensing examination; and
(B) apply to the division for a waiver of the national component of the licensing examination;
(f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
(i) documentation indicating successful completion of the required prelicensing education;
(ii) a report of the examination showing a passing score for each component of the examination; and
(iii) the applicant's business, home, and e-mail addresses;
(g) provide from any state where licensed:
(i) a written record of the applicant's license history; and
(ii) complete documentation of any disciplinary action taken against the applicant's license;
(h) if applying for an active license, affiliate with a principal broker; and
(i) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.
(3) Deadlines.
(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:
(i) within six months of the date on which the individual achieves a passing score on the passed component; and
(ii) within 12 months of the date on which the individual completes the prelicensing education.
(b) An application for licensure shall be submitted:
(i) within 90 days of the date on which the individual achieves passing scores on both examination components; and
(ii) within 12 months of the date on which the individual completes the prelicensing education.
(c) If any deadline in this Section R162-2f-202a falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-202b. Principal Broker Licensing Fees and Procedures.

(1) To obtain a Utah license to practice as a principal broker, an individual shall:

(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

(c)(i) successfully complete 120 hours of approved prelicensing education, including:

(A) 45 hours of broker principles;

(B) 45 hours of broker practices; and

(C) 30 hours of Utah law and testing; or

(ii) apply to the division for waiver of all or part of the education requirement by virtue of:

(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or

(B) completing other equivalent real estate education within the 12-month period prior to the date of application;

(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and

(ii) pay a nonrefundable examination fee to the testing center;

(e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;

(f)(i) unless Subsection (2)(a) applies, evidence the individual's having, within the five-year period preceding the date of application, a minimum of three years experience related to real estate, including the following:

(A) at least two years full-time licensed, active experience selling, listing, or managing the property types identified in Appendix 1; and

(B) up to one year full-time professional experience related to real estate, as outlined in Appendix 3; and

(ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 experience points as follows:

(A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2; and

(B) 0 to 15 points pursuant to the experience point table found in Appendix 3;

(g) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:

(i) documentation indicating successful completion of the approved broker prelicensing education;

(ii) a report of the examination showing a passing score for each component of the examination; and

(iii) the applicant's business, home, and e-mail addresses;

(h) provide from any state where licensed as a real estate agent or broker:

(i) a written record of the applicant's license history; and

(ii) complete documentation of any disciplinary action taken against the applicant's license;

(i) if applying for an active license, affiliate with a registered company;

(j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund; and

(k) establish real estate and property management trust accounts, as applicable pursuant to Section R162-2f-403, that:

(i) contain the term "real estate trust account" or "property management trust account", as applicable, in the account name; and

(ii) are separate from any operating account(s) of the registered entity for which the individual will serve as a broker; and

(l) identify the location(s) where brokerage records will be kept.

(2)(a) If an individual applies under this Subsection R162-2f-202b within two years of allowing a principal broker license to expire, the experience required under Subsection (1)(f) shall be accumulated within the seven-year period preceding the date of application.

(b) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under this Subsection (1)(f) may bring the application before the commission.

(3) Deadlines.

(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(b) An application for licensure shall be submitted:

(i) within 90 days of the date on which the individual achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this Section R162-2f-202b falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(4) Restriction. A principal broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.

(5) Dual broker licenses.

(a)(i) A person who holds or obtains a dual broker license under this Subsection may function as the principal broker of a property management company that is a separate entity from the person's real estate brokerage.

(ii) A dual broker may not conduct real estate sales activities from the separate property management company.

(iii) A principal broker may conduct property management activities from the person's real estate brokerage:

(A) without holding a dual broker license; and

(B) in accordance with Subsections R162-2f-401j and R162-2f-403a-403c;

(b) A dual broker who wishes to consolidate real estate and property management operations into a single brokerage may:

(i) at the broker's request, convert the dual broker license to a principal broker license; and

(ii)(A) convert the property management company to a branch office of the real estate brokerage, including the assignment of a branch broker and using the same name as the real estate brokerage; or

(B) close the separate property management company.

(c) As of May 8, 2013:

(i) the Division shall:

(A) cease issuing property management principal broker (PMPB) licenses;

(B) cease issuing property management company (MN) registrations except as to a second company registered under a dual broker license;

(C) convert any property management principal broker (PMPB) license to a real estate principal broker (PB) license; and

(D) as to any property management company (MN) registration that is not a second company under a dual broker license, convert the registration to a real estate brokerage (CN) registration; and

(ii) it shall be permissible to conduct real estate sales activities under any company registration that is converted pursuant to this Subsection (5)(c)(i)(C).

R162-2f-202c. Associate Broker Licensing Fees and

Procedures.

To obtain a Utah license to practice as an associate broker, an individual shall:

(1) comply with Subsections R162-2f-202b(1)(a) through (j); and

(2) if applying for an active license, affiliate with a principal broker.

R162-2f-203. Inactivation and Activation.

(1) Inactivation.

(a) To voluntarily inactivate the license of a sales agent or an associate broker, the holder of the license shall complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(b) To voluntarily inactivate a principal broker license, the principal broker shall:

(i) prior to inactivating the license:

(A) give written notice to each licensee affiliated with the principal broker of the date on which the principal broker proposes to inactivate the license; and

(B) provide to the division evidence that the licensee has complied with this Subsection (1)(b)(i)(A); and

(ii) complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(c) The license of a sales agent or associate broker is involuntarily inactivated upon:

(i) termination of the licensee's affiliation with a principal broker;

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the sales agent or associate broker is affiliated; or

(iii) inactivation or termination of the registration of the entity with which the licensee's principal broker is affiliated.

(d) The registration of an entity is involuntarily inactivated upon:

(i) termination of the entity's affiliation with a principal broker; or

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the entity is affiliated.

(e) The license of a principal broker is involuntarily inactivated upon termination of the licensee's affiliation with a registered entity.

(f) If the division or commission orders that a principal broker's license is to be suspended or revoked:

(i) the order shall state the effective date of the suspension or revocation; and

(ii) prior to the effective date, the entity shall:

(A)(I) affiliate with a new principal broker; and

(II) submit change forms through RELMS to affiliate each licensee with the new principal broker; or

(B)(I) provide written notice to each licensee affiliated with the principal broker of the pending suspension or revocation; and

(II) comply with Subsection R162-2f-207(3)(c)(ii)(B).

(2) Activation.

(a) To activate a license, the holder of the inactive license shall:

(i) complete and submit a change card through RELMS pursuant to Section R162-2f-207;

(ii) submit proof of:

(A) having been issued an active license at the time of last renewal;

(B) having completed, within the one-year period preceding the date on which the licensee requests activation, 18 hours of continuing education, including nine hours of core topics; or

(C) having passed the licensing examination within the six-month period prior to the date on which the licensee requests activation;

(iii)(A) if applying to activate a sales agent or associate broker license, evidence affiliation with a principal broker; or

(B) if applying to activate a principal broker license, evidence affiliation with a registered entity; and

(iv) pay a non-refundable activation fee.

(b) A licensee who submits continuing education to activate a license may not use the same continuing education to renew the license at the time of the licensee's next renewal.

R162-2f-204. License Renewal.

(1) Renewal period and deadlines.

(a) A license issued under these rules is valid for a period of two years from the date of licensure.

(b) By the 15th day of the month of expiration, an applicant for renewal shall submit to the division proof of having completed all continuing education required under this Subsection (2)(b).

(c) In order to renew on time without incurring a late fee:

(i) an individual who is required to submit a renewal application through the online RELMS system shall complete the online process, including the completion and banking of continuing education credits, by the license expiration date; and

(ii) an individual whose circumstances require a "yes" answer to a disclosure question on the renewal application shall submit a paper renewal:

(A) by the license expiration date, if that date falls on a day when the division is open for business; or

(B) on the next business day following the license expiration date, if that date falls on a day when the division is closed for business.

(2) Qualification for renewal.

(a) Character and competency.

(i) An individual applying for a renewed license shall evidence that the individual maintains character and competency as required for initial licensure.

(ii) An individual applying for a renewed license may not have:

(A) a felony conviction since the last date of licensure; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant, related to activities requiring a real estate license, by a court of competent jurisdiction or a government agency since the last date of licensure, unless the finding was explicitly considered by the division in a previous application.

(b) Continuing education.

(i) To renew at the end of the first renewal cycle, an individual shall complete:

(A) the 12-hour new sales agent course certified by the division; and

(B) an additional six non-duplicative hours of continuing education:

(I) certified by the division as either core or elective; or

(II) acceptable to the division pursuant to this Subsection (2)(b)(ii)(B).

(ii) To renew at the end of a renewal cycle subsequent to the first renewal, an individual shall:

(A) complete 18 non-duplicative hours of continuing education:

(I) certified by the division;

(II) including at least nine non-duplicative hours of core curriculum; and

(III) taken during the previous license period; or

(B) apply to the division for a waiver of all or part of the required continuing education hours by virtue of having completed non-certified courses that:

(I) were not required under Subsection R162-2f-206c(1)(a) to be certified; and

(II) meet the continuing education objectives listed in Subsection R162-2f-206c(2)(f).

(iii)(A) Completed continuing education courses will be credited to an individual when the hours are uploaded by the course provider pursuant to Subsection R162-2f-401d(1)(k).

(B) If a provider fails to upload course completion information within the ten-day period specified in Subsection R162-2f-401d(1)(k), an individual who attended the course may obtain credit by:

(I) filing a complaint against the provider; and

(II) submitting the course completion certificate to the division.

(c) Principal broker. In addition to meeting the requirements of this Subsection (2)(a) and (b), an individual applying to renew a principal broker license shall certify that:

(i) the business name under which the individual operates is current and in good standing with the Division of Corporations and Commercial Code; and

(ii) the trust account maintained by the principal broker is current and in compliance with Section R162-2f-403.

(3) Renewal and reinstatement procedures.

(a) To renew a license, an applicant shall, prior to the expiration of the license:

(i) submit the forms required by the division, including proof of having completed continuing education pursuant to this Subsection (2)(b); and

(ii) pay a nonrefundable renewal fee.

(b) To reinstate an expired license, an applicant shall, according to deadlines set forth in Subsections 61-2f-204(2)(b) - (d):

(i) submit all forms required by the division, including proof of having completed continuing education pursuant to Subsection 61-2f-204(2); and

(ii) pay a nonrefundable reinstatement fee.

(4) Transition to online renewal. An individual licensee shall submit an application for renewal through the online RELMS system unless the individual's circumstances require a "yes" answer in response to a disclosure question.

R162-2f-205. Registration of Entity.

(1) A principal broker may not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division.

(2) Exemptions. The following locations may be used to conduct real estate business without being registered as branch offices:

(a) a model home;

(b) a project sales office; and

(c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

(3) To register an entity with the division, a principal broker shall:

(a) evidence that the name of the entity is registered with the Division of Corporations;

(b) certify that the entity is affiliated with a principal broker who:

(i) is authorized to use the entity name; and

(ii) will actively supervise the activities of all sales agents, associate brokers, branch brokers, and unlicensed staff;

(c) if registering a branch office, identify the branch broker who will actively supervise all licensees and unlicensed staff working from the branch office;

(d) submit an application that includes:

(i) the physical address of the entity;

(ii) if the entity is a branch office, the name and license number of the branch broker;

(iii) the names of associate brokers and sales agents assigned to the entity; and

(iv) the location and account number of any real estate and property management trust account(s) in which funds received at the registered location will be deposited;

(e) inform the division of:

(i) the location and account number of any operating account(s) used by the registered entity; and

(ii) the location where brokerage records will be kept; and

(f) pay a nonrefundable application fee.

(4) Restrictions.

(a)(i) The division shall not register an entity proposing to use a business name that:

(A) is likely to mislead the public into thinking that the entity is not a real estate brokerage or property management company;

(B) closely resembles the name of another registered entity; or

(C) the division determines might otherwise be confusing or misleading to the public.

(ii) Approval by the division of an entity's business name does not ensure or grant to the entity a legal right to use or operate under that name.

(b) A branch office shall operate under the same business name as the principal brokerage.

(c) An entity may not designate a post office box as its business address, but may designate a post office box as a mailing address.

(d) All trust accounts and operating accounts used by a registered entity shall be maintained in a bank or credit union located in the state of Utah.

(5) Registration not transferable.

(a) A registered entity shall not transfer the registration to any other person.

(b) A registered entity shall not allow an unlicensed person to use the entity's registration to perform work for which licensure is required.

(c) If a change in corporate structure of a registered entity creates a separate and unique legal entity, that entity shall obtain a unique registration, and shall not operate under an existing registration.

(d) The dissolution of a corporation, partnership, limited liability company, association, or other entity registered with the division terminates the registration.

R162-2f-206a. Certification of Real Estate School.

(1) Prior to offering real estate prelicensing or continuing education, a school shall:

(a) first, obtain division approval of the school name; and

(b) second, certify the school with the division pursuant to this Subsection (2).

(2) To certify, a school applicant shall, at least 90 days prior to teaching any course, prepare and supply the following information to the division:

(a) contact information, including:

(i) name, phone number, email address, and address of the physical facility;

(ii) name, phone number, email address, and address of each school director;

(iii) name, phone number, email address, and address of each school owner; and

(iv) an e-mail address where correspondence will be received by the school;

(b) evidence that the school directors and owners meet the character requirements outlined in Subsection R162-2f-201(1) and the competency requirements outlined in Subsection R162-2f-201(2);

(c) evidence that the school name, as approved by the division pursuant to this Subsection (1)(a), is registered with the Division of Corporations and Commercial Code as a real estate education provider;

(d) school description, including:

(i) type of school; and

(ii) description of the school's physical facilities;

(e) list of courses to be offered, including the following:

(i) a statement of whether each course is a prelicensing or continuing education course; and

(ii) as to a continuing education course, whether it is designed to qualify as fulfilling all or part of the core curriculum requirement for new agents;

(f) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(g) proof that each instructor is:

(i) certified by the division;

(ii) qualified as a guest lecturer by having:

(A) requisite expertise in the field; and

(B) approval from the division; or

(iii) exempt from certification under Subsection R162-2f-206d(4);

(h) schedule of courses offered, including the days, times, and locations of classes;

(i) statement of attendance requirements as provided to students;

(j) refund policy as provided to students;

(k) disclaimer as provided to students and as specified in Subsection (3)(c);

(l) criminal history disclosure statement as provided to students and as specified in Subsection (3)(d);

(m) disclosure, as specified in Subsection (3)(e), of any possibility of obtaining an education waiver;

(n) course completion policy, as provided to students, describing the length of time allowed for completion and detailed requirements; and

(o) any other information the division requires.

(3) Minimum standards.

(a) The course schedule may not provide or allow for more than eight credit hours per student per day.

(b) The attendance statement shall require that each student attend at least 90% of the scheduled class periods, excluding breaks.

(c) The disclaimer shall adhere to the following requirements:

(i) be typed in all capital letters at least 1/4 inch high; and

(ii) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for licensees at this school."

(d) The criminal history disclosure statement shall:

(i) be provided to each student prior to the school accepting payment; and

(ii) clearly inform the student that upon application with the division, the student will be required to:

(A) accurately disclose the student's criminal history according to the licensing questionnaire provided by the division;

(B) submit fingerprint cards to the division and consent to a criminal background check; and

(C) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(iii) clearly inform the student that the division will consider the applicant's criminal history pursuant to Subsection 61-2f-204(1)(e) and Subsection R162-2f-201(1) in making a decision on the application; and

(iv) include a section for the student's attestation that the student has read and understood the disclosure.

(e) The education waiver disclosure shall adhere to the following requirements:

(i) disclose to students the requirements for obtaining an education waiver while they are still eligible for a full refund;

(ii) be typed in all capital letters at least 1/4 inch high;

(iii) inform the students that the division grants education waivers for qualified individuals; and

(iv) state the following language: "A student accepted or enrolled for education hours cannot later reduce those hours by applying for an education waiver. An education waiver must be obtained before a student enrolls and is accepted by a school for education hours."

(f) Within 15 days after the occurrence of any material change in the information outlined in this Subsection (2)(a), the school shall provide, to the division's education staff, written notice of the change.

(4)(a) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a school certification, an applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(c) To reinstate an expired school certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired school certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (4) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206b. Certification Prelicensing Course.

(1) To certify a prelicensing course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) comprehensive course outline including:

(i) description of the course, including a statement of whether the course is designed for:

(A) sales agents; or

(B) brokers;

(ii) number of class periods spent on each subject area;

(iii) minimum of three to five learning objectives for every three hours of class time; and

(iv) reference to the course outline approved by the commission for each topic;

(b) number of quizzes and examinations;

(c) grading system, including methods of testing and standards of grading;

(d)(i) a copy of at least two final examinations to be used in the course;

(ii) the answer key(s) used to determine if a student has passed the exam; and

(iii) an explanation of procedure if the student fails the final examination and thereby fails the course; and

(e) a list of the titles, authors and publishers of all required textbooks.

(2) To certify a prelicensing course for distance education, a person shall, no later than 60 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) all items listed in this Subsection (1);

(b) description of each method of course delivery;

(c) description of any media to be used;

(d) course access for the division using the same delivery methods and media that will be provided to the students;

(e) description of specific and regularly scheduled

interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;

(f) description of how the students' achievement of the stated learning objectives will be measured at regular intervals;

(g) description of how and when certified prelicensing instructors will be available to answer student questions;

(h) attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims; and

(i) a description of the complaint process to resolve student grievances.

(3) Minimum standards. A prelicensing course shall:

(a) address each topic required by the course outline as approved by the commission;

(b) meet the minimum hourly requirement as established by Subsection 61-2f-203(1)(d)(i) and these rules;

(c) limit the credit that students may earn to no more than eight credit hours per day;

(d) be taught in an appropriate classroom facility unless approved for distance education;

(e) allow a maximum of 10% of the required class time for testing, including:

(i) practice tests; and

(ii) a final examination;

(f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline; and

(g) reflect the current statutes and rules of the division.

(4) A prelicensing course certification expires at the same time as the school certification and is renewed automatically when the school certification is renewed.

R162-2f-206c. Certification of Continuing Education Course.

(1)(a) The division may not award continuing education credit for a course that is advertised in Utah to real estate licensees unless the course is certified prior to its being taught.

(b) A licensee who completes a course that is not required to be certified pursuant to this Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to this Subsection (2)(f), may apply to the division for an award of continuing education credit after successfully completing the course.

(2) To certify a continuing education course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) name and contact information of the course provider;

(b) name and contact information of the entity through which the course will be provided;

(c) description of the physical facility where the course will be taught;

(d) course title;

(e) number of credit hours;

(f) statement defining how the course will meet the objectives of continuing education by increasing the participant's:

(i) knowledge;

(ii) professionalism; and

(iii) ability to protect and serve the public;

(g) course outline including a description of the subject matter covered in each 15-minute segment;

(h) a minimum of three learning objectives for every three hours of class time;

(i) name and certification number of each certified instructor who will teach the course;

(j) copies of all materials to be distributed to participants;

(k) signed statement in which the course provider and instructor(s):

(i) agree not to market personal sales products;

(ii) allow the division or its representative to audit the course on an unannounced basis; and

(iii) agree to upload, within ten business days after the end of a course offering, to the database specified by the division, the following:

(A) course name;

(B) course certificate number assigned by the division;

(C) date(s) the course was taught;

(D) number of credit hours; and

(E) names and license numbers of all students receiving continuing education credit;

(l) procedure for pre-registration;

(m) tuition or registration fee;

(n) cancellation and refund policy;

(o) procedure for taking and maintaining control of attendance during class time;

(p) sample of the completion certificate;

(q) nonrefundable fee for certification as required by the division; and

(r) any other information the division requires.

(3) To certify a continuing education course for distance education, a person shall:

(a) comply with this Subsection (2);

(b) submit to the division a complete description of all course delivery methods and all media to be used;

(c) provide course access for the division using the same delivery methods and media that will be provided to the students;

(d) describe specific frequent and periodic interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives and encourage student participation;

(e) describe how and when certified instructors will be available to answer student questions; and

(f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

(4) Minimum standards.

(a) Except for distance education courses, all courses shall be taught in an appropriate classroom facility and not in a private residence.

(b) The minimum length of a course shall be one credit hour.

(c) Except for online courses, the procedure for taking attendance shall be more extensive than having the student sign a class roll.

(d) The completion certificate shall allow for entry of the following information:

(i) licensee's name;

(ii) type of license;

(iii) license number;

(iv) date of course;

(v) name of the course provider;

(vi) course title;

(vii) number of credit hours awarded;

(viii) course certification number;

(ix) course certification expiration date;

(x) signature of the course sponsor; and

(xi) signature of the licensee.

(5) Certification procedures.

(a) Upon receipt of a complete application for certification of a continuing education course, the division shall, at its own discretion, determine whether a course qualifies for certification.

(b) Upon determining that a course qualifies for certification, the division shall determine whether the content satisfies core or elective requirements.

(c) Core topics include the following:
(i) state approved forms and contracts;
(ii) other industry used forms or contracts;
(iii) ethics;
(iv) agency;
(v) short sales or sales of bank-owned property;
(vi) environmental hazards;
(vii) property management;
(viii) prevention of real estate and mortgage fraud;
(ix) federal and state real estate laws;
(x) division administrative rules;
(xi) broker trust accounts; and
(xii) water law, rights and transfer.
(d) If a course regarding an industry used form or contract is approved by the division as a core course, the provider of the course shall:
(i) obtain authorization to use the form(s) or contract(s) taught in the course;
(ii) obtain permission for licensees to subsequently use the form(s) or contract(s) taught in the course; and
(iii) if applicable, arrange for the owner of each form or contract to make it available to licensees for a reasonable fee.
(e) Elective topics include the following:
(i) real estate financing, including mortgages and other financing techniques;
(ii) real estate investments;
(iii) real estate market measures and evaluation;
(iv) real estate appraising;
(v) market analysis;
(vi) measurement of homes or buildings;
(vii) accounting and taxation as applied to real property;
(viii) estate building and portfolio management for clients;
(ix) settlement statements;
(x) real estate mathematics;
(xi) real estate law;
(xii) contract law;
(xiii) agency and subagency;
(xiv) real estate securities and syndications;
(xv) regulation and management of timeshares, condominiums, and cooperatives;
(xvi) resort and recreational properties;
(xvii) farm and ranch properties;
(xviii) real property exchanging;
(xix) legislative issues that influence real estate practice;
(xx) real estate license law;
(xxi) division administrative rules;
(xxii) land development;
(xxiii) land use;
(xxiv) planning and zoning;
(xxv) construction;
(xxvi) energy conservation in buildings;
(xxvii) water rights;
(xxviii) landlord/tenant relationships;
(xxix) property disclosure forms;
(xxx) Americans with Disabilities Act;
(xxxi) fair housing;
(xxxii) affirmative marketing;
(xxxiii) commercial real estate;
(xxxiv) tenancy in common;
(xxxv) professional development;
(xxxvi) business success;
(xxxvii) customer relation skills;
(xxxviii) sales promotion, including:
(A) salesmanship;
(B) negotiation;
(C) sales psychology;
(D) marketing techniques related to real estate knowledge;
(E) servicing clients; and
(F) communication skills;
(xxxix) personal and property protection for licensees and their clients;
(xl) any topic that focuses on real estate concepts, principles, or industry practices or procedures, if the topic enhances licensee professional skills and thereby advances public protection and safety;
(xli) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education; and
(xlii) technology courses that utilize the majority of the time instructing students how the technology:
(A) directly benefits the consumer; or
(B) enables the licensee to be more proficient in performing the licensee's agency responsibilities.
(f) Unacceptable topics include the following:
(i) offerings in mechanical office and business skills, including:
(A) typing;
(B) speed reading;
(C) memory improvement;
(D) language report writing;
(E) advertising; and
(F) technology courses with a principal focus on technology operation, software design, or software use;
(ii) physical well-being, including:
(A) personal motivation;
(B) stress management; and
(C) dress-for-success;
(iii) meetings held in conjunction with the general business of the licensee and the licensee's broker, employer, or trade organization, including:
(A) sales meetings;
(B) in-house staff meetings or training meetings; and
(C) member orientations for professional organizations;
(iv) courses in wealth creation or retirement planning for licensees; and
(v) courses that are specifically designed for exam preparation.
(g) If an application for certification of a continuing education course is denied by the division, the person making application may appeal to the commission.
(6)(a) A continuing education course certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
(b) To renew a continuing education course certification, an applicant shall:
(i) complete a renewal application as provided by the division; and
(ii) pay a nonrefundable renewal fee.
(c) To reinstate an expired continuing education course certification within 30 days following the expiration date, a person shall:
(i) comply with all requirements for a timely renewal; and
(ii) pay a nonrefundable late fee.
(d) To reinstate an expired continuing education course certification after 30 days and within six months following the expiration date, a person shall:
(i) comply with all requirements for a timely renewal; and
(ii) pay a non-refundable reinstatement fee.
(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
(f) If a deadline specified in this Subsection (6) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206d. Certification of Prelicensing Course Instructor.
(1) An instructor shall certify with the division prior to

teaching a prelicensing course.

(2) To certify, an applicant shall provide, within the 30-day period prior to the date on which the applicant proposes to begin instruction:

(a) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);

(b) evidence of having graduated from high school or achieved an equivalent education;

(c) evidence that the applicant understands the real estate industry through:

(i) a minimum of five years of full-time experience as a real estate licensee;

(ii) post-graduate education related to the course subject; or

(iii) demonstrated expertise on the subject proposed to be taught;

(d) evidence of ability to teach through:

(i) a minimum of 12 months of full-time teaching experience;

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or

(iii) attendance at a division instructor development workshop totaling at least two days in length;

(e) evidence of having passed an examination:

(i) designed to test the knowledge of the subject matter proposed to be taught;

(ii) with a score of 80% or more correct responses, and;

(iii) within the six-month period preceding the date of application;

(f) name and certification number of the certified prelicensing school for which the applicant will work;

(g) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(h) a signed statement agreeing not to market personal sales products;

(i) any other information the division requires;

(j) an application fee; and

(k) course-specific requirements as follows:

(i) sales agent prelicensing course: evidence of being a licensed sales agent or broker; and

(ii) broker prelicensing course: evidence of being a licensed associate broker, branch broker, or principal broker.

(3) An applicant may certify to teach a subcourse of the broker prelicensing course by meeting the following requirements:

(a) Brokerage Management. An applicant shall:

(i) hold a current real estate broker license;

(ii) possess at least two years practical experience as an active real estate principal broker; and

(iii)(A) have experience managing a real estate office; or

(B) hold a certified residential broker or equivalent professional designation in real estate brokerage management.

(b) Advanced Real Estate Law. An applicant shall:

(i) hold a current real estate broker license;

(ii) evidence current membership in the Utah State Bar; or

(iii)(A) have graduated from an American Bar Association accredited law school; and

(B) have at least two years real estate law experience.

(c) Advanced Appraisal. An applicant shall hold:

(i) a current real estate broker license, or

(ii) a current appraiser license or certification from the division.

(d) Advanced Finance. An applicant shall:

(i) evidence at least two years practical experience in real estate finance; and

(ii)(A) hold a current real estate broker license;

(B) evidence having been associated with a lending institution as a loan officer; or

(C) hold a degree in finance.

(e) Advanced Property Management. An applicant shall hold a current real estate license and:

(i) evidence at least two years full-time experience as a property manager; or

(ii) hold a certified property manager or equivalent professional designation.

(4) A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the division academic training or experience qualifying the faculty member to teach the course.

(5)(a) A prelicensing instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a prelicensing course instructor certification, an individual shall:

(i) submit all forms required by the division;

(ii) evidence having taught, within the two-year period prior to the date of application, a certified real estate course;

(iii) evidence having attended, within the two-year period prior to the date of application, an instructor development workshop sponsored by the division; and

(iv) pay a nonrefundable renewal fee.

(c) To reinstate an expired prelicensing course instructor certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired prelicensing course instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (5) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206e. Certification of Continuing Education Course Instructor.

(1) An instructor shall certify with the division before teaching a continuing education course.

(2) To certify, an applicant shall, within the 30-day period prior to the date on which the applicant proposes to begin instruction, provide the following:

(a) name and contact information of the applicant;

(b) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);

(c) evidence of having graduated from high school or achieved an equivalent education;

(d) evidence that the applicant understands the subject matter to be taught through:

(i) a minimum of two years of full-time experience as a real estate licensee;

(ii) college-level education related to the course subject; or

(iii) demonstrated expertise on the subject proposed to be taught;

(e) evidence of ability to teach through:

(i) a minimum of 12 months of full-time teaching experience; or

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience;

(f) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the

division or its representative;

(g) a signed statement agreeing not to market personal sales products;

(h) any other information the division requires; and

(i) a nonrefundable application fee.

(3)(a) A continuing education course instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a continuing education course instructor certification, a person shall:

(i) submit all forms required by the division;

(ii)(A) evidence having taught, within the previous renewal period, a minimum of 12 continuing education credit hours; or

(B) submit written explanation outlining:

(I) the reason for not having taught a minimum of 12 continuing education credit hours; and

(II) documentation to the division that the applicant maintains satisfactory expertise in the subject area proposed to be taught; and

(iii) pay a nonrefundable renewal fee.

(c) To reinstate an expired continuing education instructor certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired continuing education instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (3) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-207. Reporting a Change of Information.

(1) Individual notification requirements.

(a) An individual licensed as a sales agent, associate broker, or principal broker shall report the following to the division:

(i) change in licensee's name; and

(ii) change in licensee's business, home, e-mail, or mailing address.

(b) In addition to complying with this Subsection (1)(a):

(i) an individual licensed as a sales agent or associate broker shall report to the division a change in affiliation with a principal broker; and

(ii) an individual licensed as a principal broker shall report to the division:

(A) termination of a sales agent, associate broker, or branch broker, if the change is not reported pursuant to this Subsection (1)(b)(i);

(B) change in assignment of branch broker; and

(C) termination of the principal broker's affiliation with an entity.

(2) Entity notification requirements. A registered entity shall report the following to the division:

(a) change in entity's name;

(b) change in entity's affiliation with a principal broker;

(c) change in corporate structure;

(d) dissolution of corporation; and

(e) change of location where brokerage records are kept.

(3) Notification procedures.

(a) Name. To report a change in name, a person shall submit to the division a paper change form and:

(i) if the person is an individual, attach to it official documentation such as a:

(A) marriage certificate;

(B) divorce decree;

(C) court order; or

(D) driver license; and

(ii) if the person is an entity:

(A) obtain prior approval from the division of the new entity name; and

(B) attach to the change form proof that the new name as approved by the division pursuant to this Subsection (3)(a)(ii)(A) is registered with, and approved by, the Division of Corporations.

(b) Address. To report a change in address, a person shall enter the change into RELMS.

(c) Affiliation.

(i) To terminate an affiliation between an individual and a principal broker, a person shall submit a change form through RELMS to inactivate or transfer the individual's license; and

(A)(I) obtain the electronic affirmation of the other party to the terminated affiliation; or

(II) comply with this Subsection (4); and

(B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.

(ii) To terminate an affiliation between a principal broker and an entity:

(A) the principal broker shall submit a paper change form to the division to inactivate or transfer the principal broker's license; and

(B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:

(I) cease operations;

(II) submit to the division a paper company/branch change form to inactivate the entity registration;

(III) submit change forms through RELMS to inactivate the license of any licensee affiliated with the entity;

(IV) advise the division as to the location where records will be stored;

(V) notify each listing and management client that the entity is no longer in business and that the client may enter into a new listing or management agreement with a different brokerage;

(VI) notify each party and cooperating broker to any existing contracts; and

(VII) retain money held in trust under the control of a signer on the trust account, or an administrator or executor, until all parties to each transaction agree in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition.

(iii) Branch broker. To change an assignment of branch broker, a principal broker shall submit a paper change form to the division.

(d) Corporate structure.

(i) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:

(A) if the change does not involve a new business license, or a new registration with the Utah Division of Corporations and Commercial Code, submit a letter to the division, fully explaining the change; and

(B) if the change involves a new business license or a new registration with the Utah Division of Corporations and Commercial Code for a purpose other than a company name change, obtain a new registration.

(ii) To report the dissolution of an entity registered with the division, a person shall comply with this Subsection (3)(c)(ii)(B).

(e) Brokerage records. To report a change in the location

where brokerage records are kept, the principal broker of the registered entity shall submit to the division a letter on brokerage letterhead.

(4) Unavailability of individual. If an individual is unavailable to sign or electronically affirm a change form, the person responsible to report the change may do so by:

(a) sending a letter by certified mail to the last known address of the individual to notify that individual of the change; and

(b) as applicable:

(i) entering the certified mail reference number into the appropriate field on the electronic change form; or

(ii) providing to the division a copy of the certified mail receipt.

(5) Fees. The division may require a notification submitted pursuant to this subsection to be accompanied by a nonrefundable change fee.

(6) Deadlines.

(a) A change in affiliation shall be reported to the division before the change is made.

(b) A change in branch manager shall be reported to the division at the time the change is made.

(c) Any other change shall be reported to the division within ten business days of the change taking effect.

(d) As to a change that requires submission of a paper form or document, if the deadline specified in this Section R162-2f-207 falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(7) Effective date. A change reported in compliance with this Section R162-2f-207 becomes effective with the division the day on which the properly executed change form is received by the division.

R162-2f-307. Undivided Fractionalized Long-Term Estate.

(1) A real estate licensee who markets an undivided fractionalized long-term estate shall:

(a) obtain from the sponsor written disclosures pursuant to this Subsection (2) regarding the sponsor and each affiliate; and

(b) provide the disclosures to purchasers prior to closing so as to allow adequate review by the purchaser.

(2) Required disclosures.

(a) Disclosure as to the sponsor and the sponsor's affiliates, including the following:

(i) current certified financial statements;

(ii) current credit reports;

(iii) information concerning any bankruptcies or civil lawsuits;

(iv) proposed use of purchaser proceeds;

(v)(A) if applicable, financial statements of the master lease tenant, audited according to generally accepted accounting principles; and

(B) if the master lease tenant is an entity formed for the sole purpose of acting as the master lease tenant, audited financial statements of the owners of that entity;

(vi) statement as to whether the sponsor is an affiliate of a master lease tenant; and

(vii) statement as to whether any affiliate of the sponsor is:

(A) a third-party service provider; or

(B) a master lease tenant.

(b) Disclosure as to the real property in which the undivided fractionalized long-term estate is offered, including the following:

(i) material information concerning any leases or subleases affecting the real property;

(ii) material information concerning any environmental issues affecting the real property;

(iii) a preliminary title report on the real property;

(iv) if available, financial statements on any tenants for the life of the entity or the last five years, whichever is shorter;

(v) if applicable, rent rolls and operating history;

(vi) if applicable, loan documents;

(vii)(A) a tenants in common agreement; or

(B) any agreement that forms the substance of the undivided fractionalized long-term estate, including definition of the undivided fractionalized interest;

(viii) third party reports acquired by the sponsor;

(ix) a narrative appraisal report that:

(A) is effective no more than six months prior to the date the offer of sale is made; and

(B) includes, at a minimum:

(I) pictures;

(II) type of construction;

(III) age of building; and

(IV) site information such as improvements, parking, cross easements, site and location maps;

(x) material information concerning the market conditions for the property class; and

(xi) material information concerning the demographics of the general market area.

(c) Disclosure as to the asset managers and the property managers of the real property in which the undivided fractionalized long-term estate is offered, including the following:

(i) contact information for any existing or recommended asset managers and property managers;

(ii) description of any relationship between:

(A) the asset managers and the sponsor; and

(B) the property managers and the sponsor; and

(iii) copies of any existing:

(A) asset management agreements; and

(B) property management agreements.

(d) Disclosure as to potential tax consequences, including the following:

(i) a statement that there might be tax consequences for a failure to close on the purchase;

(ii) a statement that there might be risks involved in the purchase; and

(iii) a statement advising purchasers to consult with tax advisors and other professionals for advice concerning these matters.

(3) The division and commission shall consider any offering of a fractionalized undivided long-term estate in real property that complies with the Securities and Exchange Commission Regulation D, Rule 506, 17 C.F.R. Sec. 203.506 to be in compliance with these rules.

R162-2f-401a. Affirmative Duties Required of All Licensed Individuals.

An individual licensee shall:

(1) uphold the following fiduciary duties in the course of representing a principal:

(a) loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;

(b) obedience, which obligates the agent to obey all lawful instructions from the principal;

(c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:

(i) the other party; or

(ii) the transaction;

(d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:

(i) a defect in the property; or

(ii) the client's ability to perform on the contract;

(e) reasonable care and diligence;
(f) holding safe and accounting for all money or property entrusted to the agent; and
(g) any additional duties created by the agency agreement;
(2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:
(a) seller(s) the individual represents;
(b) buyer(s) the individual represents;
(c) buyer(s) and seller(s) the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);
(d) the owner of a property for which the individual will provide property management services; and
(e) a tenant whom the individual represents;
(3) in order to represent both principals in a transaction as a limited agent, obtain informed consent by:
(a) clearly explaining in writing to both parties:
(i) that each is entitled to be represented by a separate agent;
(ii) the type(s) of information that will be held confidential;
(iii) the type(s) of information that will be disclosed; and
(iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;
(b) obtaining a written acknowledgment from each party affirming that the party waives the right to:
(i) undivided loyalty;
(ii) absolute confidentiality; and
(iii) full disclosure from the licensee; and
(c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;
(4) when acting under a limited agency agreement:
(a) act as a neutral third party; and
(b) uphold the following fiduciary duties to both parties:
(i) obedience, which obligates the limited agent to obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;
(ii) reasonable care and diligence;
(iii) holding safe all money or property entrusted to the limited agent; and
(iv) any additional duties created by the agency agreement;
(5) prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:
(a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;
(b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;
(c) the licensee's agency relationship(s);
(d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and
(ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;
(6) in order to offer any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;
(7) in order to offer a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:
(a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and
(b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;
(8) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;
(9) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:
(a) in the currently approved Real Estate Purchase Contract; or
(b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;
(10) when executing a lease or rental agreement, confirm the prior agency disclosure by:
(a) incorporating it into the agreement; or
(b) attaching it as a separate document;
(11) when offering an inducement to a buyer who will not pay a real estate commission in a transaction:
(a) obtain authorization from the licensee's principal broker to offer the inducement;
(b) comply with all underwriting guidelines that apply to the loan for which the borrower has applied; and
(c) provide notice of the inducement, using any method or form, to:
(i) the principal broker of the seller's agent, if the seller paying a commission is represented; or
(ii) the seller, if the seller paying a commission is not represented;
(12) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:
(a) notify the listing brokerage that sub-agency is requested; and
(b) enter into a written agreement with the listing brokerage with which the seller has contracted:
(i) consenting to the sub-agency; and
(ii) defining the scope of the agency;
(c) obtain from the listing brokerage all available information about the property; and
(d) uphold the same fiduciary duties outlined in this Subsection (1);
(13) provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;
(14)(a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:
(i) the principal broker's individual name; or
(ii) the principal broker's brokerage name; and
(b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;
(15) timely inform the licensee's principal broker or branch broker of real estate transactions in which:
(a) the licensee is involved as agent or principal;
(b) the licensee has received funds on behalf of the principal broker; or
(c) an offer has been written;
(16)(a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and
(b) ensure that any such compensation is paid to the licensee's principal broker;
(17)(a) in negotiating and closing a transaction involving a property for which a certificate of occupancy has been issued, use:
(i)(A) the standard forms approved by the commission and identified in Section R162-2f-401f;

(B) standard supplementary clauses approved by the commission; and

(C) as necessary, other standard forms including settlement statements, warranty deeds, and quit claim deeds;

(ii) forms prepared by an attorney for a party to the transaction, if:

(A) a party to the transaction requests the use of the attorney-drafted forms; and

(B) the licensee first verifies that the forms have in fact been drafted by the party's attorney; or

(iii) if no state-approved form exists to serve a specific need, any form prepared by an attorney, regardless of whether the attorney is employed for the purpose by:

(A) the principal; or

(B) an entity in the business of selling blank legal forms; and

(b) in presenting an offer on a property for which a certificate of occupancy has not been issued, use any form prepared by an attorney, regardless of whether the attorney is employed for the purpose by:

(i) the principal; or

(ii) an entity in the business of selling blank forms.

(18) use an approved addendum form to make a counteroffer or any other modification to a contract;

(19) in order to sign or initial a document on behalf of a principal:

(a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;

(b) retain in the file for the transaction a copy of said power of attorney;

(c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;

(d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and

(e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"

(20) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;

(21) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;

(22) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:

(a) the conditions and other terms under which the property is guaranteed to be sold or purchased;

(b) the charges or other costs for the service or plan;

(c) the price for which the property will be sold or purchased; and

(d) the approximate net proceeds the seller may reasonably expect to receive;

(23) immediately deliver money received in a real estate transaction to the principal broker for deposit; and

(24) as contemplated by Subsection 61-2f-401(18), when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days.

R162-2f-401b. Prohibited Conduct As Applicable to All Licensed Individuals.

An individual licensee may not:

(1) engage in any of the practices described in Section 61-2f-401 et seq., whether acting as agent or on the licensee's own account, in a manner that:

(a) fails to conform with accepted standards of the real estate sales, leasing, or management industries;

(b) could jeopardize the public health, safety, or welfare; or

(c) violates any provision of Title 61, Chapter 2f et seq. or the rules of this chapter;

(2) require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties signing a contract evidencing agreement to the terms thereof;

(3) make a misrepresentation to the division:

(a) in an application for license renewal; or

(b) in an investigation.

(4)(a) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or

(b) knowingly participate in a transaction in which such a false device is used;

(5) participate in a transaction in which a buyer enters into an agreement that:

(a) is not disclosed to the lender; and

(b) if disclosed, might have a material effect on the terms or the granting of the loan;

(6) use or propose the use of a double contract;

(7) place a sign on real property without the written consent of the property owner;

(8) take a net listing;

(9) sell listed properties other than through the listing broker;

(10) subject a principal to paying a double commission without the principal's informed consent;

(11) enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;

(12) pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect, except that:

(a) a licensee may give a gift valued at $150 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction; and

(b) as to a property management transaction, a licensee may compensate an unlicensed employee or current tenant up to $200 per lease for assistance in retaining an existing tenant or securing a new tenant;

(13) accept a referral fee from:

(a) a lender; or

(b) a mortgage broker;

(14) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:

(a) mortgage loan originator, associate lending manager, or principal lending manager;

(b) appraiser or appraiser trainee;

(c) escrow agent; or

(d) provider of title services;

(15) act or attempt to act as a limited agent in any transaction in which:

(a) the licensee is a principal in the transaction; or

(b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction;

(16) make a counteroffer by striking out, whiting out, substituting new language, or otherwise altering:

(a) the boilerplate provisions of the Real Estate Purchase Contract; or

(b) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;

(17) advertise or offer to sell or lease property without the written consent of:

(a) the owner of the property; and

(b) if the property is currently listed, the listing broker;

(18) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;

(19) represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a(23);

(20) when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information;

(21) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued;

(22) in a short sale, have the seller sign a document allowing the licensee to lien the property; or

(23) charge any fee that represents the difference between:

(a) the total concessions authorized by a seller and the actual amount of the buyer's closing costs; or

(b) in a short sale, the sale price approved by the lender and the total amount required to clear encumbrances on title and close the transaction.

R162-2f-401c. Additional Provisions Applicable to Principal Brokers.

(1) A principal broker shall:

(a) strictly comply with the record retention and maintenance requirements of Subsection R162-2f-401k;

(b) provide to the person whom the principal broker represents in a real estate transaction:

(i) a detailed statement showing the current status of a transaction upon the earlier of:

(A) the expiration of 30 days after an offer has been made and accepted; or

(B) a buyer or seller making a demand for such statement; and

(ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;

(c)(i) regardless of who closes a real estate transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:

(A) the principal broker;

(B) an associate broker or branch broker affiliated with the principal broker; or

(C) the sales agent who is:

(I) affiliated with the principal broker; and

(II) representing the principal in the transaction; and

(ii) ensure the principals in each closed real estate transaction receive copies of all documents executed in the transaction closing;

(d) in order to assign all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:

(i) an identification of the property involved in the real estate transaction;

(ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;

(iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;

(iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and

(v) additional instructions at the discretion of the principal broker;

(e) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;

(f) exercise active supervision over the conduct of all licensees and unlicensed staff employed by or affiliated with the principal broker, whether acting as:

(i) the principal broker for an entity; or

(ii) a branch broker;

(g) strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;

(h) strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;

(i)(i) except as provided in this Subsection (1)(i)(iii), within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:

(A) maintained by the principal broker pursuant to Section R162-2f-403; or

(B) if the parties to the transaction agree in writing, maintained by:

(I) a title company pursuant to Section 31A-23a-406; or

(II) another authorized escrow entity; and

(ii) within three business days of receiving money from a client or a tenant in a property management transaction, deposit the money into a trust account maintained by the principal broker pursuant to Section R162-2f-403 or forward or deposit client or tenant money into an account maintained by the property owner;

(iii) a principal broker is not required to comply with this Subsection (1)(i)(i) or (ii) if:

(A) the contract or other written agreement states that the money is to be:

(I) held for a specific length of time; or

(II) as to a real estate transaction, deposited upon acceptance by the seller; or

(B) as to a real estate transaction, the Real Estate Purchase Contract or other written agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:

(I) names the seller as payee; and

(II) is retained in the principal broker's file until closing;

(j)(i) maintain at the principal business location a complete record of all consideration received or escrowed for real estate and property management transactions; and

(ii) be personally responsible at all times for deposits held in the principal broker's trust account;

(k)(i)(A)(I) in a real estate transaction, assign a consecutive, sequential number to each offer; and

(II) assign a unique identification to each property management client; and

(B) include the transaction number or client identification, as applicable, on:

(I) trust account deposit records; and

(II) trust account checks or other equivalent records evidencing the transfer of trust funds;

(ii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

(iii) maintain a record of each rejected offer in a real estate transaction that does not involve funds deposited to trust:

(A) in separate files; or

(B) in a single file holding all such offers; and

(l) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in this Subsection (1):

(i) actively supervise any such associate broker or branch broker; and

(ii) remain personally responsible and accountable for adequate supervision of all licensees and unlicensed staff affiliated with the principal broker.

(2) A principal broker shall not be deemed in violation of this Subsection (1)(f) where:

(a) an affiliated licensee or unlicensed staff member violates a provision of Title 61, Chapter 2f et seq. or the rules

promulgated thereunder;

(b) the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such a violation;

(c) reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures;

(d) upon learning of the violation, the broker attempted to prevent or mitigate the damage;

(e) the broker did not participate in the violation;

(f) the broker did not ratify the violation; and

(g) the broker did not attempt to avoid learning of the violation.

R162-2f-401d. School and Provider Conduct.

(1) Affirmative duties. A school's owner(s) and director(s) shall:

(a) within 15 days after the occurrence of any material change in the information provided to the division under Subsection R162-2f-206a(2)(a), give the division written notice of that change;

(b)(i) provide instructors of prelicensing courses with the state-approved course outline; and

(ii) ensure that any prelicensing course adheres to the topics mandated in the state-approved course outline;

(c) ensure that all instructors comply with Section R162-2f-401e.

(d) prior to accepting payment from a prospective student for a prelicensing education course:

(i) provide the criminal history disclosure statement described in Subsection R162-2f-206a(3)(d);

(ii) obtain the student's signature on the criminal history disclosure; and

(iii) have the enrollee verify that an education waiver has not been obtained from the division;

(e)(i) retain signed criminal history disclosures for a minimum of three years from the date of course completion; and

(ii) make the signed criminal history disclosures available for inspection by the division upon request;

(f) maintain for a minimum of three years after enrollment:

(i) the registration record of each student;

(ii) the attendance record of each student; and

(iii) any other prescribed information regarding the offering, including exam results, if any;

(g) ensure that course topics are taught only by:

(i) certified instructors; or

(ii) guest lecturers;

(h)(i) limit the use of approved guest lecturers to a total of 20% of the instructional hours per approved course; and

(ii) prior to using a guest lecturer to teach a portion of a course, document for the division the professional qualifications of the guest lecturer;

(i) furnish to the division an updated roster of the school's approved instructors and guest lecturers each time there is a change;

(j) within ten days of teaching a course, upload course completion information for any student who:

(i) successfully completes the course; and

(ii) provides an accurate name or license number within seven business days of attending the course;

(k) substantiate, upon request by the division, any claims made in advertising; and

(l) include in all advertising materials the continuing education course certification number issued by the division.

(2) Prohibited conduct. A school may not:

(a) award continuing education credit for a course that has not been certified by the division prior to its being taught;

(b) award continuing education credit to any student who fails to:

(i) attend a minimum of 90% of the required class time; or

(ii) pass a prelicense course final examination;

(c) accept a student for a reduced number of hours without first having a written statement from the division defining the exact number of hours the student must complete;

(d) allow a student to challenge by examination any course or part of a course in lieu of attendance;

(e) allow a course approved for traditional education to be:

(i) taught in a private residence; or

(ii) completed through home study;

(f) make a misrepresentation in advertising about any course of instruction;

(g) disseminate advertisements or public notices that disparage the dignity and integrity of the real estate profession;

(h) make disparaging remarks about a competitor's services or methods of operation;

(i) attempt by any means to obtain or use the questions on the prelicensing examinations unless the questions have been dropped from the current exam bank;

(j) give valuable consideration to a real estate brokerage or licensee for referring students to the school;

(k) accept valuable consideration from a real estate brokerage or licensee for referring students to the brokerage;

(l) allow real estate brokerages to solicit for agents at the school during class time, including the student break time;

(m) obligate or require students to attend any event in which a brokerage solicits for agents;

(n) award more than eight credit hours per day per student;

(o) award credit for an online course to a student who fails to complete the course within one year of the registration date;

(p) advertise or market a continuing education course that has not been:

(i) approved by the division; and

(ii) issued a current continuing education course certification number; or

(q) advertise, market, or promote a continuing education course with language indicating that division certification is pending or otherwise forthcoming.

R162-2f-401e. Instructor Conduct.

(1) Affirmative duties. An instructor shall:

(a) adhere to the approved outline for any course taught;

(b) comply with a division request for information within ten business days of the date of the request; and

(c) maintain a professional demeanor in all interactions with students.

(2) Prohibited conduct. An instructor may not:

(a) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(b) continue to teach any course after the course has expired and without renewing the course certification.

R162-2f-401f. Approved Forms.

The following standard forms are approved by the commission and the Office of the Attorney General for use by all licensees:

(1) August 27, 2008, Real Estate Purchase Contract;

(2) January 1, 1987, Uniform Real Estate Contract;

(3) October 1, 1983, All Inclusive Trust Deed;

(4) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(5) August 5, 2003, Addendum to Real Estate Purchase Contract;

(6) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;

(7) January 1, 1999, Buyer Financial Information Sheet;

(8) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;

(9) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;

(10) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract; and

(11) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

R162-2f-401g. Use of Personal Assistants.

In order to employ an unlicensed individual to provide assistance in connection with real estate transactions, an individual licensee shall:

(1) obtain the permission of the licensee's principal broker before employing the individual;

(2) supervise the assistant to ensure that the duties of an unlicensed assistant are limited to those that do not require a real estate license, including the following:

(a) performing clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact is initiated by the prospect and not by the unlicensed assistant;

(b) at an open house, distributing preprinted literature written by a licensee, where a licensee is present and the unlicensed person provides no additional information concerning the property or financing, and does not become involved in negotiating, offering, selling or completing contracts;

(c) acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion or completion of forms or documents;

(d) placing brokerage signs on listed properties;

(e) having keys made for listed properties; and

(f) securing public records from a county recorder's office, zoning office, sewer district, water district, or similar entity;

(3) compensate a personal assistant at a predetermined rate that is not:

(a) contingent upon the occurrence of real estate transactions; or

(b) determined through commission sharing or fee splitting; and

(4) prohibit the assistant from engaging in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in this Subsection (2)(a).

R162-2f-401h. Requirements and Restrictions in Advertising.

(1) Advertising shall include the name of the real estate brokerage or, as applicable, the property management brokerage as shown on division records except where:

(a) a licensee advertises unlisted property in which the licensee has an ownership interest; and

(b) the advertisement identifies the licensee as "owner-agent" or "owner-broker."

(2) An advertisement that includes the name of an individual licensee shall also include the name of the licensee's brokerage in lettering that is at least one-half the size of the lettering identifying the individual licensee.

(3) An advertisement that includes a photograph of an individual who is not a licensee shall identify the individual's role in terms that make it clear that the individual is not licensed.

(4) An advertisement may not include artwork or text that states or implies that an individual has a position or status other than that of sales agent, associate broker, or principal broker affiliated with a brokerage.

(5) An advertising team, group, or other marketing entity that is not registered as a brokerage:

(a) shall, in all types of advertising, clearly:

(i) disclose that the team, group, or other marketing entity is not itself a brokerage; and

(ii) state the name of the registered brokerage with which the property being advertised is listed;

(b) shall, in any printed advertising material, clearly and conspicuously identify, in lettering that is at least one-half the size of the largest lettering used in the advertisement, the name of the registered brokerage with which the property being advertised is listed; and

(c) may not advertise as an "owner-agent" or "owner-broker."

(6)(a) A written advertisement of a guaranteed sales plan shall include, in print at least one-fourth as large as the largest print in the advertisement:

(i) a statement that costs and conditions may apply; and

(ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(22).

(b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

R162-2f-401i. Standards for Real Estate Auctions.

A principal broker who contracts or in any manner affiliates with an auctioneer or auction company to sell at auction real property in this state shall:

(1) ensure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions;

(2) ensure that advertising and promotional materials associated with an auction name the principal broker;

(3) attend and supervise the auction;

(4) ensure that any purchase agreement used at the auction:

(a) meets the requirements of Subsection R162-2f-401a(18); and

(b) is completed by an individual holding an active Utah real estate license;

(5) ensure that any money deposited at the auction is placed in trust pursuant to Subsection R162-2f-401c(1)(i); and

(6) ensure that adequate arrangements are made for the closing of any real estate transaction arising out of the auction.

R162-2f-401j. Standards for Property Management.

(1) Property management performed by a real estate brokerage, or by licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage as registered with the division unless the principal broker holds a dual broker license and obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.

(2) In addition to fulfilling all duties related to supervision per Section 61-2f-401(12), the principal broker of a registered entity, and the branch broker of a registered branch, shall implement training to ensure that each sales agent, associate broker, and unlicensed employee who is affiliated with the licensee has the knowledge and skills necessary to perform assigned property management tasks within the boundaries of these rules, including this Subsection R162-2f-401j(3).

(3) An unlicensed individual employed by a real estate or property management company may perform the following services under the supervision of the principal broker without holding an active real estate license:

(a) providing a prospective tenant with access to a rental unit;

(b) providing secretarial, bookkeeping, maintenance, or rent collection services;

(c) quoting rent and lease terms as established or approved by the principal broker;

(d) completing pre-printed lease or rental agreements, except as to terms that may be determined through negotiation of the principals;

(e) serving or receiving legal notices;

(f) addressing tenant or neighbor complaints; and

(g) inspecting units.

(4) Within 30 days of the termination of a contract with a property owner for property management services, the principal broker shall deliver all trust money to the property owner, the property owner's designated agent, or other party as designated under the contract with the property owner.

R162-2f-401k. Recordkeeping Requirements.

A principal broker shall:

(1) maintain and safeguard the following records to the extent they relate to the business of a principal broker:

(a) all trust account records;

(b) any document submitted by a licensee affiliated with the principal broker to a lender or underwriter as part of a real estate transaction;

(c) any document signed by a seller or buyer with whom the principal broker or an affiliated licensee is required to have an agency agreement; and

(d) any document created or executed by a licensee over whom the principal broker has supervisory responsibility pursuant to Subsection R162-2f-401c(1)(f);

(2) maintain the records identified in Subsection R162-2f-401k(1):

(a)(i) physically:

(A) at the principal business location designated by the principal broker on division records; or

(B) where applicable, at a branch office as designated by the principal broker on division records; or

(ii) electronically, in a storage system that complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act; and

(b) for at least three calendar years following the year in which:

(i) an offer is rejected; or

(ii) the transaction either closes or fails;

(3) upon request of the division, make any record identified in Subsection R162-2f-401k(1) available for inspection and copying by the division;

(4) notify the division in writing within ten business days after terminating business operations as to where business records will be maintained; and

(5) upon filing for brokerage bankruptcy, notify the division in writing of:

(a) the filing; and

(b) the current location of brokerage records.

R162-2f-402. Investigations.

The investigative and enforcement activities of the division shall include the following:

(1) verifying information provided on new license applications and applications for license renewal;

(2) evaluation and investigation of complaints;

(3) auditing licensees' business records, including trust account records;

(4) meeting with complainants, respondents, witnesses and attorneys;

(5) making recommendations for dismissal or prosecution;

(6) preparation of cases for formal or informal hearings, restraining orders, or injunctions;

(7) working with the assistant attorney general and representatives of other state and federal agencies; and

(8) entering into proposed stipulations for presentation to the commission and the director.

R162-2f-403a. Trust Accounts - General Provisions.

(1) A principal broker shall:

(a)(i) if engaged in listing or selling real estate, maintain at least one real estate trust account in a bank or credit union located within the state of Utah; and

(ii) if engaged in property management, refer to Subsection R162-2f-403b(3);

(b) at the time a trust account is established, notify the division in writing of:

(i) the account number;

(ii) the address of the bank or credit union where the account is located; and

(iii) the type of activity for which the account is used.

(2) A trust account maintained by a principal broker shall be non-interest-bearing, unless:

(a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account;

(b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the sale;

(c) the person designated under this Subsection (2)(b):

(i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and

(ii) operates exclusively to provide grants to affordable housing programs in Utah; and

(d) the affordable housing program that is the recipient of the grant under this Subsection (2)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.

(3) A principal broker may not deposit into the principal broker's real estate trust account funds received in connection with rental of tourist accommodations where the rental period is less than 30 consecutive days.

(4) Records of deposits to a trust account shall include:

(a) transaction number or unique client identifier, as applicable pursuant to Subsection R162-2f-401c(1)(k);

(b) identification of payee and payor;

(c) amount of deposit;

(d) location of property subject to the transaction; and

(e) date and place of deposit.

(5) Any instrument by which funds are disbursed from a real estate or property management trust account shall include:

(a) the business name of the registered entity;

(b) the address of the registered entity;

(c) clear identification of the trust account from which the disbursement is made, including:

(i) account name; and

(ii) account number;

(iii) transaction number or unique client identification, as applicable, pursuant to Subsection R162-2f-401c(1)(k);

(iv) date of disbursement;

(v) clear identification of payee and payor;

(vi) amount disbursed;

(vii) notation identifying the purpose for disbursement; and

(viii) check number, wire transfer number, or equivalent bank or credit union instrument identification.

(6) Any instrument of conveyance that is voided shall be clearly marked with the term "void" and the original instrument retained pursuant to Subsection R162-2f-401k.

(7) If both parties to a contract make a written claim to money held in a principal broker's trust fund and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:

(a) interplead the funds into court and thereafter disburse:

(i) upon written authorization of the party who will not receive the funds; or

(ii) pursuant to the order of a court of competent

jurisdiction; or

(b) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:

(i) no party has filed a civil suit arising out of the transaction; and

(ii) the parties have contractually agreed to submit disputes arising out of their contract to mediation.

(8) If a principal broker is unable to disburse trust funds within five years after the failure of a transaction, the principal broker shall remit the funds to the State Treasurer's Office as unclaimed property pursuant to Title 67, Chapter 4a et seq.

(9) Trust account reconciliation. For each real estate or property management trust account operated by a registered entity, the principal broker of the entity shall:

(a) maintain a date-sequential record of all deposits to and disbursements from the account, including or cross-referenced to the information specified in Subsection R162-2f-401c(1)(k);

(b) maintain a current, running total of the balance contained in the trust account;

(c)(i) maintain records sufficient to detail the final disposition of all funds associated with each transaction; and

(ii) ensure that each closed transaction balances to zero;

(d) reconcile the brokerage trust account records with the bank or credit union records at least monthly; and

(e) upon request, make all trust account records available to the division for auditing or investigation.

(10) The principal broker shall notify the division within 30 days if:

(a) the principal broker receives, from a bank or credit union in which the principal broker maintains a real estate or property management trust account, documentation to evidence that the trust account is out of balance; and

(b) the imbalance cannot be cured within the 30-day notification period.

R162-2f-403b. Real Estate Trust Accounts.

(1) A real estate trust account shall be used for the purpose of securing client funds:

(a) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f et seq.;

(b) if the principal broker is also a builder or developer, deposited under a Real Estate Purchase Contract, construction contract, or other agreement that provides for the construction of a dwelling; and

(c) collected in the performance of property management duties, pursuant to this Subsection (3).

(2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into the real estate trust account more than $500 of the principal broker's own funds.

(3)(a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish at least one property management trust account that is:

(i) separate from the real estate trust account; and

(ii) operated in accordance with Subsection R162-2f-403c.

(b) A principal broker who collects rents or otherwise manages property for no more than six individual units at any given time may use the real estate trust account to secure funds received in connection with the principal broker's property management activities.

(4) Unless otherwise agreed pursuant to this Subsection (5)(b), a principal broker may not pay a commission from the real estate trust account without first:

(a) obtaining written authorization from the buyer and seller, through contract or otherwise;

(b) closing or otherwise terminating the transaction;

(c) delivering the settlement statement to the buyer and seller;

(d) ensuring that the buyer or seller whom the principal broker represents has been paid the amount due as determined by the settlement statement;

(e) making a record of each disbursement; and

(f) depositing funds withdrawn as the principal broker's commission into the principal broker's operating account prior to further disbursing the money.

(5) A principal broker may disburse funds from a real estate trust account only in accordance with:

(a) specific language in the Real Estate Purchase Contract authorizing disbursement;

(b) other proper written authorization of the parties having an interest in the funds; or

(c) court order.

(6) A principal broker may not release for construction purposes those funds held as deposit money under an agreement that provides for the construction of a dwelling unless the purchaser authorizes such disbursement in writing.

(7) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:

(a) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or

(b) the parties execute a separate signed agreement containing instructions and authorization for disbursement.

R162-2f-403c. Property Management Trust Accounts.

(1) As of January 1, 2014, a trust account that is used exclusively for property management purposes shall be used to secure the following:

(a) tenant security deposits;

(b) rents; and

(c) money tendered by a property owner as a reserve fund or for payment of unexpected expenses.

(2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into a property management trust account any funds belonging to the principal broker without:

(a) maintaining records to clearly identify the total amount belonging to the principal broker; or

(b) performing a monthly line-item reconciliation of all deposits and withdrawals of funds belonging to the principal broker.

(3) A principal broker may disburse funds from a property management trust account only in accordance with:

(a) specific language in the property management contract or tenant lease agreement, as applicable, authorizing disbursement;

(b) other proper written authorization of the parties having an interest in the funds; or

(c) court order.

(4) A principal broker who transfers funds from a property management trust account for any purpose shall maintain records to clearly evidence that:

(a) prior to making the transfer, the principal broker verified the money as belonging to the property owner for whose benefit, or on whose instruction, the funds are transferred;

(b) any money transferred into an operating account as the principal broker's property management fee is earned according to the terms of the principal broker's contract with the property owner;

(c) any transfer for maintenance, repair, or similar purpose is:

(i) authorized according to the terms of the applicable property management contract, tenant lease agreement, or other instruction of the property owner; and

(ii) used strictly for the purpose for which the transfer is authorized, with any excess returned to the trust account.

R162-2f-407. Administrative Proceedings.

(1) 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.

(2) Informal adjudicative proceedings.

(a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Licensing and Practices Act or by these rules.

(3) Hearings required. A hearing before the commission shall be held in a proceeding:

(a) commenced by the division for disciplinary action pursuant to Section 61-2f-401 and Subsection 63G-4-201(2); and

(b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing.

(4) 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 a member 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 Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(c) Except as provided in this Subsection (5)(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 407, 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-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing:

(i) to the respondent at the address last provided to the division pursuant to Section 61-2f-207; and

(ii) if the respondent is an actively licensed sales agent or associate broker, to the principal broker with whom the respondent is affiliated.

(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 the party:

(A) 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 a 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 Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(5) 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) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit lists 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 the 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.

R162-2f-501. Appendices.

TABLE 1
APPENDIX 1 - REAL ESTATE TRANSACTIONS EXPERIENCE TABLE

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:		
(a)	One unit dwelling	2.5 points
(b)	Two- to four-unit dwellings	5 points
(c)	Apartments, 5 units or over	10 points
(d)	Improved lot	2 points
(e)	Vacant land/subdivision	10 points
COMMERCIAL		
(f)	Hotel or motel	10 points
(g)	Industrial or warehouse	10 points
(h)	Office building	10 points
(i)	Retail building	10 points
(j)	Leasing of commercial space	5 points

TABLE 2
APPENDIX 2 - PROPERTY MANAGEMENT EXPERIENCE TABLE

RESIDENTIAL	
(a) Each unit managed	0.25 pt/month
COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building	
(b) Each contract OR each separate property address or location for which licensee has direct responsibility	1 pt/month

TABLE 3
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

KEY: real estate business, operational requirements, trust account records, notification requirements
June 22, 2015 **61-2f-103(1)**
Notice of Continuation August 12, 2015 **61-2f-105**
61-2f-203(1)(e)
61-2f-206(3)
61-2f-206(4)(a)
61-2f-306
61-2f-307

R251. Corrections, Administration.
R251-110. Sex Offender Registration Program.
R251-110-1. Authority and Purpose.

(1) This rule is authorized under Sections 63G-3-201, 64-13-10, and 77-27-21.5, of the Utah Code.

(2) The purpose of the rule is to define the registrant requirement and process for obtaining sex offender registration information.

R251-110-2. Definitions.

(1) As used in this section:

(a) "Department" means Utah Department of Corrections;

(b) "registrant" means any individual who is registered under UCA 77-27-21.5, of the Utah Code; and

(c) "Sex Offender Registration Unit" means the unit of the Department assigned to manage the state's sex offender registration program, sex offender information files and disseminate information on sex offenders.

R251-110-3. Registrant Requirements.

(1) A sex offender as defined under Section 77-27-21.5, of the Utah Code, shall adhere to the provisions in stated code.

(2) Registrants shall sign the Utah Sex Offender Registration Form and the Sex Offender Address Form upon each request.

R251-110-4. Public Access to Sex Offender Registry.

(1) If members of the public do not have access to the sex offender registry website, they may request sex offender registration information from the Department's Sex Offender Registration Unit.

(a) Requests may be in writing with a return address and telephone number.

(b) Requests shall be sent to the Utah Department of Corrections, Sex Offender Registration Unit, 14717 S. Minuteman Drive, Draper, Utah 84020.

(c) If a requestor changes his residence after having submitted a request, but prior to receiving a response from the Department, it is the requestor's obligation to file another request with a current return address and telephone number.

(d) Members of the public may request information by telephone.

R251-110-5. Instructions for Use of the Information.

(1) Information compiled for this registry may not be used to harass or threaten sex offenders or their families.

(2) Harassment, stalking, or threats are prohibited and doing so may violate Utah criminal law.

KEY: sex crimes, notification
March 21, 2003 64-13-10
Notice of Continuation August 21, 2015 77-27-21.5

R251. Corrections, Administration.
R251-303. Offenders' Use of Telephones.
R251-303-1. Authority and Purpose.

(1) This rule is authorized by Sections 63G-3-201 and 64-13-10, of the Utah Code, which allows the Department to adopt standards and rules in accordance with its responsibilities.

(2) The purpose of this rule is to provide the Department's policy and procedures governing offenders' access to and use of telephones.

R251-303-2. Definitions.

(1) "Center" means community correctional centers; halfway houses.

(2) "Offender" means any person under the jurisdiction of the Department; including inmates, parolees, probationers, and persons in halfway houses or other non-secure facilities.

R251-303-3. Standards and Procedures.

It is the policy of the Department that in order to ensure Center telephones are used for authorized purposes, staff may listen to the offender's conversation, except calls made to legal counsel.

KEY: corrections, halfway houses
1991 64-13-10
Notice of Continuation August 24, 2015

R270. Crime Victim Reparations, Administration.
R270-1. Award and Reparation Standards.
R270-1-1. Authorization and Purpose.

As provided in Section 63M-7-506 the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

R270-1-2. Funeral and Burial Award.

A. Pursuant to Subsection 63M-7-511(4)(f), total award for funeral and burial expenses is $7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.

B. Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the $7,000.

C. Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:

1. Three days in-state
2. Five days out-of-state

D. When a victim dies leaving no identifying information, claims made by a provider cannot be considered.

R270-1-3. Negligent Homicide and Hit and Run Claims.

A. Negligent homicide claims shall be considered criminally injurious conduct as defined in Subsection 63M-7-502(9).

B. Pursuant to Subsection 63M-7-502(9)(a), criminally injurious conduct shall not include victims of hit and run crimes.

R270-1-4. Counseling Awards.

A. Pursuant to Subsections 63M-7-502(21) and 63M-7-511(4)(c), out-patient mental health counseling awards are subject to limitations as follows:

1. The reparation officer shall approve a standardized treatment plan.

2. The cost of initial evaluation and testing may not exceed $300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

3. Primary victims of a crime shall be eligible for the lesser of 25 aggregate individual and/or group counseling sessions or $2,500 maximum mental health counseling award.

(a) Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.

4. Secondary victims of a crime shall be eligible for the lesser of 15 aggregate individual and/or group counseling sessions or $1,250 maximum mental health counseling award.

5. Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider when it appears likely that the maximum award will be reached.

6. Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

7. In-patient hospitalization shall only be considered when the treatment has been recommended by a licensed therapist in life-threatening situations. A direct relationship to the crime needs to be established. Acute in-patient hospitalization shall not exceed $600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient hospitalization. All other secondary victims of other crime types are excluded.

8. Residential and day treatment shall only be considered when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. A direct relationship to the crime needs to be established. Residential treatment shall not exceed $300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. All residential clients shall receive routine assessments from a psychiatrist and/or APRN at least once a week for medication management. Day treatment shall not exceed $200 per day and will be capped at $10,000. These charges will be considered payment in full to the provider. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for residential and day treatment. All other secondary victims of other crime types are excluded.

9. Wilderness programs shall not be covered as an appropriate treatment modality when considering inpatient hospitalization, residential or day treatment.

10. Child sexual abuse victims under the age of 13 who become perpetrators shall only be considered for mental health treatment awards directly related to the victimization. Perpetrators age 13 and over who have been child sexual abuse victims shall not be eligible for compensation. The CVRA Board or contracting agency for managed mental health care shall help establish a reasonable percentage regarding victimization treatment for inpatient, residential and day treatment. Out-patient claims shall be determined by the Reparation Officer on a case by case basis upon review of the mental health treatment plan.

11. Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the State of Utah Department of Commerce, Division of Professional and Occupational Licensing, working under the supervision of a supervisor approved by the Division. Student interns otherwise eligible under 58-1-307(1)(b) Exceptions from licensure, and/or the institution/facility/agency responsible for the supervision of the student, shall not be eligible for payment under this rule for counseling services provided by the student.

12. Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

13. The following maximum amounts shall be payable for mental health counseling:

(a) up to $130 per hour for individual and family therapy performed by licensed psychiatrists, and up to $65 per hour for group therapy;

(b) up to $90 per hour for individual and family therapy performed by licensed psychologists and up to $45 per hour for group therapy;

(c) up to $70 per hour for individual and family therapy performed by a licensed master's level therapist or an Advanced Practice Registered Nurse, and up to $35 per hour for group therapy. These rates shall also apply to therapists working towards a license and supervised by a licensed therapist;

(d) The above-mentioned rates shall apply to individuals performing treatment, and not those supervising treatment.

14. Chemical dependency specific treatment will not be compensated unless the Reparation Officer determines that it is directly related to the crime. The CVRA Board may review

extenuating circumstance cases.

R270-1-5. Attorney Fees.

Pursuant to Subsection 63M-7-524(2) attorney fees shall be made within the reparation award and not in addition to the award. If an award is paid in a lump sum, the attorney's fee shall not exceed 15% of the total award; if payments are awarded on an ongoing basis, attorney fees will be paid when warrants are generated but not to exceed 15%. When appeal hearing denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

R270-1-6. Reparation Awards.

Pursuant to Section 63M-7-503, reparation awards can be made to victims of violent crime where restitution has been ordered by the court but appears unlikely the restitution can be paid within a reasonable time period. However, notification of the award will be sent to the courts, prosecuting attorneys, Board of Pardons or probation and parole counselors indicating any restitution monies collected up to the amount of the award will be forwarded to the Crime Victim Reparations Trust Fund.

R270-1-7. Abortion.

Expenses for an abortion that is permitted pursuant to Sections 76-7-301 through 76-7-331 shall be eligible for a reparation award as long as all the requirements of Section 63M-7-511 have been met.

R270-1-8. Emergency Awards.

Pursuant to Section 63M-7-522, emergency awards up to $1000 can be granted. No time limit is required for filing an emergency claim. Processing of emergency claims is three to five days.

R270-1-9. Loss of Earnings.

A. Pursuant to Subsection 63M-7-511(4)(d), the 66-2/3% of the person's weekly salary or wages is calculated on gross earnings.

B. Loss of earnings for primary and secondary victims may be reimbursed for up to a maximum of twelve (12) weeks work loss, at an amount not to exceed the maximum allowed per week by Worker's Compensation guidelines in effect at the time of work loss. The Crime Victim Reparations and Assistance Board may review extenuating circumstances on loss of earnings claims for the purpose of consideration and authorization of extensions beyond set limits.

R270-1-10. Moving, Transportation Expenses.

A. Pursuant to Subsection 63M-7-511(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to $1,000. Board approval is needed where extenuating circumstances exist.

B. Transportation expenses up to $1000 are allowed for crime-related travel including, but not limited to, participation in court hearings and parole hearings as well as medical or mental health visits for primary and secondary victims. The Board may approve travel expenses in excess of $1000 where extenuating circumstances exist.

R270-1-11. Collateral Source.

A. Crime Victim Reparations Trust Fund monies shall be used before State Social Services contract monies when considering out-of-pocket expenses in child sexual abuse cases, if the individuals qualify as victims. If the victim qualifies for Medicaid, the contract monies should be used first.

B. Crime Victim Reparations Trust Fund monies shall be used before the Utah Medical Assistance Program funds when considering allowable benefits for victims of violent crime.

R270-1-12. Record Retention.

A. Pursuant to Section 63M-7-501, retention of Crime Victim Reparations annual report and crime victim case files shall be as follows:

1. Annual reports and other statistical information shall be retained in office for a period of three years and then transferred to State Archives.

2. Crime victim case files shall be retained in office as needed for administrative use. After closure or denial of a case file, case file shall be retained in office for one year and then transferred to State Archives. Case files will be retained in the State Records Center for eleven years and then destroyed.

R270-1-13. Awards.

A. Pursuant to Section 63M-7-521, when billing from the providers exceeds the maximum allowed, the Reparation Officer shall pay the bills by the date of service. The Reparation Officer shall solicit input from the victim when making this determination. When the services and the billings have occurred at the same time, the Reparation Officer shall determine payment on a percentage basis.

R270-1-14. Essential Personal Property.

A. Pursuant to Subsection 63M-7-511(4)(h), essential personal property covers all personal articles necessary and essential for the health and safety of the victim.

B. The Reparation Officer may allow up to $5000 for medically necessary items such as eyeglasses, hearing aids, and wheelchairs. The board may approve expenses for medically necessary items in excess of $5000 where extenuating circumstances exist.

C. The Reparation Officer may allow up to $1500 for essential personal property not included in Subsection (B) such as burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. The board may approve expenses for essential personal property in excess of $1500 where extenuating circumstances exist.

R270-1-15. Subrogation.

A. Pursuant to Section 63M-7-519, subrogation monies collected from the perpetrator, insurance, etc., will be placed in the Crime Victim Reparations Trust Fund and will not be credited toward a particular victim or claimant award amount.

B. Pursuant to Subsection 63M-7-519(2)(a) and (b), in such instances where a settlement against a third party appears imminent, the Director may reduce by up to 33% the lesser of; (a) the amount paid by the state; or (b) the amount of the settlement. Reduction in excess of 33% shall be determined by the CVRA Board with the concurrence of the Director.

R270-1-16. Unjust Enrichment.

A. Pursuant to Subsection 63M-7-510(1)(d), the following criteria shall be used when considering claims involving possible unjust enrichment of an offender:

1. Unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award.

2. Awards shall not be denied on the basis that the offender would be unjustly enriched, if the victim cooperates with investigation and prosecution of the crime and does what is possible to prevent access by the offender to substantial compensation.

3. Payment to third party providers shall be made to prevent monies intended for victim expenses be used by or on behalf of the offender.

4. Collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender shall be examined. However, the victim shall not be penalized for failure of an offender to meet legal obligations to

pay for the cost of the victim's recovery.

5. Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

R270-1-17. Prescription or Over-the-Counter Medications.

A. Reimbursement of prescription or over-the-counter medications used in conjunction with mental health therapy shall be considered only for the duration of an approved Treatment Plan.

B. Reimbursement of prescription or over-the-counter medications used in conjunction with medical treatment shall be considered only during the course of treatment by the physician.

C. Medication management rates shall be limited to a maximum of $62.50 per thirty minute session.

R270-1-18. Peer Review Committee.

A. A volunteer Peer Review Committee may be established to review issues and/or provide input to Crime Victim Reparations staff on out-patient mental health counseling claims. The composition, duties, and responsibilities of this Committee shall be defined by the Crime Victim Reparations and Assistance Board by written internal policy and procedure.

R270-1-19. Medical Awards.

A. Pursuant to Subsection 63M-7-511(4)(b), medical awards are subject to limitations as follows:

1. All medical costs must be related directly to the victimization and all treatment must be considered usual and customary.

2. The reparation officer reserves the right to audit any and all billings associated with medical care.

3. The reparation officer will not pay any interest, finance, or collection fees as part of the award.

4.a. If the claimant has no medical insurance or other collateral source for payment of the victim's medical bill, Crime Victim Reparations shall pay 70% of billed charges for eligible medical bills.

b. If the claimant has medical insurance or another collateral source for payment of the victim's medical bills, Crime Victim Reparations shall pay the portion of the eligible medical bills that the claimant is obligated to pay pursuant to the insurance agreement.

c. This subsection (4) does not apply to expenses governed by R270-1-4 or R270-1-22.

5. This rule supersedes any other agreements regarding payment of medical bills by Crime Victim Reparations.

6. Child endangerment examinations for children that have been exposed to drugs shall be paid for when the health and safety of the child is at risk and no other collateral source is available. The cost of the exam needs to be an expense incurred by the victim. The writing of evidentiary reports and any form of lab testing shall not be covered as part of the examination.

R270-1-20. Misconduct.

Pursuant to Subsections 63M-7-502(22) and 63M-7-512(1)(b) misconduct shall be considered conduct which contributed to the victim's injury or death or conduct which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in misconduct, the CVR staff shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim or the ability of the victim to have reasonably avoided the incident upon which the claim is based. CVR staff shall not consider any behavior or action of any victim that is committed by the victim while under the duress or experience of threat, exploitation, coercion or any circumstance absent the victim's own willful desire to participate or any behavior or action committed or perceived to have been committed by the victim of any sex crime when determining whether the victim engaged in misconduct.

R270-1-21. Three Year Limitation.

Pursuant to Subsections 63M-7-506(1)(c) and 63M-7-525(2) a claim for benefits expires and no further payments will be made with regard to the claim after three years have elapsed from the date of application with CVR. Reparations Officers may extend claims that have been closed because of the Three Year Limitation rule if extenuating circumstances exist.

R270-1-22. Sexual Assault Forensic Examinations.

A. Pursuant to Subsections 63M-7-502(21) and 63M-7-511(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by CVR in the amount of up to $750.00 for a full examination which must include photo documentation. Pursuant to Section 63M-7-521.5, CVR may also pay for the cost of medication and/or pharmacological management and consultation provided for the purpose of obtaining free medications and 70% of the eligible hospital services and supplies. Payment to the hospital or other eligible facility for the rent or use of an examination room or space for the purpose of conducting a sexual assault forensic exam shall not exceed $350.00. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations:

1. A sexual assault forensic examination shall be reported by the health care provider who performs the examination to law enforcement.

2. Victims shall not be charged for sexual assault forensic examinations.

3. Victims shall not be required to participate in the criminal justice system or cooperate with law enforcement or prosecuting attorneys as a condition of being provided a sexual assault forensic examination or as a condition of payment being made pursuant to this rule.

4. The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations.

5. The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.

6. CVR may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault.

7. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider.

8. The application or billing for the sexual assault forensic examination must be submitted to CVR within one year of the examination.

9. The billing for the sexual assault forensic examination shall:

a. identify the victim by name, address, date of birth, Social Security number, telephone number, patient number;

b. indicate the claim is for a sexual assault forensic examination; and

c. itemize services and fees for services.

10. All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before Crime Victim Reparations Trust Fund monies are used.

Pursuant to Subsection 63M-7-513(5), the Director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source.

11. Evidence will be collected only with the permission of the victim or the legal guardian of the victim.

12. Restitution for the cost of the sexual assault forensic examination may be pursued by CVR.

13. Payment for sexual assault forensic examinations shall be considered for the following:

a. Fees for the collection of evidence, for forensic documentation only, to include:

i. history;

ii. physical; and

iii. collection of specimens and wet mount for sperm.

b. Emergency department services to include:

i. emergency room, clinic room or office room fee;

ii. cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease;

iii. serum blood test for pregnancy;

iv. morning after pill or high dose oral contraceptives for the prevention of pregnancy; and

v. treatment for the prevention of sexually transmitted disease up to four weeks.

14. The victim of a sexual assault that is requesting payment by CVR for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the CVR office.

R270-1-23. Loss of Support Awards.

A. Pursuant to Subsection 63M-7-511(4)(g), loss of support awards shall be covered on death claims only.

B. Except as provided in Subsection (C), loss of support awards are available only to minor children of the deceased victim. Payment of the award may be made to the parent or guardian of the minor child on behalf of the minor child.

C. The Crime Victim Reparations and Assistance Board may approve loss of support awards to persons who are not minor children, but were physically and financially dependent on the deceased victim.

R270-1-25. Secondary Victim.

Secondary victims who are not primary victims pursuant to Subsections 63M-7-502(33) and who are traumatically affected by criminally injurious conduct shall be eligible for compensation as prescribed by the CVRA Board. Secondary victims include only immediate family members (spouse, father, mother, stepparents, grandparents, child, brother, sister, stepchild, stepbrother, stepsister, or legal guardian) or other persons who the Reparation Officer reasonably determines bears an equally significant relationship to the primary victim.

R270-1-26. Victim Services.

A. Pursuant to Subsection 63M-7-506(1)(i), there is established a Victim Services Grant Program.

B. For purposes of Subsection 63M-7-506(1)(i), "sufficient reserve" means enough funds to sustain the operation of the Crime Victim Reparations program, including administrative costs and reparations payments, for one year.

C. The CVRA Board shall annually determine whether a sufficient reserve exists in the Crime Victim Reparation Fund. If a sufficient reserve does not exist, the CVRA Board shall not authorize the Victim Services Grant Program for that year. If a sufficient reserve does exist, the CVRA Board may authorize the Victim Services Grant Program for that year.

D. When the Victim Services Grant Program is authorized, the CVRA Board:

1. shall determine the amount available for the Victim Services Grant Program for that year;

2. shall announce the availability of grant funds through a request for proposals or other similar competitive process approved by the Board; and

3. may establish funding priorities and shall include any priorities in the announcement of grant funds.

E. Requests for funding shall be submitted on a form approved by the CVRA Board.

F. The CVRA Board shall establish a process to review requests for funding and shall make final decisions regarding the approval, modification, or denial of requests for funding. The CVRA Board may award less than the amount determined in Subsection (D)(1). The decisions of the CVRA Board may not be appealed.

G. All awards shall be for a period of not more than one year. An award by the CVRA Board shall not constitute a commitment for funding in future years. The CVRA Board may limit funding for ongoing projects.

H. Award recipients shall submit quarterly reports to the Crime Victim Reparations and Assistance Board on forms established by the Director. The CVR staff shall monitor all victim services grants and provide regular reports to the CVRA Board.

R270-1-27. Nontraditional Cultural Services.

Cultural services rendered in accordance with recognized spiritual or religious methods of healing, legally available in the state of Utah, may be considered for payment. Since a reasonable and customary schedule of charges has not been established, the reparation officer may require the following: a written itemized description of each procedure, function and/or activity performed and an explanation of its benefit to the victim; the location and time involved to perform such services; and a summary of qualifications and experience which allows the service provider to perform the services. Services shall be requested in lieu of traditional treatment methods. Awards shall be deducted from the claimant's outpatient mental health award and shall remain within the allowed limits set upon that benefit. The fund will not pay for intoxicating or psychotropic substances unless prescribed by a medical practitioner licensed to do so. Claim will be denied if no healing benefit can be identified.

KEY: victim compensation, victims of crimes
August 21, 2015 63M-7-501 et seq.
Notice of Continuation June 29, 2011

R277. Education, Administration.
R277-99. Definitions for Utah State Board of Education (Board) Rules.
R277-99. Authority and Purpose.

(1) This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board and by Subsection 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

(2) The purpose of this rule is to provide definitions that are used in the Board rules beginning with R277.

R277-99-2. Definitions.

(1) "Accreditation" means the formal process for internal and external review and approval under the standards of an accrediting entity adopted by the Board.

(2) "Audit" means an independent appraisal activity established by the Board as a control system to examine and evaluate the adequacy and effectiveness of internal control systems within an agency.

(3) "Board" means the State Board of Education.

(4) "Charter school" means a school established as a charter school by a charter school authorizer under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, and rule.

(5) "District school" means a public school under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

(6) "Educator" means an individual licensed under Section 53A-6-104 and who meets the requirements of R277-501.

(7) "Individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 (2004), and rule.

(8) "Individuals with Disabilities Education Act" or "IDEA," 20 U.S.C. Section 1400 et seq. (2004), is a four part (A-D) piece of federal legislation that ensures a student with a disability is provided with a Free Appropriate Public Education (FAPE) that is tailored to the student's individual needs.

(9)(a) "LEA" or "local education agency" means a school district or charter school.

(b) For purposes of certain rules, "LEA" or "local education agency" may include the Utah Schools for the Deaf and the Blind (USDB) if indicated in the specific rule.

(10)(a) "LEA governing board" means:

(i) for a school district, a local school board; and

(ii) for a charter school, a charter school governing board.

(b) For purposes of certain rules, "LEA governing board" may include the State Board of Education as the governing board for the Utah Schools for the Deaf and the Blind if indicated in the specific rule.

(11) "Parent" means a parent or guardian who has established residency of a child under Sections 53A-2-201, 53A-2-202, or 53A-2-207 or another applicable Utah guardianship provision.

(12) "SEOP/Plan for College and Career Readiness" means a student education occupation plan for college and career readiness that is a developmentally organized intervention process that includes:

(a) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(b) all Board, local board and local charter board graduation requirements;

(c) evidence of parent or guardian, student, and school representative involvement annually;

(d) attainment of approved workplace skill competencies, including job placement when appropriate; and

(e) identification of post secondary goals and approved sequence of courses.

(13) "State Charter School Board" or "SCSB" means the State Charter School Board created in Section 53A-1a-501.5.

(14) "Superintendent" mean the State Superintendent of Public Instruction or the Superintendent's designee.

(15) "USDB" means the Utah Schools for the Deaf and the Blind.

(16) "USOE" means the Utah State Office of Education.

(17) "USOR" means the Utah State Office of Rehabilitation.

KEY: Board of Education, rules, definitions
August 26, 2015 **Art X Sec 3**
53A-1-401(3)

R277. Education, Administration.
R277-107. Educational Services Outside of Educator's Regular Employment.
R277-107-1. Definitions.

A. "Activity sponsor" means a private or public individual or entity that employs an employee in any program in which public school students participate.

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

C. "Extracurricular activity" means an activity for students recognized or sanctioned by an LEA which may supplement or compliment, but is not part of, the LEA's required program or regular curriculum.

D. "LEA" or "local education agency" means a school district, charter school or, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

E. "Public education employee (employee)" means a person who is employed on a full-time, part-time, or contract basis by any LEA.

F(1) "Private, but public education-related activity" means any type of activity for which:

(a) a public education employee receives compensation; and

(b) the principle clients are students at the school where the employee works.

(2) "Private, but public education-related activity" may include:

(a) tutoring;
(b) lessons;
(c) clinics;
(d) camps; or
(e) travel opportunities.

R277-107-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402.5 which directs the Board to make rules that establish basic ethical conduct standards for employees who provide public education-related services or activities outside of their regular employment, and 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide direction and parameters for employees who provide or participate in public education-related services or activities outside of their regular public education employment.

C. The Board recognizes that public school educators have expertise and training in various subjects and skills and should have the opportunity to enrich the community with their skills and expertise while still respecting the unique public trust that public educators have.

R277-107-3. LEA Responsibility.

An LEA may have policies providing for the following, consistent with the provisions of this R277-107 and the law:

A. sponsorship or specific non-sponsorship of extracurricular activities; or

B. opportunities for students.

R277-107-4. LEA Relationship to Activities Involving Educators.

A(1) An LEA may sponsor extracurricular activities or opportunities for students.

(2) Extracurricular activities are subject to Utah's school fee laws and rules, fee waivers, procurement and all other applicable laws and rules.

B. An employee that participates in a private, but public education-related activity, is subject to the following:

(1) the employee's participation in the activity shall be separate and distinguishable from the employee's public employment as required by this rule;

(2) the employee may not, in promoting the activity:

(a) contact students at the public schools, except as permitted by this rule; or

(b) use education records, resources, or information obtained through the employee's public employment unless the records, resources, or information are readily available to the general public;

(3) the employee may not use school time to discuss, promote, or prepare for:

(a) a private activity; or

(b) a private, but public education-related activity;

(4) the employee may:

(a) offer private, but public education-related services, programs or activities to students provided that they are not advertised or promoted by the employee during school time;

(b) discuss a private, but public education-related activity with students or parents outside of the classroom and the regular school day;

(c) use student directories or online resources which are available to the general public; and

(d) use student or school publications in which commercial advertising is allowed, to advertise and promote the activity.

C. Credit and participation in a public school program or activity may not be conditioned on a student's participation in such activities as clinics, camps, private programs, or travel activities not equally and freely available to all students.

D. No employee may state or imply to any person that participation in a regular school activity or program is conditioned on participation in a private activity.

E. No provision of this rule shall preclude a student from requesting or petitioning a teacher or school for approval of credit based on an extracurricular educational experience consistent with LEA policy.

R277-107-5. Advertising.

A. An employee may purchase advertising space to advertise an activity or service in a publication, whether or not sponsored by the public schools, that accepts paid or community advertising.

B. The advertisement may identify the activity, participants, and leaders or service providers by name, provide non-school contact information, and provide details of the employee's employment experience and qualification.

C. Posters or brochures may be posted or distributed in the same manner as could be done by a member of the general public, advertising an employee's services, consistent with LEA policy.

D. Unless an activity is sponsored by the LEA, the advertisement shall state clearly and distinctly that the activity is NOT sponsored by the LEA.

E. The name of an LEA may not be used in the advertisement except as the LEA's name may relate to the employee's employment history or if school facilities have been rented for the activity.

F. If the name of the employee offering the service or participating in the activity is stated in any advertisement sent to the employee's students, or is posted, distributed, or otherwise made available in the employee's school, the advertisement shall state that the activity is not school sponsored.

R277-107-6. Public Education Employees.

A. Public education employees shall comply with Title 63G, Chapter 6a, Utah Procurement Code.

B. Public education employees shall comply with Title 67, Chapter 16, Public Officers' and Employees' Ethics Act.

C. Except as provided in R277-107-6D, consistent with Section 63G-6a-2404 and Title 67, Chapter 16, Public Officers'

and Employees' Ethics Act, a public education employee may not solicit or accept gifts, incentives, honoraria, or stipends from private sources:

(1) for the employee's personal or family use;

(2) in exchange or payment for advertising placed by the employee; or

(3) in exchange or payment for securing agreements, contracts or purchases between private company and public education employer, programs or teams.

D. A public education employee may accept a gift, incentive, honoraria, or stipend from a private source if the gift, incentive, honoraria, or stipend is:

(1)(a) of nominal value and is for birthdays, holidays, or teacher appreciation occasions; or

(b) a public award in recognition of public service; and

(2) consistent with school or LEA policies and the Utah Public Employees Ethics Act.

E. A public education employee who holds a Utah educator license shall be subject to license discipline (including license suspension or revocation) for violation of this R277-107 and applicable provisions of Utah law.

R277-107-7. Public Education Employee/Sponsor Agreements or Contracts.

A. An agreement between an employee and an activity sponsor shall be signed by the employee and include a statement that reads substantially: I understand that this activity is not sponsored by an LEA, that my responsibilities to the activity sponsor are outside the scope of and unrelated to any public duties or responsibilities I may have as a public education employee, and I agree to comply with laws and rules of the state and policies regarding my advertising and participation.

B. An employee shall provide the LEA business administrator, superintendent, or charter school director with a signed copy of all contracts between the employee and a private activity sponsor.

C. An LEA shall maintain a copy of a contract described in R277-107-7B in the employee's personnel file.

KEY: school personnel

August 26, 2015	**Art X Sec 3**
Notice of Continuation June 25, 2015	**53A-1-402.5**
	53A-1-401(3)

R277. Education, Administration.
R277-410. Accreditation of Schools.
R277-410-1. Definitions.

A. "Accreditation" means the formal process for internal and external review and approval under the Standards for the Northwest Accreditation Commission, a division of Advance Education Inc., (AdvancED).

B. "AdvancED" means the provider of accreditation services based on standards, student performance and stakeholder involvement and nonprofit resource offering school improvement and accreditation services to education providers.

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

D. "Elementary school" for the purpose of this rule means grades no higher than grade 6.

E. "Junior high school" for purposes of this rule means grades 7 through 9.

F. "Middle school" for the purpose of this rule means grades no lower than grade 5 and no higher than grade 8 in any combination.

G. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member. Northwest is an accreditation division of AdvancED.

H. "Secondary school" for the purpose of this rule means a school that includes grades 9-12 that offers credits toward high school graduation or diplomas or both in whatever kind of school the grade levels exist.

I. "State Council" means the State Accreditation Council, which is composed of 15- 20 public school administrators, school district personnel, private and special purpose school representatives, and USOE personnel. The members are selected to provide statewide representation and volunteer their time and service.

J. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

R277-410-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board, by Subsection 53A-1-402(1)(c)(i), which directs the Board to adopt rules for school accreditation, and Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify accreditation procedures and responsibility for public schools for which accreditation is required or sought voluntarily and for nonpublic schools which voluntarily request AdvancED Northwest accreditation.

R277-410-3. Accreditation of Public Schools.

A. The Superintendent has responsibility to facilitate accreditation by the Board for Utah public schools. The Board is not responsible for the accreditation of nonpublic schools, including private, parochial, or other independent schools.

B. A Utah public secondary school, as defined in R277-410-1H and consistent with R277-481-3A(2), shall be a member of AdvancED Northwest and be accredited by AdvancED Northwest.

C. A Utah public elementary or middle school that desires accreditation shall be a member of AdvancED Northwest and meet the requirements of R277-410-5 and R277-410-6. AdvancED Northwest accreditation is optional for Utah elementary and middle schools.

D. An AdvancED Northwest accredited school shall complete and file reports in accordance with AdvancED Northwest protocols.

E. If a school includes grade levels for which accreditation is both mandatory and optional, the school shall be accredited in its entirety.

R277-410-4. Accreditation Status; Reports.

A. The Board accepts the AdvancED Northwest Standards for Quality Schools as the basis for its accreditation standards for school accreditation.

B. A Utah public school seeking accreditation shall meet additional specific Utah assurances in addition to required AdvancED Northwest standards.

C. A school shall complete reports as required by AdvancED Northwest and submit the report to the appropriate recipients.

D. A school shall have a complete school evaluation and site visit at least once every five years to maintain its accreditation.

E. The Board or Superintendent may require on-site visits as often as necessary when the Superintendent receives notice of accreditation problems, as determined by the Superintendent, AdvancED Northwest, or its State Council.

F. The school's accreditation status is recommended by the State Council following a review of the report of the school's External Review. Final approval of the status is determined by the AdvancED Commission and approved by the Board.

R277-410-5. Accreditation Procedures.

A. The evaluation of secondary schools for the purpose of accreditation is a cooperative activity in which the school, the school district, the Superintendent, and AdvancED Northwest share responsibilities. A school's internal review, development, and implementation of a school improvement plan are crucial steps toward accreditation.

B. A school seeking AdvancED Northwest accreditation for the first time shall submit a membership application to AdvancED. The accepted application shall be forwarded to the AdvancED Managing Office Director.

(1) If a school's application for membership is accepted by AdvancED, the Utah AdvancED Managing Office shall schedule an on-site Readiness Review. Upon successful completion of the Readiness Review, the school may become a candidate for accreditation. Candidate schools are not accredited until such status is officially granted.

(2) A school may remain in candidacy for no more than two years prior to hosting an External Review Team accreditation visit. The External Review Team shall be staffed with at least two qualified educators verifying a school's compliance with accreditation standards. Following approval by both the Utah AdvancED Council and the AdvancED Commission, the school shall receive accreditation. A school may request an External Review accreditation visit prior to year two if the school has sufficient student and financial data.

C. AdvancED Northwest accredited schools shall be subject to:

(1) compliance with AdvancED Northwest membership requirements;

(2) satisfactory review by the AdvancED State Council, AdvancED Northwest Commission and Board approval;

(3) a site visit at least every five years by an external review team to review the internal review materials, visit classes, and talk with staff and students as follows:

(a) The external review team shall present its finding in the form of a written report in a timely manner. The report shall be provided to the school, school district superintendent or local charter board chair, and other appropriate parties.

(b) AdvancED staff shall review the external review team report, and consult with the Utah AdvancED Council. The AdvancED Commission shall grant accreditation status if appropriate.

D. Following review and acceptance, accreditation external review team reports are public information and are available upon request.

R277-410-6. Elementary School Accreditation.

A. Elementary schools desiring accreditation shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.

B. The accreditation of Utah elementary schools is optional; interested elementary schools may apply to AdvancED Northwest for accreditation.

C. Accreditation shall take place under the direction of AdvancED Northwest.

R277-410-7. Junior High and Middle School Accreditation.

A. Junior high and middle schools desiring accreditation shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.

B. The accreditation of Utah middle schools is optional; interested middle schools may apply to AdvancED Northwest for accreditation.

C. Public junior high and middle schools that include grade 9 shall be members of AdvancED Northwest and be visited and assigned status by AdvancED Northwest.

D. The AdvancED Northwest accreditation standards provided in this rule are applicable to a junior high or middle school in the school's entirety if the school includes grade 9 consistent with R277-410-6C.

R277-410-8. Board Accreditation Standards.

A. Board accreditation standards include AdvancED Standards for Quality Schools and Utah-specific requirements. Each standard requires the school to respond to a series of indicator statements and provide evidence of compliance as directed.

B. Utah-specific assurances include essential information sought from schools to demonstrate alignment with Utah law and Board rules. Utah-specific assurances are available from the USOE Teaching and Learning Section.

R277-410-9. Transfer or Acceptance of Credit.

A. Utah public schools shall accept transfer credits from accredited secondary schools consistent with R277-705-3.

B. Utah public schools may accept transfer credits from other credit sources consistent with R277-705-3.

KEY: accreditation, public schools, nonpublic schools
August 26, 2015 **Art X Sec 3**
Notice of Continuation July 1, 2015 **53A-1-402(1)(c)**
53A-1-401(3)

R277. Education, Administration.
R277-444. Distribution of Funds to Arts and Science Organizations.
R277-444-1. Definitions.

A. "Arts organization (organization)" means a non-profit professional artistic organization that provides artistic (dance, music, drama, art) services, performances or instruction to the Utah community.

B. "Arts and science subsidy program" means groups that have participated in the RFP program and have been determined by the Board to be providing valuable services in the schools. They do not qualify as professional outreach programs.

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

D. "Cost effectiveness" means maximization of the educational potential of the resources available through the professional organization, not using POPS funding for costs that would be expended necessarily for the maintenance and operation of the organization.

E. "Educational soundness" means that learning activities or programs:

(1) are designed for the community and grade level being served, including suggested preparatory activities and Core-relevant follow-up activities;

(2) feature literal interaction of students and teachers with professional artists and scientists;

(3) focus on those specific Life Skills and Arts or Science Core Curricula concepts and skills; and

(4) show continuous improvement of services guided by analysis of evaluative tools.

F. "Hands-on activities" means activities that include active involvement of students with presenters, ideally with materials provided by the organization.

G. "Non-profit organization" means an organization no part of the income of which, is distributable to its members, directors or officers; a corporation organized for other than profit-making purposes.

H. "Professional excellence" means the organization:

(1) has been juried or reviewed, based on criteria for artistic or scientific excellence, by a panel of recognized and qualified critics in the appropriate discipline;

(2) has received recognitions of excellence through an award, a prize, a grant, a commission, an invitation to participate in a recognized series of presentations in a well-known venue; and

(3) includes a recognized and qualified professional in the appropriate field who has created an artistic or scientific project or composition specifically for the organization to present; or

(4) any combination of criteria.

I. "Professional outreach programs (POPS) in the schools" means those established arts and science organizations which received line item funding directly from the Utah State Legislature prior to 2004. These organizations have demonstrated the capacity to mobilize programmatic resources and focus them systematically in improving teaching and learning in schools statewide.

G. "Request for proposal (RFP)" means a competitive application process used to identify programs that best meet requirements established by the Board.

H. "RFP program" means arts and science organizations that receive one-time funding through application to the USOE.

I. "School visits" means performances, lecture demonstrations/presentations, in-depth instructional workshops, residencies, side-by-side mentoring, and exhibit tours by professional arts and science groups in the community.

J. "Science organization (organization)" means a non-profit professional science organization that provides science-related services, performances or instruction to the Utah community.

K. "State Core Curriculum" means those standards of learning that are essential for all Utah students, as well as the ideas, concepts, and skills that provide a foundation on which subsequent learning may be built, as established by the Board.

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

R277-444-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of the arts and science program is to provide opportunities for students to develop and use the knowledge, skills, and appreciation defined in the arts and science Core curricula through in-depth school instructional services, performances or presentations in school and theatres, or arts or science museum tours.

C. This rule also provides criteria for the distribution of funds appropriated by the Utah Legislature for this program.

R277-444-3. Criteria for Eligibility, Applications, and Funding for POPS Organizations.

A. Established professional outreach program in the schools (POPS) organizations shall be eligible for funding under the POPS program applications and funding criteria and not eligible to apply for the RFP or arts and science subsidy programs.

B. Documentation of an organization's non-profit status, shall be provided in the annual evaluation report described in R277-444-6.

C. Every four years, beginning in July 1998, all POPS organizations shall reapply to the USOE to reestablish their continuation and amount of funding. Re-application materials shall be provided by the USOE.

D. When there are changes in the program funding from the Utah State Legislature, allocations shall be at the discretion of the Board.

E. Funds shall be distributed annually beginning in August.

R277-444-4. Criteria for Eligibility, Applications, and Funding for RFP Organizations.

A. Non-profit professional arts and science organizations that have existed for at least three years prior to application with a track record of proven fiscal responsibility, of demonstrated excellence in their discipline, and with the ability to share their discipline creatively and effectively in educational settings shall be eligible to apply for RFP funding.

B. Documentation of an organization's non-profit status, professional excellence or educational soundness may be required by the USOE prior to receipt of application from these organizations.

C. RFP organizations that can demonstrate successful participation in the RFP Program for three years, have an education staff, and the capacity to reach out statewide may apply to the Board to become a POPS organization.

D. Organizations funded through an RFP process shall submit annual applications to the USOE. Applications shall be provided by the USOE.

E. The designated USOE specialist(s) shall make final funding recommendations following a review of applications by designated community representatives to the Board by August 31 of the school year in which the money is available.

F. Application for eligible organizations to become a POPS organization is possible every year through the following process:

(1) Organizations submit a letter of intent and a master plan for servicing the schools to the designated USOE specialist(s) by the first day of October to determine eligibility

and accordingly respond with an invitation to meet and complete the application and evaluation process required of all established POPS and arts and science subsidy organizations in their re-application procedure every four years.

(2) The completed application, original letter of intent, and recommendations based on the evaluation are submitted to the Board through the designated USOE specialist(s) by June 1.

(3) The Board or designee meets with the designated USOE specialist(s) to determine whether or not to approve the applicant as a candidate to become a POPS organization.

(4) The Board shall request new money for a new POPS organization from the Utah State Legislature if the application is approved, prior to providing funds to the newly approved organization.

(5) The same procedure would be followed for organizations desiring to apply to be arts and science subsidy organizations, and to re-apply to establish their funding level and standing as an arts and science subsidy group.

(6) Arts and science organizations meeting the arts and science subsidy criteria may apply for the arts and science subsidy program, but may not apply for RFP funding.

G. When there are changes in the program funding from the Utah State Legislature, allocations shall be at the discretion of the Board.

H. Funds shall be distributed annually beginning in August.

R277-444-5. Process for Continued Funding of Arts and Science Subsidy Program Organizations.

A. Scientists, artists, or entities hired or sponsored for services in the schools, directly or indirectly through coordinating organizations, shall be subject to the same review and approval for funding process.

B. Every four years, beginning in 2010, all arts and science subsidy program organizations shall reapply to the USOE to reestablish the continuation and amount of funding. Re-application materials shall be provided by the USOE.

C. When there are changes in the program funding from the Utah State Legislature, annual allocations shall be at the discretion of the Board.

D. Funds shall be distributed annually beginning in August.

R277-444-6. Criteria for Evaluation and Accountability of Funding.

A. Arts and science organizations qualifying for POPS or RFP funding may not charge schools for services funded under those programs.

B. Organizations may be visited by USOE staff prior to funding or at school presentations during the funding cycle to evaluate the effectiveness and preparation of the organization.

C. Organizations that receive arts and science funding shall submit annual evaluation reports to the USOE by July 1.

D. The year-end report shall include:

(1) a budget expenditure report and income source report using a form provided by the USOE, including a report and accounting of fees charged, if any, to recipient schools, districts, or organizations; and

(2) record of the dates and places of all services rendered, the number of instruction and performance hours per district, school, and classroom service, as applicable, with the number of students and teachers served, including:

(a) documentation that all school districts and schools have been offered opportunities for participation with all organizations over a three year period consistent with the arts and science organizations' plans and to the extent possible; and

(b) documentation of collaboration with the USOE and school communities in planning visit preparation/follow up and content that focuses on the state Core curriculum; and

(c) arts or science and their contribution(s) to students' development of life skills; and

(3) a brief description of services provided by the organizations through the fine arts and science POPS, RFP, or arts and science subsidy programs, and if requested, copies of any and all materials developed; and

(4) a summary of organization's evaluation of:

(a) cost-effectiveness;

(b) procedural efficiency;

(c) collaborative practices;

(d) educational soundness;

(e) professional excellence; and

(f) the resultant goals, plans, or both, for continued evaluation and improvement.

E. The USOE may require additional evaluation or audit procedures from organizations to demonstrate use of funds consistent with the law and this rule.

F. Funding and levels of funding to POPS, RFP, and arts and science subsidy programs are continued at the discretion of the Board based on review of information collected in year-end reports.

R277-444-7. Variations or Waivers.

A. No deviations from the approved and funded arts or science proposals shall be permitted without prior approval from the designated USOE specialist(s) or designee.

B. The USOE may require requests for variations to be submitted in writing.

C. The nature and justification for any deviation or variation from the approved proposal shall be reported in the year-end report.

D. Any variation shall be consistent with law and the purposes of this rule.

KEY: arts, science, curricula
July 18, 2005 **Art X Sec 3**
Notice of Continuation August 13, 2015 **53A-1-401(3)**

R277. Education, Administration.
R277-477. Distribution of Funds from the Interest and Dividend Account and Administration of the School LAND Trust Program.
R277-477-1. Definitions.

A. "Approving Entity" means the school district, University, or other legally authorized entity that approves or rejects plans for a district or charter school.

B. "Board" means the Utah State Board of Education. The Board is the primary beneficiary representative and advocate for beneficiaries of the School Trust corpus and the School LAND Trust Program.

C. "Chartering Entity" means the school district, Board, university, or other entity authorized to charter a charter school.

D. "Charter trust land council" means a council comprised of a two person majority of elected parents or guardians of students attending the charter school and may include other members, as determined by the board of the charter school. The governing board of a charter school may serve as a charter trust land council if the board membership includes at least two more parents or guardians of students currently enrolled at the school than all other members combined consistent with Section 53A-16-101.5. If not, the board of the charter school shall develop a school policy governing the election of a charter trust land council. R277-491 does not apply to charter trust land councils.

E. "Councils" means school community councils and charter trust lands councils.

F. "Fall enrollment report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report from the previous year.

G. "Funds" means interest and dividend income as defined under Section 53A-16-101.5(2).

H. "Interest and Dividends Account" means a restricted account within the Uniform School Fund created under Section 53A-16-101 established to collect interest and dividends from the permanent State School Fund until the end of the fiscal year. The USOE distributes funds to school districts, charter schools and the USDB through the School LAND Trust Program at the beginning of the next fiscal year.

I. "Local board of education" means the locally-elected board designated in Section 53A-3-101 that makes decisions and directs the actions of local school districts, and which approves School LAND Trust plans for schools under the local board's authority.

J. "Most critical academic needs" for purposes of this rule means academic needs identified in an individual school's improvement plan developed consistent with Section 53A-1a-108.5 or identified in the school charter.

K. "Principal" means an administrator licensed as a principal in the state of Utah and employed in that capacity at a school. For the purposes of this rule, "principal" includes the director of a charter school. "Principal" also includes a specific designee of the principal.

L. "School Children's Trust Director" means the Director appointed by the Board under Section 53A-16-101.6 to assist the Board in fulfilling its duties as primary beneficiary representative for trust lands and funds.

M. "School community council" means the council organized at each school district public school as established in Section 53A-1a-108 and R277-491. The council includes the principal, school employee members and parent members. There shall be at least a two parent member majority.

N. "State Charter School Board (SCSB)" means the board designated under Section 53A-1a-501.5 that has responsibility for making recommendations regarding the welfare of charter schools to the Board.

O. "State Superintendent of Public Instruction (Superintendent)" means the individual appointed by the Board as provided for in Section 53A-1-301(1) to administer all programs assigned to the Board in accordance with the policies and the standards established by the Board.

P. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report of the school district, charter school, or USDB.

Q. "USDB" means the Utah Schools for the Deaf and the Blind.

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

R277-477-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by Section 53A-16-101.5(3)(c) which allows the Board to adopt rules regarding the time and manner in which the student count shall be made for allocation of school trust land funds, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) provide financial resources to public schools to enhance or improve student academic achievement and implement an academic component of the school improvement plan;

(2) involve parents and guardians of a school's students in decision making regarding the expenditure of School LAND Trust Program money allocated to the school;

(3) provide direction in the distribution from the Interest and Dividends Account created in Section 53A-16-101 and funded in Section 53A-16-101.5(2);

(4) provide for appropriate and adequate oversight of the expenditure and use of School LAND Trust monies by designated local boards of education, chartering entities, and the Board;

(5) provide for:

(a) appropriate and timely distribution of School LAND Trust funds;

(b) accountability of councils for notice to school community members and appropriate use of funds;

(c) independent oversight of the agencies managing school trust lands and the permanent State School Fund to ensure those trust assets are managed prudently, profitably, and in the best interest of the beneficiaries;

(d) representation, advocacy, and information on school trust lands and permanent State School Fund issues to all interested parties including: the School and Institutional Trust Lands Administration, the School and Institutional Trust Lands Board of Trustees, the School and Institutional Trust Fund Office, the School and Institutional Trust Fund Board of Trustees, the Legislature, the Utah Attorney General's office, school community councils, and the general public;

(e) compliance by councils with requirements in statute and Board rule; and

(f) allocation of the monies as provided in Section 53A-16-101.5(3)(c) based on student count.

(6) define the roles, duties, and responsibilities of the School Children's Trust Director within the USOE.

R277-477-3. Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans.

A. All public schools receiving School LAND Trust Program funds shall have a council as required by Sections 53A-1a-108 and R277-491, a charter school trust lands council as required in 53A-16-101.5(7), or have a local board approved exemption under R277-491-3E. District public schools and charter schools shall submit a Principal Assurance Form, as described in R277-491-5A.

B. All charter schools that elect to receive School LAND

Trust funds shall have a charter trust lands council, develop an academic plan in accordance with the school charter, and report the date when the charter trust lands council and charter board approved the plan. The principal for each charter school that elects to receive School LAND Trust funds shall submit a plan on the School LAND Trust Program website no later than May 1; newly opening charter schools shall submit plans on the School LAND Trust Program website no later than October 1 in the school's first year.

C. An approving entity shall consider plans annually and may approve or disapprove a school plan. If the approving entity does not approve a plan, the approving entity shall provide a written explanation explaining why the plan was not approved and request that the school revise the plan, consistent with Section 53A-16-101.5.

D. The principal for each public school shall provide information on each school's plan to address most critical academic needs and complete the USOE-provided form via the School LAND Trust website.

(1) Along with each plan, the principal shall submit a record of the vote by the school community council or charter trust land council approving the school plan.

(2) The approval shall include the date of the vote, votes for, against, and absent, consistent with Section 53A-16-101.5.

E. To facilitate schools' submission of information, each local board of education shall establish a school district submission date for the school district schools not later than May 1 of each year. Timelines shall allow for school community council reconsideration and amendment of the school plans if the approving entity rejects a plan.

F. The USOE shall only distribute funds to schools with plans approved by the approving entity.

G. Approving entity responsibilities:

(1) Principals shall show at least one of the training DVDs available on the School LAND Trust website in at least one school faculty meeting annually. In the same meeting, the principal shall explain how the school is spending its School LAND Trust funds.

(2) Prior to approval of school plans, the approving entity shall ensure that plans include academic goals, specific steps to meet those goals, measurements to assess improvement and specific expenditures focused on student academic improvement.

(3) The USOE shall not distribute funds until a school has an approved plan to use funds to enhance or improve a school's academic excellence consistent with Section 53A-16-101.5 and R277-477.

(4) The School Children's Trust Director shall review and approve all charter school plans on behalf of the SCSB. The School Children's Trust Director shall also provide notice as necessary to the SCSB of changes required of charter schools for compliance with state law and Board rule.

R277-477-4. Appropriate Use of School LAND Trust Program Funds.

A. Examples of successful plans using School LAND Trust Program monies include programs focused on:

(1) credit recovery courses and programs;

(2) study skills classes;

(3) college entrance exam preparation classes;

(4) academic field trips;

(5) classroom equipment and materials such as flashcards, math manipulatives, calculators, microscopes, maps or books;

(6) teachers, teacher aides, and student tutors;

(7) professional development directly tied to school academic goals;

(8) student focused educational technology, including hardware and software, computer carts and work stations;

(9) books, textbooks, workbooks, library books, bookcases, and audio-visual materials;

(10) student planners; and

(11) nominal student incentives that are academic in nature or of marginal total cost.

B. Examples of plans ineligible for School LAND Trust Program funding include:

(1) security;

(2) phone, cell phone, electric, and other utility costs;

(3) sports and playground equipment;

(4) athletic or intermural programs;

(5) extra-curricular non-academic expenditures;

(6) audio-visual systems in non-classroom locations;

(7) non-academic field trips;

(8) food and drink for council meetings or parent nights;

(9) printing and mailing costs for notices to parents;

(10) accreditation, administrative, clerical, or secretarial costs;

(11) cash or cash equivalent incentives for students;

(12) other furniture;

(13) staff bonuses; and

(14) similar non-instructional items or programs.

C. Each school plan may budget and spend no more than the lesser of $5,000 or 20 percent of the annual allocation of School LAND Trust funds for in-school civic and character education including student leadership skills training and positive behavior intervention. A school may designate funds for these programs/activities only if the plan clearly describes how these activities/programs directly affect student academic achievement.

D. Schools that are specifically designated to serve students with disabilities may use funds as needed to directly influence and improve student performance according to the students' Individual Education Plans (IEPs).

E. The school trust is intended to benefit all of Utah's school children. The Board encourages councils to design and implement plans in a way that benefits all children at each school.

F. School districts and charter schools choosing to submit information to the School LAND Trust website through a comprehensive electronic plan shall satisfy standards for programming and data entry required by the USOE. They shall review School LAND Trust plans on the USOE website prior to local board of education or chartering entity approval to ensure information consistent with the law has been downloaded by individual schools into the electronic plan visible on the School LAND Trust Program website.

G. Principals shall ensure that all council members have the opportunity to sign the form indicating their involvement in implementing the current School LAND Trust plan and developing the school plan for the upcoming year. A principal shall upload the form to the database.

H. Prior to approval of the School LAND Trust plans, the president or chair of an approving entity shall ensure that the members of the approving entity receive annual training on the requirements of Section 53A-16-101.5.

I. When approving school plans on the School LAND Trust Program website, the approving entity shall report the meeting date(s) when the approving entity approved the plans.

R277-477-5. Distribution of Funds - Determination of Proportionate Share.

A. A designated amount appropriated by the Legislature from the Interest and Dividends Account shall fund the School Children's Trust Section, the administration of the program and other duties outlined in this rule and Sections 53A-16-101.5 and 53A-16-101.6. The USOE shall deposit any unused balance initially allocated for School LAND Trust Program administration in the Interest and Dividends Account for future distribution to schools through the School LAND Trust

Program.

B. The USOE, through the School LAND Trust Program, shall distribute funds to school districts and charter schools as provided under Section 53A-16-101.5(3)(a). The USOE shall base the distribution on the state's total fall enrollment as reflected in the audited October 1 Fall Enrollment Report from the previous school year.

C. Each school district shall distribute funds received under R277-477-3A to each school within each school district on an equal per student basis.

D. Local boards of education shall adjust distributions, maintaining an equal per student distribution within a school district, for school openings and closures and for boundary changes occurring after the audited October 1 Fall Enrollment Report of the prior year.

E. The USOE shall fund charter schools on a per pupil basis, provided that each charter school, including newly opening charter schools, receives at least 0.4 percent of the total available to charter schools as a group. A newly opening charter school shall receive the greater of 0.4 percent of the total available to charter schools as a group or the per pupil amount based on the school's estimated enrollment. The USOE shall allocate the remainder of the distribution to charter schools on a per pupil basis to all charter schools that receive an amount greater than the base 0.4 percent amount. The USOE shall increase or decrease a newly opening charter school's enrollment in the school's second year to reflect the school's actual initial October 1 enrollment.

F. If a school chooses not to apply for School LAND Trust Program funds or does not meet the requirements for receiving funds, the USOE shall retain the funds allocated for that school and include those funds in the statewide distribution for the following school year.

G. Local boards of education and school districts shall ensure timely notification to chairs and principals of the availability of the funds to schools with approved plans.

H. The School Children's Trust Director shall review and approve all plans submitted by the USDB governing board as necessary.

R277-477-6. School LAND Trust Program: Implementation of Plans and Required Reporting.

A. Schools shall make full good faith efforts to implement plans as approved.

B. The school community council or charter school trust land council may amend a current year plan when necessary. The council shall amend the plan by a majority vote of a quorum of the council. The principal shall amend the school plan on the School LAND Trust website. The approving entity shall consider the amendment for approval, and approve amendments before funds are spent according to the amendment.

C. A school may carryover funds not used in the school approved plan to the next school year and add those funds to the School LAND Trust Program funds available for expenditure in the school the following year.

D. Schools shall provide an explanation for any carry over that exceeds one-tenth of the school's allocation in a single year in the school plan or report. The USOE shall consider districts and schools with consistently large carryover balances over multiple years as not making adequate and appropriate progress on their approved plans. The USOE may direct compliance reviews and corrective action.

E. Approval of school plans on the School LAND Trust website affirms that the approving entity has reviewed the plans and that the plans meet the requirements of Section 53A-1a-105 and R277-477.

F. District and charter school business officials shall enter prior year audited expenditures by category on the School LAND Trust website on or before October 15th. The expenditure data shall appear in the final reports submitted online by principals for reporting to parents as required in Section 53A-1a-108.

G. Principals shall submit final reports on the School LAND Trust website by October 20 annually.

R277-477-7. School LAND Trust Program - School Children's Trust to Review Compliance.

A. The School Children's Trust Section staff shall review each school final report for consistency with the approved school plan.

B. The School Children's Trust Section staff shall create a list of all schools whose final reports indicate that funds from the School LAND Trust Program were expended inconsistent with the requirements and academic intent of the law, inconsistent with R277-477 or R277-491, or inconsistent with the local board of education/charter board approved plan. The School Children's Trust Section staff shall report this list of schools to the district contact, district superintendent, and local board of education or charter board president annually.

C. USOE staff may visit schools receiving funds from the School LAND Trust Program to discuss the program, receive information and suggestions, provide training, and answer questions.

D. The School Children's Trust Director shall supervise annual compliance reviews to review expenditure of funds relative to the approved plan and allowable expenses.

E. The School Children's Trust Director shall report annually to the Board Audit Committee on compliance review findings and other compliance issues. The Board Audit Committee shall make determinations regarding questioned costs and corrective action, following review and consideration of compliance and financial reviews conducted by the School Children's Trust Section staff.

F. The Board Audit Committee may recommend to the Board that the Board reduce or eliminate funds if a school fails to comply with Utah law or Board rule. The Board may require that the school reimburse the School LAND Trust Program for any inappropriate expenditures.

R277-477-8. School Children's Trust Director - Other Provisions.

A. The Director shall have professional qualifications and expertise in the areas generating revenue to the trust, including economics, energy development, finance, investments, public education, real estate, renewable resources, risk management, and trust law, as provided in 53A-16-101.6(3)(b).

B. The Director shall report to the Board Audit Committee monthly. The Director shall report day to day to the Superintendent or Superintendent's designee and has responsibilities as outlined in Sections 53A-16-101.5 and 53A-16-101.6.

C. The employees of the section report to the Director, who shall carry out the policy direction of the Board under law and faithfully adhere to the Board-approved budget.

D. The School Children's Trust Director shall submit a draft section budget to the Board Audit Committee annually, consistent with Section 53A-16-101.6(5)(a).

E. The School Children's Trust Director shall include in the draft budget a proposed School LAND Trust Program and school community council training schedule, as described in Section 53A-16-101.6(11).

F. The Board Audit Committee may discuss or approve, or both, the School Children's Trust budget in an open portion of the Board Audit Committee meeting.

G. The Board, consistent with Section 53A-16-101.6(5)(b), shall propose an approved budget to the Legislature.

KEY: schools, trust lands funds
July 8, 2014 Art X Sec 3
Notice of Continuation August 13, 2015 53A-16-101.5(3)(c)
53A-1-401(3)

R277. Education, Administration.
R277-491. School Community Councils.
R277-491-1. Definitions.

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

B. "Candidate" means a parent or school employee who has filed for election to the school community council.

C. "Contested race" means the election of members to a school community council when there are more candidates than open positions.

D. "Days" means calendar days unless otherwise specifically designated.

E. "Educator" means a person employed by the school district where the person's child attends school and who holds a current educator license.

F. "Parent" means the parent or legal guardian of a student attending a school district public school.

G. "Parent or legal guardian member":

(1) means a member of a school community council who is a parent of a student who will be enrolled at the school at any time during the parent's or legal guardian's term of office; and

(2) may not include an educator that the school employs.

H. "School principal" means the principal of the school or designee as assigned by the principal.

I. "School community" means the geographic area the school district designates as the attendance area, with reasonable inclusion of the parents and legal guardians of additional students who currently attend the school.

J. "School community council" means the council organized at each school district public school consistent with Section 53A-1a-108 and R277-491. The council includes the principal, school employee members and parent members. Each council shall have at least a two parent member majority.

K. "School employee member" means a member of a school community council that the school or school district employs at a school, including the principal.

L. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report.

M. "USDB" means the Utah Schools for the Deaf and the Blind.

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

R277-491-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. Local boards of education are responsible for school community council operations, plan approval, oversight, and training.

C. The purpose of this rule is to:

(1) provide procedures and clarifying information to school community councils to assist them in fulfilling school community council responsibilities consistent with Section 53A-1a-108(3);

(2) provide direction to school districts and schools in establishing and maintaining school community councils whose primary focus is to develop, approve, and assist in implementing school plans, and advising school/school district administrators consistent with Sections 53A-1a-108(3) and 53A-16-101.5;

(3) provide a framework and support for improved academic achievement of students that is locally driven from within individual schools, through critical review of assessments and other indicators of student success, by establishing meaningful, measurable goals and implementing research-based programs and processes to reach the goals;

(4) encourage increased participation of the parents, school employees and others that support the purposes of the school community councils;

(5) encourage compliance with the law; and

(6) increase public awareness of:

(a) school trust lands and related land policies;

(b) management of the permanent State School Fund established in Utah Constitution Article X, Section 5; and

(c) educational excellence.

R277-491-3. School Community Council Member Election Provisions.

A. Each school shall establish a timeline for the election of parent or legal guardian members of a school community council; the timeline shall remain consistent for at least a four-year period.

B. A school shall hold the election for the parent or legal guardian members of a school community council near the beginning of the school year or in the spring and completed before the last week of school.

C. If a school holds the election in the spring, the school community council shall attempt to notify parents of incoming students about the opportunity to run for the council, and provide those parents with the opportunity to vote in the election.

D. A school community council member's term lasts two years. A school community council shall stagger terms so that approximately half of the council positions are elected each year.

E. A public school that is a secure facility, juvenile detention facility, hospital program school, or other small special program may receive School LAND Trust Program funds without having a school community council if the school demonstrates and documents a good faith effort to recruit members, have meetings and publicize results. The local board of education shall make this determination.

F. Each school community council shall determine the size of the council by a majority vote of a quorum of council members, provided that the resulting council has at least one employee member, the principal, and a two person majority of parents.

G. The principal shall provide notice of the school community council elections to the school community at least 10 days prior to the elections. The principal shall include in the notice the dates, times, and location of the election, the positions up for election, and information about becoming a candidate.

H. Parents and guardians may stand for election as parent or guardian members of a school community council at a school consistent with the definition of parent member in R277-491-1G.

I. The USOE encourages school community councils to establish clear and written timelines and procedures for school community council elections that may include receiving information from applicants in a timely manner.

J. A school need only conduct an election if the school community council position(s) are contested.

K. Parents may vote for the school community council parent members if their child(ren) are enrolled at the school, or to the extent possible consistent with R277-491-3C.

L. School community councils may establish procedures that allow for ballots to be clearly marked and mailed to the school in the case of distances that would otherwise discourage parent participation. Hand-delivered or mailed ballots shall meet the same timelines for voters voting in person.

M. Entire school districts or schools may allow parents to vote by electronic ballot. The school district or school shall clearly explain on its website the opportunity to vote by electronic means, if allowed by the school district or school.

N. Following the election, if those taking part in the election elect to the council more parent members who are

educators in that district than parents who are not educators in that district, the parents on that council shall appoint additional parent members until the number of parent members who are not educators exceeds the number of parent educators in that district.

O. School community council members who were duly elected or appointed prior to a subsequent change in law or Board rule may complete the term for which they were elected. All school community council members shall satisfy requirements of Utah law and Board rule in subsequent terms.

R277-491-4. Local School Board and School District Responsibilities Relating to School Community Councils.

A. Local boards of education may ask school community councils to address local issues at the school community council level for discussion before bringing the issues to local boards of education. Local boards of education may ask school community councils for information to inform local board decisions.

B. A local school board, in compliance with Section 53A-1a-108, shall ensure that all council members receive annual training, including training for the chair and vice chair about their specific responsibilities, and about the school community council requirements of Sections 53A-1a-108, 53A-1a-108.1, 53A-16-108.5, and 53A-16-101.5.

C. A school or school district administrator shall not prohibit or discourage a school community council from discussing any issue or concern not prohibited by law and raised by any school community council member.

R277-491-5. School Community Council Principal Responsibilities.

A. Following the election, the principal shall enter and electronically sign on the School LAND Trust website a Principal's Assurance Form affirming the school community council's election, that vacancies were filled after the elections, as necessary, and that the school community council's bylaws or procedures comply with Section 53A-1a-108 and R277-477 and R277-491.

B. A principal may not serve as chair or vice-chair of the school community council.

C. Annually, on or before October 20, the principal shall provide the following information on the school website, in the school office, and if needed, through a method that the council decides is best for the parents at the school who do not have internet access, and as provided in Section 53A-1a-108 and 53A-1a-108.1:

(1) A list of the members of the school community council and each member's direct email or phone number, or both;

(2) The school community council meeting schedule; and

(3) A summary of the annual report describing how the school used the School LAND Trust Program funds consistent with Section 53A-1a-108.1(5)(b) and R277-477-4C.

D. Principals shall ensure that school websites fully communicate the opportunities provided to parents to serve on the school community council and how parents can directly influence the expenditure of the School LAND Trust Program funds. Principals shall include on the website each school's dollar amount received each year through the program.

R277-491-6. School Community Council Chair Responsibilities.

A. After the council is seated each year, the council shall elect a chair from the parent members and a vice-chair from the parent or school employee members.

B. The school community council chair or designee shall:

(1) post the school community council meeting information (time, place and date of meeting; meeting agenda; and previous meeting draft minutes) on the school's website at least one week prior to each meeting;

(2) set the agenda for every meeting;

(3) conduct every meeting;

(4) assure that written minutes are kept consistent with Section 53A-1a-108.1(8);

(5) inform council members on resources available on the School LAND Trust website;

(6) assure that the council adopts a set of rules of order and procedures, including procedures for electing the chair and vice-chair, that the chair follows to conduct each meeting. The principal shall post these rules on the school website and make them available at each meeting; and

(7) welcome and encourage public participation.

C. School community council responsibilities do not allow for closed meetings, consistent with Section 53A-1a-108.1.

R277-491-7. School Community Council Business.

A. School community councils shall report on plans, programs, and expenditures at least annually to local boards of education and cooperate with USOE monitoring and audits.

B. School community councils shall encourage participation on the school community council and may recruit potential applicants to apply for open positions on the council.

C. The USOE encourages:

(1) school community councils to establish clear and written procedures governing the removal from office of a member who moves away or consistently does not attend meetings, and additional clarifications to assist in the efficient operation of school community councils, consistent with the law and Board rules; and

(2) school principals to attend all school community council meetings.

R277-491-8. Development of Plans.

A. School community council members shall participate fully in the development of various school plans described in Section 53A-1a-108(3) including, at a minimum:

(1) The School Improvement Plan;

(2) The School LAND Trust Plan;

(3) The Reading Achievement Plan (for elementary schools); and

(4) The Professional Development Plan.

B. The USOE encourages school community councils to advise and inform elected local school board members and other interested community members regarding the uses of these funds.

R277-491-9. Failure to Comply with Rule.

A. If a school district, school, or school community council fails to comply with the provisions of this rule, the School Children's Trust Director appointed under Section 53A-16-101.6 may report such failure to the Audit Committee of the Utah State Board of Education.

B. The Audit Committee of the Utah State Board of Education may recommend to the Board a reduction or elimination of School LAND Trust funds for a school district or school if the Audit Committee finds that the school district, school, or school community council has failed to comply with Utah law or Board rule.

KEY: school community councils
July 8, 2014 **Art X Sec 3**
Notice of Continuation August 13, 2015 **53A-1-401(3)**

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 August 13, 2015	**53A-1-1113**
	53A-1-401(3)

R277. Education, Administration.
R277-498. Grant for Math Teaching Training.
R277-498-1. Definitions.

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

B. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history; and

(5) a record of disciplinary action taken against the educator.

C. "Endorsements in mathematics" means one or more endorsements in the mathematics teaching field that qualify an educator or prospective educator to teach a specific or specific level of mathematics course. A notation indicating the educator's competency is maintained on the educator's CACTUS record.

D. "Matching funds" means funds provided by the grant recipient in order to receive state funds under Section 53A-6-901.

E. "Teaching license" or "educator license" means an authorization issued by the Board which permits the holder to serve in a professional capacity in the public schools.

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

R277-498-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and by Section 53A-6-901(2) that directs the Board to write rules to provide criteria to award grant(s) to a higher education institution(s) to encourage prospective educators to earn mathematics endorsements.

B. The purpose of this rule is to award funds, consistent with 2012 legislation, to institution(s) of higher education to support and encourage prospective educators to earn mathematics endorsements.

R277-498-3. Board/USOE Procedures for Distributing Funds.

A. The USOE shall identify one or more institutions of higher education that meets the criteria of Section 53A-6-901 and the criteria of this rule from requests submitted by interested institutions of higher education.

B. The USOE shall notify selected institutions of their eligibility to receive funds under this program following review of the request and the assurance of matching funds.

C. The USOE may identify one eligible and qualified institution of higher education and establish a funding schedule to distribute funds or allow institutions to submit applications until March 30, 2013.

D. The USOE, under the direction of the Board, shall distribute the appropriation provided for in Section 53A-6-901, Section 2 by June 30 2013.

R277-498-4. Criteria for Awarding Grants.

A. The USOE shall consider the amount or percent of matching funds that an institution of higher education shall offer.

B. The USOE shall determine that the institution of higher education requesting funds under Section 53A-6-901 shall use the funds for teachers and training consistent with Section 53A-6-901(1).

R277-498-5. Accountability and Documentation.

A. The USOE shall maintain records of the distribution of funds to institution(s) of higher education that made requests for funds provided under Section 53A-6-901 and R277-498.

B. The recipient of funds under Section 53A-6-901 shall maintain documentation of the matching funds offered by the institution that established the institution's eligibility.

C. Both the USOE and the eligible institution(s) shall maintain documentation of the number of prospective educators and the relevant training received from funding provided in Section 53A-6-901.

KEY: grants, educators, math teaching training

April 8, 2013	**Art X, Sec 3**
Notice of Continuation August 13, 2015	**53A-1-401(3)**
	53A-6-901(2)

R277. Education, Administration.
R277-500. Educator Licensing Renewal, Timelines, and Required Fingerprint Background Checks.
R277-500-1. Definitions.

A. "Acceptable alternative professional learning activity" means an activity that may not fall within a specific category under R277-500-5 but is consistent with this rule.

B. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC), or the Council for the Accreditation of Educator Preparation (CAEP).

C. "Accredited school," for purposes of this rule, means a public or private school that has met standards considered to be essential for the operation of a quality school program and has received formal approval by the Northwest Accreditation Commission.

D. "Active educator," for purposes of this rule, means an individual holding a valid license issued by the Board who is employed by a Utah public LEA, accredited private school, or USOE, or who was employed by a Utah public LEA or accredited private school in a role covered by the license for at least three years in the individual's renewal period.

E. "Active educator license" means a license that is currently valid for employment in a position requiring an educator license.

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

G. "College/university course" means a course taken through an institution approved under Section 53A-6-108.

H. "Course work successfully completed" for purposes of this rule means the student earns a grade C or better in approved university or university level course work or USOE professional learning credit.

I. "Documentation of professional learning activities" means:

(1) an original student transcript of university/college courses;

(2) an LEA or USOE-sponsored electronic record of professional learning activities;

(3) a summary, explanation, or copy of the product of a professional learning activity signed by the educator's supervisor or a licensed administrator ;

(4) a certificate of completion for an approved professional learning conference, workshop, institute, symposium, educational travel experience or staff development; or

(5) an agenda or conference program demonstrating sessions and duration of professional learning activities.

J. "Educational research" means conducting research on education issues or investigating education innovations.

K. "Inactive educator" means an individual:

(1) who holds a valid license issued by the Board;

(2) who is not currently employed by a Utah public LEA or accredited private school; and

(3) who was employed by a Utah public LEA or accredited private school in a role covered by the license for less than three years in the individual's renewal period.

L. "Inactive educator license" means a license issued by the Board, other than a suspended or revoked license, that is currently not valid due to the holder's failure to complete requirements for license renewal.

M. "LEA" or "local education agency" means a school district or a charter school.

N. "Level 1 license" means a Utah professional educator license issued:

(1) to an applicant upon completion of an approved preparation program or an alternative preparation program; or

(2) to an applicant that holds an educator license issued by another state or country that has also met all ancillary requirements established by law or rule.

O. "Level 2 license" means a Utah professional educator license issued to an applicant after the applicant meets the following:

(1) completion of all requirements for a Level 1 license;

(2) satisfaction of requirements under R277-522 for a teacher whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(3) completion of:

(a) at least three years of successful education experience in a Utah public LEA or accredited private school; or

(b)(i) one year of successful education experience in a Utah public LEA or accredited private school; and

(ii) at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and

(4) completion of any additional requirements established by law or rule.

P. "Level 3 license" means a Utah professional educator license issued to an educator who:

(1) holds a current Utah Level 2 license; and

(2)(a) received National Board Certification;

(b) received a doctorate in education or in a field related to a content area in a unit of:

(i) the public education system; or

(ii) an accredited private school; or

(c) holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

Q. "License" means an authorization which permits the license holder to serve in a professional capacity in a public LEA or accredited private school.

R. "Licensed administrator" means:

(1) an individual holding an active educator license that is valid for employment in a public school administrative position; or

(2) an individual currently employed by a Utah charter school in an administrative position.

S. "License renewal points" means the points accumulated by a Utah license holder through activities approved under this rule for the purpose of satisfying requirements of Section 53A-6-104.

T. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBTPS) process, a three-year process, that may include:

(1) national content-area assessment;

(2) an extensive portfolio; and

(3) assessment of video-taped classroom teaching experience.

U. "Professional growth plan" means a plan created and reviewed annually by an active educator and the educator's direct supervisor that details the professional goals of the educator based on the Utah Effective Teaching and Educational Leadership Standards consistent with R277-520 and related to the educator's self-assessment and formal evaluation required under Section 53A-8a-301.

V. "Professional learning" means engaging in activities that improve or enhance an educator's practice.

W. "Professional learning plan" means a document prepared by a Utah educator consistent with this rule.

X. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

Y. "University level course" means a course:

(1) that has the same academic rigor and requirements of a university or college course;

(2) taught by appropriately trained individuals; and

(3) designated as a university level course by the Superintendent.

Z. "UPPAC" means the Utah Professional Practices Advisory Commission under Section 53A-6-301 through 307.

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

BB. "USOE professional learning credit" means a course, approved by the Superintendent under R277-519-3, that educators may participate in to:

(1) renew a license;

(2) teach in another subject area; or

(3) teach at another grade level.

CC. "Verification of employment" means official documentation of employment as an educator listing the educator's assignment and years of service, signed by the supervising administrator.

R277-500-2. 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-6-104 which requires the Board to make rules requiring participation in professional learning activities in order for educators to retain Utah licensure, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and requirements for an educator to renew a Utah educator license. This rule requires verification of employment, development of a professional learning plan, and documentation of activities consistent with Title 53A, Chapter 6.

R277-500-3. Educator License Renewal Requirements.

A. Professional Learning Plan for Active Educators

(1) An active educator, in collaboration with the active educator's supervisor, shall develop and maintain a professional learning plan as a subset of the active educator's professional growth plan.

(2) The professional learning plan shall outline the professional learning activities in which the educator will participate during the educator's current license renewal cycle;

(3) The professional learning plan shall be developed by taking into account:

(a) the educator's professional goals;

(b) curriculum relevant to the educator's current or anticipated assignment;

(c) goals and priorities of the LEA and school;

(d) available student data relevant to the educator's current or anticipated assignment;

(e) feedback from the educator's yearly evaluation required under Section 53A-8a-301;

(f) the requirements under R277-522 if the educator is a Level 1 licensed educator.

(4) The professional learning plan for active educators shall include two hours of professional learning on youth suicide prevention consistent with Section 53A-1-603.

(5) The professional learning plan shall be reviewed and signed annually by the educator and supervisor and may be adjusted as appropriate.

(6) The educator is responsible for creation of the professional learning plan in collaboration with the designated supervisor.

(7) The educator is responsible for maintaining documentation associated with the plan and the annual review of the plan.

(8) The LEA may create tools or policies or both to assist educators in meeting this responsibility.

B. Professional Learning Plan for Inactive Educators

(1) All inactive educators intending to renew an educator license shall, in collaboration with a licensed administrator, develop and maintain a professional learning plan.

(2) The professional learning plan shall outline the professional learning activities in which the educator will participate during the educator's current license renewal cycle.

(3) The plan shall take into account:

(a) the educator's professional goals;

(b) current license areas of concentration and endorsements;

(c) current trends relevant to the educator's current license areas of concentration and endorsements;

(d) the Utah Core Standards relevant to the educator's current license areas of concentration and endorsements;

(4) The professional learning plan shall be reviewed and signed by the educator and a licensed administrator at the beginning of the license renewal cycle and again at the end of the license renewal cycle.

(5) The educator shall develop the professional learning plan and maintain documentation of the plan.

C. License Renewal Points

(1) To be valid for renewal, the professional learning plan shall document that the educator has earned the appropriate number of license renewal points as defined in R277-500-3.

(2) License holders may accrue license renewal points beginning with the date of each new license renewal.

(3) A Level 1 license holder shall earn at least 100 license renewal points in each three year period. A Level 1 license may only be renewed consistent with R277-504-3D.

(4) A Level 2 license holder shall earn at least 200 license renewal points in each 5 year period.

(5) A Level 3 license holder shall earn at least 200 license renewal points in each 7 year period.

D. Documentation

(1) Each Utah license holder shall be responsible for maintaining documentation supporting completion of the professional learning plan.

(2) It is the educator's responsibility to retain documentation of professional learning activities with appropriate signatures.

(3) All documentation relevant to the professional learning plan shall be retained by the educator for a minimum of two years from the designated renewal date.

E. Educator Ethics Review

(1) Completion of the USOE Educator Ethics Review shall be required for the renewal of a Utah educator license beginning January 1, 2011.

(2) No license may be renewed prior to the completion of the USOE Educator Ethics Review.

(3) The Ethics Review shall be completed within one calendar year prior to license renewal.

F. The Superintendent may renew an educator's license if:

(1) the educator's background check is complete; and

(2) the educator is currently enrolled in ongoing monitoring through registration with the systems described in Section 53A-15-1505.

R277-500-4. Educator License Renewal Procedures.

A. An active educator license holder shall satisfy the final review and obtain the appropriate signatures regarding completion of the professional learning plan between January 1 and June 30 of the educator's assigned renewal year.

(1) A Level 2 or 3 educator license holder who has completed all additional requirements for renewal shall complete the online renewal provided by USOE between January 1 and June 30 of the educator's assigned renewal year.

(2) A Level 1 educator license holder who has completed all additional requirements for renewal shall submit the Professional Learning Plan Completion Form to the USOE between January 1 and June 30 of the educator's assigned renewal year. Forms that are not complete or do not bear original signatures shall not be processed.

(3) An educator's failure to complete the online process or submit the completion form consistent with deadlines in this

rule shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

B. An inactive educator license holder shall satisfy the final review and obtain the appropriate signatures regarding completion of the professional learning plan within one calendar year prior to the date on which the inactive educator license holder is directed/scheduled to renew the license.

(1) A Level 2 or 3 educator license holder who has completed all additional requirements for renewal shall complete the online renewal process provided by USOE between January 1 and June 30 of the educator's assigned renewal year.

(2) A Level 1 educator license holder who has completed all additional requirements for renewal shall submit the Professional Learning Plan Completion Form to the USOE between January 1 and June 30 of the educator's assigned renewal year. Forms that are not complete or do not bear original signatures shall not be processed.

(3) An educator's failure to complete the online process or submit the completion form consistent with deadlines shall result in beginning anew the licensure process, including all attendant fees and criminal background checks.

C.(1) An educator shall obtain the signature of the educator's direct administrative supervisor on the educator's renewal form.

(2) The educator's direct administrative supervisor described in R277-500-4C(1) shall be a licensed administrator.

(3) If an educator's supervisor is not a licensed administrator then the form shall be signed by the next highest administrative supervisor who is a licensed administrator.

(4) If the educator is the highest administrative authority in the LEA then the form shall be signed by the president or chairperson of the LEA's governing board.

D. An educator who is seeking a license renewal shall obtain the signature of a licensed administrator on the educator's license renewal form.

E.(1) The Superintendent shall charge a fee, set by the Superintendent, to an educator seeking renewal from an inactive status or requesting level changes.

(2) The Superintendent shall charge an educator with an active license renewal fee consistent with R277-502

F. The Superintendent shall audit a random sample of approximately ten percent of the annual online renewals.

G. An educator selected for an audit described in R277-500-4F:

(1) shall submit the Professional Learning Plan Completion Form with the appropriate signatures to the USOE in a timely manner.

(2) shall receive a warning letter and may be referred to UPPAC if documentation is not submitted as requested.

(3) shall be referred to UPPAC for possible license discipline if the documentation reveals fraudulent or unprofessional actions.

H. The Superintendent may review or audit renewal transactions including the professional learning plan, signatures, and documentation of professional learning activities.

R277-500-5. Categories of Acceptable Activities for License Renewal.

A(1) An educator may earn licensure renewal points based on the educator's employment in a position requiring a Utah educator license during the educator's license cycle.

(2) An educator may only count years of employment with satisfactory performance evaluations for license renewal points.

(3) A Level 1 license holder may earn 25 license renewal points per year of employment to a maximum of 50 points per license cycle.

(4) A Level 2 or 3 license holder may earn 35 license renewal points per year of employment to a maximum of 105 points per license cycle.

B(1) An educator shall complete a college or university course with a C or better, or a pass, to have the course apply to the educator's license.

(2) Each semester hour of university or college credit, as recorded on an official transcript, equals 18 license renewal points.

C(1) USOE professional learning credit:

(a) shall be approved as described in R277-519-3; and

(b) shall be successfully completed through attendance and through completion of required project(s).

(2) Each semester credit hour equals 15 license renewal points.

(3) An LEA may request approval of USOE professional learning credit by submitting a request to the Superintendent through the USOE-sponsored online professional learning tracking system.

(4) An LEA shall request approval from the Superintendent at least four weeks prior to the beginning date of the scheduled professional learning activity.

(5) The professional learning credit may be denied if the LEA does not seek approval from the Superintendent in advance.

D. An LEA-sponsored or approved professional learning activity:

(1) shall be approved by the LEA at least four weeks prior to the scheduled activity; and

(2) may include LEA or school based professional learning such as:

(a) participating in professional learning communities;

(b) development of LEA or school curriculum;

(c) planning and implementation of a school improvement plan;

(d) mentoring a Level 1 teacher;

(e) engaging in instructional coaching;

(f) conducting action research;

(g) studying student work with colleagues to inform instruction.

E. Each clock hour of scheduled professional learning activity time equals one license renewal point, not to exceed 25 points per activity per year.

F(1) Acceptable alternative professional learning activities for an educator include activities that enhance or improve education, yet may not fall into a specific category if the activities are approved by:

(a) the educator's supervisor;

(b) by a licensed administrator if the educator is an inactive educator; or

(c) the Superintendent, with prior written approval by the Superintendent.

(2) Each clock hour of participation equals one license renewal point, not to exceed 25 points per activity.

G. Conferences, workshops, institutes, symposia, or staff-development programs:

(1) Acceptable workshops and programs shall be approved by the educator's supervisor, by a licensed administrator if the educator is an inactive educator, or with prior written approval by the Superintendent.

(2) Each clock hour of participation equals one license renewal point, not to exceed 25 points per activity.

G. Content and pedagogy testing:

(1) Acceptable tests include those approved by the Board.

(2) Each Board-approved test score report submitted, with a passing score, equals 25 license renewal points.

(3) Each test must be related to the educator's current or potential license area(s) or endorsement(s).

(4) No more than two test score reports may be submitted in a license cycle.

H. Utah university sponsored cooperating teachers:

(1) An educator working as a cooperating teacher with one or more student teachers may earn license renewal points.

(2) Each clock hour spent supervising, collaborating with, and mentoring assigned student teachers equals one license renewal point not to exceed 25 points per license renewal cycle.

I. Service in a leadership role in a national, state-wide, or LEA-recognized professional education organization:

(1) Acceptable service shall be approved by the educator's supervisor or by a licensed administrator if the educator is an inactive educator.

(2) Each clock hour of participation equals one license renewal point, not to exceed 10 points per year.

J. Educational research and innovation that results in a final, demonstrable product:

(1) Acceptable activities shall be approved by the educator's supervisor or by a licensed administrator if the educator is an inactive educator.

(2) The research activity shall be consistent with school and LEA policy.

(3) Each clock hour of participation equals one license renewal point, not to exceed 35 points per activity.

K. Substituting in a Utah public LEA or accredited private school:

(1) shall be considered an acceptable professional learning activity only for inactive educators paid and authorized as substitutes.

(2) Two hours of documented substitute time equals one license renewal point, not to exceed 25 points per year or 50 points per license cycle.

(3) Verification of hours shall be documented on LEA or school letterhead, list dates of employment, and signed by the supervising administrator.

L. Paraprofessional or volunteer service in a Utah public LEA or accredited private school:

(1) shall be considered an acceptable professional learning activity only for inactive educators.

(2) Three hours of documented paraprofessional or volunteer service equals one license renewal point, not to exceed 25 points per year or 50 points per license cycle.

(3) Verification of hours shall be documented on LEA or school letterhead, list dates of service, and signed by the supervising administrator.

M. Credit for LEA lane change or other purposes is determined by the LEA and is awarded at the LEA's discretion. USOE professional learning credit should not be assumed to be credit for LEA purposes, such as salary or lane change credit.

R277-500-6. Board Directive to Educator License Holders for Fingerprint Background Check.

A(1) The Superintendent shall require a licensed educator or license applicant to submit to a fingerprint background check and ongoing monitoring by the Superintendent through registration with the systems described in Section 53A-15-1505 as a condition of licensure in Utah.

(2) A licensed educator shall submit a new fingerprint background check for ongoing monitoring within one calendar year prior to the date of the educator's next license renewal after July 1, 2015.

(3) A license applicant shall submit a new fingerprint background check for ongoing monitoring by the Superintendent.

(a) If a license applicant submits a new fingerprint background check on or after July 1, 2015, the Superintendent shall require the license applicant to be enrolled in ongoing monitoring before the Superintendent may issue a new license to the license applicant.

(b) The Superintendent may issue a new license to a license applicant without enrolling the license applicant in ongoing monitoring if the license applicant's background check was cleared:

(i) less than three years prior to the issue date of the license; and

(ii) prior to July 1, 2015,

(4) The Superintendent shall discontinue monitoring an individual through the systems described in Section 53A-15-1505:

(a) for a licensed educator, one year after the expiration of the most recently issued license; or

(b) for a license applicant, five years after the submission of the background check.

(5) If the fingerprint background check for a licensed educator or a license applicant is incomplete or under review by the Utah Professional Practices Advisory Commission (UPPAC), the individual's CACTUS file will direct the reviewer of the file to the Superintendent for further information.

B. The Superintendent may direct a Utah educator license holder to have a criminal fingerprint background check under Section 53A-6-401 for good cause shown.

C. If an educator license holder fails to comply with the directive in a reasonable time, following reasonable notice, and adequate due process, the educator license holder's license may be put into a pending status in the educator's CACTUS file subject to the educator license holder's compliance with the directive.

D. The Board or its designee may review an educator license holder's compliance with the directive prior to the final decision about the educator license holder's license status.

R277-500-7. Exceptions or Waivers to this Rule.

A. The Superintendent may make exceptions to the provisions of this rule for unique and compelling circumstances if the exception is granted consistent with the purposes of this rule and the authorizing statutes.

B. An educator may request an exception described in R277-500-7A.

C. An educator shall submit a request to the Superintendent for an exception described in R277-500-7C in writing at least 30 days prior to the license holder's renewal date.

D. The Superintendent shall approve or deny a request for an exception described in R277-500-7C in a timely manner.

E. A denial of a request described in R277-500-7D is not subject to administrative appeal.

KEY: educator license renewal, professional learning, fingerprint background check

August 26, 2015	**53A-6-104**
Notice of Continuation July 1, 2015	**53A-1-401(3)**

R277. Education, Administration.
R277-516. Education Employee Required Reports of Arrests and Required Background Check Policies for Non-licensed Employees.
R277-516-1. Definitions.

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

B. "Charter school governing board" means a board designated by a charter school to make decisions for the operation of the charter school.

C. "Charter school board member" means a current member of a charter school governing board.

D. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators, which includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information;

(6) completion of employee background checks; and

(7) a record of disciplinary action taken against the educator.

E. "Contract employee" means an employee of a staffing service who works at a public school under a contract between the staffing service and the public school.

F. "DPS" means the Department of Public Safety.

G. "LEA" or "local education agency" means a school district, a charter school, or, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

H.(1) "Licensed educator" means an individual who holds a valid Utah educator license and has satisfied all requirements to be a licensed educator in the Utah public school system (examples are traditional public school teachers, charter school teachers, school administrators, USOE and school district specialists).

(2) A licensed educator may or may not be employed in a position that requires an educator license.

(3) A licensed educator includes an individual who:

(a) is student teaching;

(b) is in an alternative route to licensing program or position; or

(c) an individual who holds an LEA-specific competency-based license.

I. "Non-licensed public education employee" means an employee of a an LEA who:

(1) does not hold a current Utah educator license issued by the Board under Title 53A, Chapter 6, Educator Licensing and Professional Practices; or

(2) a contract employee.

J. "Public education employer" means the education entity that hires and employs an individual, including public school districts, the Utah State Office of Education, Regional Service Centers, and charter schools.

K. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

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

M. "Volunteer" means a volunteer who may be given significant unsupervised access to children in connection with the volunteer's assignment.

R277-516-2. 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 Board, by Subsections 53A-1-301(3)(a) and 53A-1-301(3)(d)(x), which instruct the Superintendentto perform duties assigned by the Board that include presenting to the Governor and the Legislature each December a report of the public school system for the preceding year that includes investigation of all matters pertaining to the public schools, and statistical and financial information about the school system which the Superintendent considers pertinent; by Subsections 53A-1-402(1)(a)(i) and (iii), which direct the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and the evaluation of instructional personnel; and by Title 53A, Chapter 15, Part 15, Background Checks, which directs the Board to require educator license applicants to submit to background checks and provide ongoing monitoring of licensed educators.

B. The purpose of this rule is ensure that all students who are compelled by law to attend public schools, subject to release from school attendance consistent with Section 53A-11-102, are instructed and served by public school teachers and employees who have not violated laws that would endanger students in any way.

R277-516-3. Licensed Public Education Employee Personal Reporting of Arrests.

A. A licensed educator who is arrested, cited or charged with the following alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon as possible to the licensed educator's district superintendent, charter school director or designee:

(1) any matters involving an alleged sex offense;

(2) any matters involving an alleged drug-related offense;

(3) any matters involving an alleged alcohol-related offense;

(4) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person;

(5) any matters involving an alleged felony offense under Title 76, Chapter 6, Offenses Against Property;

(6) any matters involving an alleged crime of domestic violence under Title 77, Chapter 36, Cohabitant Abuse Procedures Act; and

(7) any matters involving an alleged crime under federal law or the laws of another state comparable to the violations listed in R277-516-3A(1)-(6).

B. A licensed educator shall report convictions, including pleas in abeyance and diversion agreements within 48 hours or as soon as possible upon receipt of notice of the conviction, plea in abeyance or diversion agreement.

C. An LEA superintendent, director, or designee shall report conviction, arrest or offense information received from a licensed educator to the Superintendent within 48 hours of receipt of information from a licensed educator.

D. The Superintendent shall develop an electronic reporting process on the USOE website.

E. A licensed educator shall report for work following an arrest and provide notice to the licensed educator's employer unless directed not to report for work by the employer, consistent with school district or charter school policy.

R277-516-4. Non-licensed Public Education Employee, Volunteer, and Charter School Board Member Background Check Policies.

A. An LEA shall adopt a policy for non-licensed public education employee, volunteer, and charter school board member background checks that include at least the following components:

(1) a requirement that the individual submit to a background check and ongoing monitoring through registration with the systems described in Section 53A-15-1505 as a condition of employment or appointment; and

(2) identification of the appropriate privacy risk mitigation strategy that will be used to ensure that the LEA only receives notifications for individuals with whom the LEA maintains an authorizing relationship.

B. An LEA policy shall describe the background check process necessary based on the individual's duties.

R277-516-5. Non-licensed Public Education Employee or Charter School Board Member Arrest Reporting Policy Required from LEAs.

A. An LEA shall have a policy requiring non-licensed public employees, charter school board members, and all employees who drive motor vehicles as an employment responsibility to report offenses specified in R277-516-5C.

B. An LEA shall post the policy described in R277-516-5A on the LEA's website.

C. An LEA's policy described in R277-516-5A shall include the following minimum components:

(1) reporting of the following:

(a) convictions, including pleas in abeyance and diversion agreements;

(b) any matters involving arrests for alleged sex offenses;

(c) any matters involving arrests for alleged drug-related offenses;

(d) any matters involving arrests for alleged alcohol-related offenses; and

(e) any matters involving arrests for alleged offenses against the person under Title 76, Chapter 5, Offenses Against the Person.

(2) a timeline for receiving reports from non-licensed public education employees;

(3) immediate suspension from student supervision responsibilities for alleged sex offenses and other alleged offenses which may endanger students during the period of investigation;

(4) immediate suspension from transporting students or public education vehicle operation or maintenance for alleged offenses involving alcohol or drugs during the period of investigation;

(5) adequate due process for the accused employee consistent with Subsection 53A-3-410(10);

(6) a process to review arrest information and make employment or appointment decisions that protect both the safety of students and the confidentiality and due process rights of employees and charter school board members; and

(7) timelines and procedures for maintaining records of arrests and convictions of non-licensed public education employees and charter school board members.

D. An LEA shall ensure that the records described in R277-516-5C(7):

(a) include final administrative determinations and actions following investigation; and

(b) are maintained:

(i) only as necessary to protect the safety of students; and

(ii) with strict requirements for the protection of confidential employment information.

R277-516-6. Public Education Employer Responsibilities Upon Receipt of Arrest Information.

A. A public education employer that receives arrest information about a licensed public education employee shall review the arrest information and assess the employment status consistent with Section 53A-6-501, Rule R277-515, and the LEA's policy.

B. A public education employer that receives arrest information about a non-licensed public education employee, volunteer, or charter school board member shall review the arrest information and assess the individual's employment or appointment status:

(1) considering the individual's assignment and duties; and

(2) consistent with a local board-approved policy for ethical behavior of non-licensed employees, volunteers, and charter school board members.

C. A local board shall provide appropriate training to non-licensed public education employees, volunteers, and charter school board members about the provisions of the local board's policy for self-reporting and ethical behavior of non-licensed public education employees, volunteers, and charter school board members.

D. A public education employer shall cooperate with the Superintendent in investigations of licensed educators.

KEY: school employees, self reporting

August 26, 2015	**Art X Sec 3**
Notice of Continuation June 10, 2014	**53A-1-301(3)(a)**
	53A-1-301(3)(d)(x)
	53A-1-402(1)(a)(i)
	53A-1-402(1)(a)(iii)

R277. Education, Administration.
R277-602. Special Needs Scholarships - Funding and Procedures.
R277-602-1. Definitions.

A. "Agreed upon procedure" for purposes of this rule means the agreed upon procedure as provided for under Section 53A-1a-705(1)(b)(i)(B).

B. "Annual assessment" for purposes of this rule means a formal testing procedure carried out under prescribed and uniform conditions that measures students' academic progress, consistent with Section 53A-1a-705(1)(f).

C. "Appeal" for purposes of the rule means an opportunity to discuss/contest a final administrative decision consistent with and expressly limited to the procedures of this rule.

D. "Assessment team" means the individuals designated under Section 53A-1a-703(1).

E. "Audit of a private school" for purposes of this rule means a financial audit provided by an independent certified public accountant, as provided under Section 53A-1a-705(1)(b).

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

G. "Days" means school days unless specifically designated otherwise in this rule.

H. "Disclosure to parents" for purposes of this rule means the express acknowledgments and acceptance required under Section 53A-1a-704(5) as part of parent application available through schools districts.

I. "Eligible student" for purposes of this rule means:

(1) the student's parent resides in Utah;

(2) the student has a disability as designated in 53A-1a-704(2)(b); and

(3) the student is school age.

(4) Eligible student also means that the student was enrolled in a public school in the school year prior to the school year in which the student will be enrolled in a private school, has an IEP and has obtained acceptance for admission to an eligible private school; and

(5) The requirement to be enrolled in a public school in the year prior and have an IEP does not apply if:

(a) the student is enrolled or has obtained acceptance for admission to an eligible private school that has previously served students with disabilities; and

(b) an assessment team is able to readily determine with reasonable certainty that the student has a disability and would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the student enrolled in a public school.

J. "Enrollment" for purposes of this rule means that the student has completed the school enrollment process, the school maintains required student enrollment information and documentation of age eligibility, the student is scheduled to receive services at the school, the student attends regularly, and has been accepted consistent with R277-419 and the student's IEP.

K. "Final administrative action" for purposes of this rule means the concluding action under Section 53A-1a-701 through 53A-1a-710 and this rule.

L. "Individual education program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Board Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

M. "Private school that has previously served students with disabilities" means a school that:

(1) has enrolled students within the last three years under the special needs scholarship program;

(2) has enrolled students within the last three years who have received special education services under Individual Services Plans (ISP from the school district where the school is geographically located; or

(3) can provide other evidence to the Board that is determinative of having enrolled students with disabilities within the last three years.

N. "Special Needs Scholarship Appeals Committee (Appeals Committee)" means a committee comprised of:

(1) the special needs scholarship coordinator;

(2) the USOE Special Education Director;

(3) one individual appointed by the Superintendent or designee; and

(4) two Board-designated special education advocates.

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

P. "Warrant" means payment by check to a private school.

R277-602-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, Section 53A-1a-706(5)(b) which provides for Board rules to establish timelines for payments to private schools, Section 53A-3-410(6)(b)(i)(c) which provides for criminal background checks for employees and volunteers, Section 53A-1a-707 which provides for Board rules about eligibility of students for scholarships and the application process for students to participate in the scholarship program, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to outline responsibilities for parents/students, public schools, school districts or charter schools, and eligible private schools that accept scholarships from special needs students and the State Board of Education in providing choice for parents of special needs students who choose to have their children served in private schools and in providing accountability for the citizenry in the administration and distribution of the scholarship funds.

R277-602-3. Parent/Guardian Responsibilities.

A. If the student is enrolled in a public school or was enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application, available from the USOE or online, to the school district or charter school within which the parent/guardian resides.

(1) The parent shall complete all required information on the application and submit the following documentation with the application form, consistent with the timeline provided in Section 53A-1a-704(4):

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age before September 2 of the year of enrollment, consistent with Section 53A-3-402(6);

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-602-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705;

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.

B. If the student was not enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application to the school district

in which the private school is geographically located (school district responsible for child find under IDEA, Sec. 612(a)(3)).

(1) The parent shall complete all required information on the application and submit the following documentation with application form:

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age, before September 2 of the year of enrollment;

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-602-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705.

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) The parent shall participate in an assessment team meeting to determine if a student would qualify for special education services and the level of services for which the student would be eligible if enrolled in a public school.

C. Payment provisions - Upon review and receipt of documentation that verifies a student's admission to, or continuing enrollment and attendance at, a private school, the Board shall make scholarship payments quarterly in equal amounts in each school year in which a scholarship is in force.

D. A special needs scholarship shall be effective for three years subject to renewal under Section 53A-1a-704(6).

E. The parent shall, consistent with Section 53A-1a-706(8), endorse the warrant received by the private school from the USOE no more than 15 school days after the private school's receipt of the warrant.

F. The parent shall notify the Board in writing within five days if the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student or the student misses more than 10 consecutive days at which point the Board may modify the payment to the private school consistent with R277-419-1J.

G. The parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Board.

H. The parent shall notify the Board in writing by March 1 annually to indicate the student's continued enrollment.

R277-602-4. School District or Charter School Responsibilities.

A. The school district or charter school that receives the student's scholarship application consistent with Section 53A-1a-704(4) shall forward applications to the Board no more than 10 days following receipt of the application.

B. The school district or charter school that received the student's scholarship application shall:

(1) receive applications from students/parents;

(2) verify enrollment of the student seeking a scholarship in previous school year within a reasonable time following contact by the Board;

(3) verify the existence of the student's IEP and level of service to the USOE within a reasonable time;

(4) provide personnel to participate on an assessment team to determine:

(a) if a student who was previously enrolled in a private school that has previously served students with disabilities would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the child enrolled in a public school for purposes of determining the scholarship amount consistent with Section 53A-1a-706(2);

(b) if a student previously receiving a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

C. Special needs scholarship students shall not be enrolled in public or charter schools for dual enrollment or extracurricular activities, consistent with the parents'/guardians' assumption of full responsibility for students' services under Section 53A-1a-704(5).

D. School districts and charter schools shall cooperate with the Board in cross-checking special needs scholarship student enrollment information, as requested by the Board.

E. School district and charter school notification to students with IEPs:

(1) School districts and charter schools shall provide written notice to parents or guardians of students who have an IEP of the availability of a scholarship to attend a private school through the Special Needs Scholarship Program through state special education monitoring procedures.

(2) The written notice shall consist of the following statement: School districts and charter schools are required by Utah law, 53A-1a-704(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.

(3) The written notice shall be provided no later than 30 days after the student initially qualifies for an IEP.

(4) The written notice shall be provided annually no later than February 1 to all students who have IEPs.

(5) The written notice shall include the address of the Internet website maintained by the Board that provides prospective applicants and their parents with program information and application forms for the Carson Smith Scholarship Program.

(6) A school district, school within a school district, or charter school that has an enrolled student who has an IEP shall post the address of the Carson Smith Internet website maintained by the Board on the school district's or school's website, if the school district or school has one.

R277-602-5. State Board of Education Responsibilities.

A. The Board shall provide applications, containing acknowledgments required under Section 53A-1a-704(5), for parents seeking a special needs scholarship online, at the Board offices, at school district or charter school offices, and at charter schools no later than April 1 prior to the school year in which admission is sought.

B. The Board shall provide a determination that a private school meets the eligibility requirements of Section 53A-1a-705 as soon as possible but no more than 30 days after the private school submits an application and completed documentation of eligibility. The Board may:

(1) provide reasonable timelines within the application for satisfaction of private school requirements;

(2) issue letters of warning, require the school to take corrective action within a time frame set by the Board, suspend the school from the program consistent with Section 53A-1a-708, or impose such other penalties as the Board determines appropriate under the circumstances.

(3) establish appropriate consequences or penalties for private schools that:

(a) fail to provide affidavits under Section 53A-1a-708;

(b) fail to administer assessments, fail to report assessments to parents or fail to report assessments to assessment team under Section 53a-1a-705(1)(f);

(c) fail to employ teachers with credentials required under Section 53A-1a-705(g);

(d) fail to provide to parents relevant credentials of teachers under Section 53A-1a-705(h);

(e) fail to require completed criminal background checks under Section 53A-3-410(2) and (3) and take appropriate action consistent with information received.

(4) initiate complaints and hold administrative hearings, as appropriate, and consistent with R277-602.

C. The Board shall make a list of eligible private schools updated annually and available no later than June 1 of each year.

D. Information about approved scholarships and availability and level of funding shall be provided to scholarship applicant parents/guardians no later than March 1 of each year.

E. The Board shall mail scholarship payments directly to private schools as soon as reasonably possible consistent with Section 53A-1a-706(8).

F. If an annual legislative appropriation is inadequate to cover all scholarship applicants and documented levels of service, the Board shall establish by rule a lottery system for determining the scholarship recipients, with preference provided for under Section 53A-1a-706(1)(c)(i).

G. The Board shall verify and cross-check, using USOE technology services, special needs scholarship student enrollment information consistent with Section 53A-1a-706(7).

R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.

A. Private schools shall submit applications by March 1 prior to the school year in which it intends to enroll scholarship students.

B. Applications and appropriate documentation from private schools for eligibility to receive special needs scholarship students shall be provided to the USOE on forms designated by the USOE consistent with Section 53A-1a-705(3).

C. Private schools shall satisfy criminal background check requirements for employees and volunteers consistent with Section 53A-3-410.

D. Private schools that seek to enroll special needs scholarship students shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Sections 53A-1a-704(3) and 53A-1a-704(6).

(1) Meetings shall be scheduled at times and locations mutually acceptable to private schools, applicant parents and participating public school personnel.

(2) Designated private school and public school personnel shall maintain documentation of the meetings and the decisions made for the students.

(3) Documentation regarding required assessment team meetings, including documentation of meetings for students denied scholarships or services and students admitted into private schools and their levels of service, shall be maintained confidentially by the private and public schools, except the information shall be provided to the USOE for purposes of determining student scholarship eligibility, or for verification of compliance upon request by the USOE.

E. Private schools receiving scholarship payments under this rule shall provide complete student records in a timely manner to other private schools or public schools requesting student records if parents have transferred students under Section 53A-1a-704(7).

F. Private schools shall notify the Board within five days if the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student or the student misses more than 10 consecutive days of school.

G. Private schools shall satisfy health and safety laws and codes under Section 53A-1a-705(1)(d) including:

(1) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies and

(2) compliance with R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.

H. An approved eligible private school that changes ownership shall submit a new application for eligibility to receive Carson Smith scholarship payments from the Board; the application shall demonstrate that the school continues to meet the eligibility requirements of R277-602.

(1) The application for renewed eligibility shall be received from the school within 60 calendar days of the change of ownership.

(2) Ownership changes on the date that an agreement is signed between previous owner and new owner.

(3) If the application is not received by the USOE within the 60 days, the new owner/school is presumed ineligible to receive continued Carson Smith scholarship payments from the USOE and, at the discretion of the Board, the USOE may reclaim any payments made to a school within the previous 60 days.

(4) If the application is not received by the USOE within 60 days after the change of ownership, the school is not an eligible school and shall submit a new application for Carson Smith eligibility consistent with the requirements and timelines of R277-602.

R277-602-7. Special Needs Scholarship Appeals.

A. A parent or legal guardian of an eligible student or a parent or legal guardian of a prospective eligible student may appeal only the following actions under this rule:

(1) alleged USOE violations of Section 53A-1a-701 through 710 or R277-602; or

(2) alleged USOE violations of required timelines.

B. The Appeals Committee may not grant an appeal contrary to the statutory provisions of Section 53A-1a-701 through 53A-1a-710.

C. An appeal shall be submitted in writing to the USOE Special Needs Scholarship Coordinator at: Utah State Office of Education, 250 East 500 South, P.O. Box 144200, Salt Lake City, UT 84114-4200.

(1) The appeal opportunity is expressly limited to an appeal submitted in writing for USOE consideration. The appeal opportunity does not include an investigation required under or similar to an IDEA state complaint investigation.

(2) Appellants have no right to additional elements of due process beyond the specific provisions of this rule.

(3) Nothing in the appeals process established under R277-602 shall be construed to limit, replace or adversely affect parental appeal rights available under IDEA.

D. Appeals shall be made within 15 days of written notification of the final administrative decision.

E. Appeals shall be considered by the Appeals Committee within 15 days of receipt of the written appeal.

F. The decision of the Appeals Committee shall be transmitted to parents no more than ten days following consideration by the Appeals Committee.

G. Appeals shall be finalized as expeditiously as possible in the joint interest of schools and students involved.

H. The Appeals Committee's decision is the final administrative action.

KEY: special needs students, scholarships

August 7, 2014	**Art X Sec 3**
Notice of Continuation August 13, 2015	**53A-1a-706(5)(b)**
	53A-3-410(6)(i)(c)
	53A-1a-707
	53A-1-401(3)

R277. Education, Administration.
R277-700. The Elementary and Secondary School General Core.
R277-700-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Article X, Section 3, of the Utah Constitution, which places general control and supervision of the public schools under the Board;

(b) Subsection 53A-1-402(1), which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements;

(c) Section 53A-1-402.6, which directs the Board to establish Core Standards in consultation with LEA boards and superintendents and directs LEA boards to adopt local curriculum and to design programs to help students master the General Core;

(d) Title 53A, Chapter 1, Part 12, Career and College Readiness Mathematics Competency, which directs the Board to establish college and career mathematics competency standards;

(e) Section 53A-13-109.5, which requires the Board to provide rules related to a basic civics test; and

(f) Subsection 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

(2) The purpose of this rule is to specify the minimum Core Standards and General Core requirements for the public schools, and to establish responsibility for mastery of Core Standard requirements.

R277-700-2. Definitions.

For purposes of this rule:

(1)(a) "Applied course" means a public school course or class that applies the concepts of a Core subject.

(b) "Applied course" includes a course offered through Career and Technical Education or through other areas of the curriculum.

(2) "Assessment" means a summative computer adaptive assessment for:

(a) English language arts grades 3 through 11;

(b) mathematics grades 3 through 8, and Secondary I, II, and III; or

(c) science grades 4 through 8, earth science, biology, physics and chemistry.

(3) "Career and Technical Education(CTE)" means an organized educational program or course which directly or indirectly prepares students for employment, or for additional preparation leading to employment, in an occupation, where entry requirements generally do not require a baccalaureate or advanced degree.

(4) "Core Standard" means a statement of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course.

(5) "Core subject" means a course for which there is a declared set of Core Standards as approved by the Board.

(6) "Elementary school" for purposes of this rule means a school that serves grades K-6 in whatever kind of school the grade levels exist.

(7) "General Core" means the courses, content, instructional elements, materials, resources and pedagogy that are used to teach the Core Standards, including the ideas, knowledge, practice and skills that support the Core Standards.

(8) "High school" for purposes of this rule means a school that serves grades 9-12 in whatever kind of school the grade levels exist.

(9) "LEA" or "local education agency" includes the Utah Schools for the Deaf and the Blind.

(10) "Life Skills document" means a companion document to the Core Standards that describes the knowledge, skills, and dispositions essential for all students; the life skills training helps students transfer academic learning into a comprehensive education.

(11) "Middle school" for purposes of this rule means a school that serves grades 7-8 in whatever kind of school the grade levels exist.

(12) "Summative adaptive assessment" means an assessment that:

(a) is administered upon completion of instruction to assess a student's achievement;

(b) is administered online under the direct supervision of a licensed educator;

(c) is designed to identify student achievement on the Core Standards for the respective grade and course; and

(d) measures the full range of student ability by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.

R277-700-3. General Core and Core Standards.

(1) The Board establishes minimum course description standards for each course in the required General Core.

(2)(a) The Superintendent shall develop, in cooperation with LEAs, course descriptions for required and elective courses.

(b) The Superintendent shall provide parents and the general public an opportunityto participate in the development process of the course descriptions described in Subsection (2)(a).

(3)(a) The Superintendent shall ensure that the courses described in Subsection (2):

(i) contain mastery criteria for the courses; and

(ii) stress mastery of the course material, Core Standards, and life skills consistent with the General Core and Life Skills document.

(b) The Superintendent shall place a greater emphasis on a student's mastery of course material rather than completion of predetermined time allotments for courses.

(4) An LEA board shall administer the General Core and comply with student assessment procedures consistent with state law.

R277-700-4. Elementary Education Requirements.

(1) The Core Standards and a General Core for elementary school students in grades K-6 are described in this section.

(2) The following are the Elementary School Education Core Subject Requirements:

(a) English Language Arts;

(b) Mathematics;

(c) Science;

(d) Social Studies;

(e) Arts:

(i) Visual Arts;

(ii) Music;

(iii) Dance; or

(iv) Theatre;

(f) Health Education;

(g) Physical Education;

(h) Educational Technology; and

(i) Library Media.

(3) An LEA board shall provide access to the General Core to all students within the LEA.

(4) An LEA board is responsible for student mastery of the Core Standards.

(5) An LEA shall conduct informal assessments on a regular basis to ensure continual student progress.

(6) An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following:

(a) reading;

(b) language arts;
(c) mathematics;
(d) science; and
(e) effectiveness of written expression in grades five and eight.

(7) An LEA shall provide remediation to elementary students who do not achieve mastery of the subjects described in this section.

R277-700-5. Middle School Education Requirements.

(1) The Core Standards and a General Core for middle school students are described in this section.

(2) A student in grades 7-8 is required to earn a minimum of 12 units of credit to be properly prepared for instruction in grades 9-12.

(3) In addition to the Board requirements described in this section, an LEA board may require a student to complete additional units of credit.

(4) The following are the Grades 7-8 General Core Requirements and units of credit:
(a) Language Arts (2.0 units of credit);
(b) Mathematics (2.0 units of credit);
(c) Science (2.0 units of credit);
(d) Social Studies (1.5 units of credit);
(e) The Arts (1.0 units of credit from the following):
(i) Visual Arts;
(ii) Music;
(iii) Dance; or
(iv) Theatre.
(f) Physical Education (1.0 units of credit);
(g) Health Education (0.5 units of credit); and
(h) Career and Technical Education, Life, and Careers (1.0 units of credit).

(5) An LEA shall use evidence-based best practices, technology, and other instructional media in middle school curricula to increase the relevance and quality of instruction.

(6) An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following:
(a) reading;
(b) language arts;
(c) mathematics; and
(d) science in grades 7 and 8.

R277-700-6. High School Requirements.

(1) The General Core and Core Standards for students in grades 9-12 are described in this section.

(2) A student in grades 9-12 is required to earn a minimum of 24 units of credit through course completion or through competency assessment consistent with R277-705 to graduate.

(3) The General Core credit requirements from courses approved by the Board are described in Subsections (4) through (18).

(4) Language Arts (4.0 units of credit from the following):
(a) Grade 9 level (1.0 unit of credit);
(b) Grade 10 level (1.0 unit of credit);
(c) Grade 11 level (1.0 unit of credit); and
(d) Grade 12 level (1.0 Unit of credit) consisting of applied or advanced language arts credit from the list of Board-approved courses using the following criteria and consistent with the student's SEOP/Plan for College and Career Readiness:
(i) courses are within the field/discipline of language arts with a significant portion of instruction aligned to language arts content, principles, knowledge, and skills;
(ii) courses provide instruction that leads to student understanding of the nature and disposition of language arts;
(iii) courses apply the fundamental concepts and skills of language arts;
(iv) courses provide developmentally appropriate content; and
(v) courses develop skills in reading, writing, listening, speaking, and presentation.

(5) Mathematics (3.0 units of credit) shall be met minimally through successful completion of a combination of the foundation or foundation honors courses, Secondary Mathematics I, Secondary Mathematics II, and Secondary Mathematics III.

(6)(a) A student may opt out of Secondary Mathematics III if the student's parent submits a written request to the school.

(b) If a student's parent requests an opt out described in Subsection (6)(a), the student is required to complete a third math credit from the Board-approved mathematics list.

(7) A 7th or 8th grade student may earn credit for a mathematics foundation course before 9th grade, consistent with the student's SEOP/Plan for College and Career Readiness if:
(a) the student is identified as gifted in mathematics on at least two different USOE-approved assessments;
(b) the student is dual enrolled at the middle school/junior high school and the high school;
(c) the student qualifies for promotion one or two grade levels above the student's age group and is placed in 9th grade; or
(d) the student takes the USOE competency test in the summer prior to 9th grade and earns high school graduation credit for the course.

(8) A student who successfully completes a mathematics foundation course before 9th grade is required to earn 3.0 units of additional mathematics credit by:
(a) taking the other mathematics foundation courses described in Subsection (5); and
(b) an additional course from the Board-approved mathematics list consistent with:
(i) the student's SEOP/Plan for College and Career Readiness; and
(ii) the following criteria:
(A) courses are within the field/discipline of mathematics with a significant portion of instruction aligned to mathematics content, principles, knowledge, and skills;
(B) courses provide instruction that lead to student understanding of the nature and disposition of mathematics;
(C) courses apply the fundamental concepts and skills of mathematics;
(D) courses provide developmentally appropriate content; and
(E) courses include the five process skills of mathematics: problem solving, reasoning, communication, connections, and representation.

(9) A student who successfully completes a Calculus course with a "C" grade or higher has completed mathematics graduation requirements, regardless of the number of mathematics credits earned.

(10) Science (3.0 units of credit):
(a) shall be met minimally through successful completion of two courses from the following science foundation areas:
(i) Earth Science (1.0 units of credit);
(ii) Biological Science (1.0 units of credit);
(iii) Chemistry (1.0 units of credit);
(iv) Physics (1.0 units of credit); or
(v) one of the following Computer Science courses (.5 or 1.0 units of credit):
(A) Advanced Placement Computer Science;
(B) Computer Science Principles; or
(C) Computer Programming II; and
(b) one additional unit of credit from:
(i) the foundation courses described in Subsection(10)(a); or
(ii) the applied or advanced science list determined by the LEA board and approved by the Board using the following criteria and consistent with the student's SEOP/Plan for College

and Career Readiness:

(A) courses are within the field/discipline of science with a significant portion of instruction aligned to science content, principles, knowledge, and skills;

(B) courses provide instruction that leads to student understanding of the nature and disposition of science;

(C) courses apply the fundamental concepts and skills of science;

(D) courses provide developmentally appropriate content;

(E) courses include the areas of physical, natural, or applied sciences; and

(F) courses develop students' skills in scientific inquiry.

(11) Social Studies (3.0 units of credit) shall be met minimally through successful completion of:

(a) 2.5 units of credit from the following courses:

(i) Geography for Life (0.5 units of credit);

(ii) World Civilizations (0.5 units of credit);

(iii) U.S. History (1.0 units of credit); and

(iv) U.S. Government and Citizenship (0.5 units of credit);

(b) Social Studies (0.5 units of credit per LEA discretion); and

(c) a basic civics test or alternate assessment described in R277-700-8.

(12) The Arts (1.5 units of credit from any of the following performance areas):

(a) Visual Arts;

(b) Music;

(c) Dance; or

(d) Theatre.

(13) Physical and Health Education (2.0 units of credit from any of the following):

(a) Health (0.5 units of credit);

(b) Participation Skills (0.5 units of credit);

(c) Fitness for Life (0.5 units of credit);

(d) Individualized Lifetime Activities (0.5 units of credit); or

(e) team sport/athletic participation (maximum of 0.5 units of credit with school approval).

(14) Career and Technical Education (1.0 units of credit from any of the following):

(a) Agriculture;

(b) Business;

(c) Family and Consumer Sciences;

(d) Health Science and Technology;

(e) Information Technology;

(f) Marketing;

(g) Technology and Engineering Education; or

(h) Trade and Technical Education.

(15) Educational Technology (0.5 units of credit from one of the following):

(a) Digital Literacy (0.5 units of credit from a Board-approved list of courses); or

(b) successful completion of a Board-approved competency examination (credit may be awarded at the discretion of the LEA).

(16) Library Media Skills (integrated into the subject areas).

(17) General Financial Literacy (0.5 units of credit).

(18) Electives (5.5 units of credit).

(19) An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following subjects:

(a) reading;

(b) language arts through grade 11;

(c) mathematics as defined in Subsection (5); and

(d) science as defined in Subsection (10).

(20) An LEA board may require a student to earn credits for graduation that exceed the minimum Board requirements described in this rule.

(21) An LEA board may establish and offer additional elective course offerings at the discretion of the LEA board.

(22)(a) An LEA may modify a student's graduation requirements to meet the unique educational needs of a student if:

(i) the student has a disability; and

(ii) the modifications to the student's graduation requirements are made through the student's individual IEP.

(b) An LEA shall document the nature and extent of a modification, substitution, or exemption made to a student's graduation requirements described in Subsection (22)(a) in the student's IEP.

(23) The Board and Superintendent may review an LEA board's list of approved courses for compliance with this rule.

(24) An LEA may modify graduation requirements for an individual student to achieve an appropriate route to student success if the modification:

(a) is consistent with:

(i) the student's IEP; or

(ii) SEOP/Plan for College and Career Readiness;

(b) is maintained in the student's file;

(c) includes the parent's signature; and

(d) maintains the integrity and rigor expected for high school graduation, as determined by the Board.

R277-700-7. Student Mastery and Assessment of Core Standards.

(1) An LEA shall ensure students master the Core Standards at all levels.

(2) An LEA shall provide remediation for secondary students who do not achieve mastery under Section 53A-13-104.

(3) An LEA shall provide remedial assistance to students who are found to be deficient in basic skills through a statewide assessment in accordance with the provisions of Subsection 53A-1-606(1).

(4) If a parent objects to a portion of a course or to a course in its entirety under provisions of Section 53A-13-101.2 and R277-105, the parent shall be responsible for the student's mastery of Core Standards to the satisfaction of the school prior to the student's promotion to the next course or grade level.

(5)(a) A student with a disability served by a special education program is required to demonstrate mastery of the Core Standards.

(b) If a student's disability precludes the student from successfully mastering the Core Standards, the student's IEP team, on a case-by-case basis, may provide the student an accommodation for, or modify the mastery demonstration to accommodate, the student's disability.

(6) A student may demonstrate competency to satisfy course requirements consistent with R277-705-3.

(7) LEAs are ultimately responsible for and shall comply with all assessment procedures, policies and ethics as described in R277-473.

R277-700-8. Civics Education Initiative.

(1) For purposes of this section:

(a) "Student" means:

(i) a public school student who graduates on or after January 1, 2016; or

(ii) a student enrolled in an adult education program who receives an adult education secondary diploma on or after January 1, 2016.

(b) "Basic civics test" means the same as that term is defined in Section 53A-13-109.5.

(2) Except as provided in Subsection (3), an LEA shall:

(a) administer a basic civics test in accordance with the requirements of Section 53A-13-109.5; and

(b) require a student to pass the basic civics test as a

condition of receiving:

(i) a high school diploma; or

(ii) an adult education secondary diploma.

(3) An LEA may require a student to pass an alternate assessment if:

(a)(i) the student has a disability; and

(ii) the alternate assessment is consistent with the student's IEP; or

(b) the student is within six months of intended graduation.

(4) Except as provided in Subsection (5), the alternate assessment shall be given:

(a) in the same manner as an exam given to an unnaturalized citizen; and

(b) in accordance with 8 C.F.R. Sec. 312.2.

(5) An LEA may modify the manner of the administration of an alternate assessment for a student with a disability in accordance with the student's IEP.

(6) If a student passes a basics civics test or an alternate assessment described in this section, an LEA shall report to the Superintendent that the student passed the basic civics test or alternate assessment.

(7) If a student who passes a basic civics test or an alternate assessment transfers to another LEA, the LEA may not require the student to re-take the basic civics test or alternate assessment.

R277-700-9. College and Career Readiness Mathematics Competency.

(1) For purposes of this section, "senior student with a special circumstance" means a student who:

(a) is pursuing a college degree after graduation; and

(b) has not met one of criteria described in Subsection (2)(a) before the beginning of the student's senior year of high school.

(2) Except as provided in Subsection (4), in addition to the graduation requirements described in R277-700-6, beginning with the 2016-17 school year, a student pursuing a college degree after graduation shall:

(a) receive one of the following:

(i) a score of 3 or higher on an Advanced Placement (AP) calculus AB or BC exam;

(ii) a score of 3 or higher on an Advanced Placement (AP) statistics exam;

(iii) a score of 5 or higher on an International Baccalaureate (IB) higher level math exam;

(iv) a score of 50 or higher on a College Level Exam Program (CLEP) pre-calculus or calculus exam;

(v) a score of 26 or higher on the mathematics portion of the American College Test (ACT) exam;

(vi) a score of 640 or higher on the mathematics portion of the Scholastic Aptitude Test (SAT) exam; or

(vii) a "C" grade in a concurrent enrollment mathematics course that satisfies a state system of higher education quantitative literacy requirement; or

(b) if the student is a senior student with a special circumstance, take a full year mathematics course during the student's senior year of high school.

(3) Except as provided in Subsection (4), in addition to the graduation requirements described in R277-700-6, beginning with the 2016-17 school year, a non-college and degree-seeking student shall complete appropriate math competencies for the student's career goals as described in the student's SEOP/Plan for College and Career Readiness.

(4) An LEA may modify a student's college or career readiness mathematics competency requirement under this section if:

(a) the student has a disability; and

(b) the modification to the student's college or career readiness mathematics competency requirement is made through the student's IEP.

(5)(a) Beginning with the 2016-17 cohort, an LEA shall report annually to the LEA's governing board the number of students within the LEA who:

(i) meet the criteria described in Subsection (2)(a);

(ii) take a full year of mathematics as described in Subsection (2)(b);

(iii) meet appropriate math competencies as established in the students' career goals as described in Subsection (3); and

(iv) meet the college or career readiness mathematics competency requirement established in the students' IEP as described in Subsection (4).

(b) An LEA shall provide the information described in Subsection (5)(a) to the Superintendent by October 1 of each year.

KEY: graduation requirements, standards

August 26, 2015	**Art X Sec 3**
Notice of Continuation July 1, 2015	**53A-1-402(1)(b)**
	53A-1-402.6
	53A-1-401(3)

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)(I) Static elimination devices which contain, as sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device.

(II) Ion generating tubes designed for ionization of air that contain, as a sealed source or sources, byproduct material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device or of a total of not more than 1.85 GBq (50 mCi) of hydrogen-3 (tritium) per device.

(III) Such devices authorized before October 23, 2012 for use under the general license then provided in 10 CFR 31.3 (January 1, 2012) or equivalent regulations of the Commission or an Agreement State and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the Commission or Agreement State.

(C) 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.

(D) 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.

(E) 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.

(F) 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.

(G) 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)(G), 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) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147, and except as provided in R313-19-13(2)(c)(ii)(C), any person is exempt from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and from the regulations in R313-15, R313-19, R313-32, R313-34, R313-36, R313-37, and R313-38 to the extent that such a person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85, or promethium-147 in self-luminous products manufactured, processed, produced, or initially transferred in accordance with a specific license issued pursuant to 10 CFR 32.22 (2015), which license authorizes the initial transfer of the product for use.

(B) Any person who desires to manufacture, process, or produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147 for use under R313-19-13(2)(c)(ii)(A), should apply for a license under 10 CFR 32.22 (2015) and for a certificate of registration in accordance with 10 CFR 32.210 (2015).

(C) The exemption in R313-19-13(2)(c)(ii)(A) does not apply to tritium, krypton-85, or promethium-147 used in products primarily for frivolous purposes or in toys or adornments.

(D) 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, any person is exempt from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and from the regulations in parts R313-18, R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, R313-37, and R313-38

to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material in gas and aerosol detectors designed to protect health, safety, or property, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.26 (2015), which license authorizes the initial transfer of the product for use under this section. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by a State under comparable provisions to 10 CFR 32.26 (2015) authorizing distribution to persons exempt from regulatory requirements.

(B) Any person who desires to manufacture, process, or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use under paragraph (a)of this section, should apply for a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Part 32.26 (2015) and for a certificate of registration in accordance with R313-22-210 or equivalent regulations of an Agreement State.

(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) Certain industrial devices.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing radioactive material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and from the regulations in parts R313-18, R313-15, R313-18, R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, R313-37, and R313-38 to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.30 (2015), which license authorizes the initial transfer of the device for use under this rule. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

(B) Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material for use under R313-19-13(2)(c)(v)(A), should apply for a license under 10 CFR 32.30 (2015) and for a certificate of registration in accordance with R313-22-210.

(vi) 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(15), 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)	Column II Concentration 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: licenses, reciprocity, transportation, exemptions
August 26, 2015 19-3-104
Notice of Continuation September 23, 2011 19-3-108

R313. Environmental Quality, Radiation Control.
R313-21. General Licenses.
R313-21-1. Purpose and Scope.

(1) R313-21 establishes general licenses for the possession and use of radioactive material contained in certain items and a general license for ownership of radioactive material.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3)and 19-3-104(6).

R313-21-21. General Licenses--Source Material.

(1) A general license is hereby issued authorizing commercial and industrial firms, research, educational and medical institutions, and state and local government agencies to use and transfer not more than 6.82 kilogram (15 lb) of source material at any one time for research, development, educational, commercial, or operational purposes. A person authorized to use or transfer source material, pursuant to this general license, may not receive more than a total of 68.2 kilogram (150 lb) of source material in any one calendar year.

(2) Persons who receive, possess, use, or transfer source material pursuant to the general license issued in R313-21-21(1) are exempt from the provisions of R313-15 and R313-18, to the extent that such receipt, possession, use or transfer is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to a person who is also in possession of source material under a specific license issued pursuant to R313-22.

(3) Persons who receive, possess, use, or transfer source material pursuant to the general license in R313-21-21(1) are prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings except as may be authorized by the Director in a specific license.

(4) A general license is hereby issued authorizing the receipt of title to source material without regard to quantity. This general license does not authorize a person to receive, possess, use, or transfer source material.

(5) Depleted uranium in industrial products and devices.

(a) A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of R313-21-21(5)(b), (c), (d), and (e), depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

(b) The general license in R313-21-21(5)(a) applies only to industrial products or devices which have been manufactured or initially transferred, either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to R313-22-75(11) or in accordance with a specific license issued to the manufacturer by the Nuclear Regulatory Commission, an Agreement State, or a Licensing State which authorizes manufacture of the products or devices for distribution to persons generally licensed by the Nuclear Regulatory Commission, an Agreement State, or a Licensing State.

(c)(i) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by R313-21-21(5)(a) shall file form DRC-12 "Registration Form-Use of Depleted Uranium Under General License," with the Director. The form shall be submitted within 30 days after the first receipt or acquisition of depleted uranium. The registrant shall furnish on form DRC-12 the following information and other information as may be required by that form:

(A) name and address of the registrant;

(B) a statement that the registrant has developed and will maintain procedures designed to establish physical control over the depleted uranium described in R313-21-21(5)(a) and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

(C) name and title, address, and telephone number of the individual duly authorized to act for and on behalf of the registrant in supervising the procedures identified in R313-21-21(5)(c)(i)(B).

(ii) The registrant possessing or using depleted uranium under the general license established by R313-21-21(5)(a) shall report in writing to the Director any changes in information previously furnished on form DRC-12 "Registration Form - Use of Depleted Uranium Under General License." The report shall be submitted within 30 days after the effective date of the change.

(d) A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by R313-21-21(5)(a):

(i) shall not introduce depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;

(ii) shall not abandon depleted uranium;

(iii) shall transfer or dispose of depleted uranium only by transfer in accordance with the provisions of R313-19-41. In the case where the transferee receives the depleted uranium pursuant to the general license established by R313-21-21(5)(a), the transferor shall furnish the transferee a copy of R313-21 and a copy of form DRC-12. In the case where the transferee receives the depleted uranium pursuant to a general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to R313-21-21(5)(a), the transferor shall furnish the transferee a copy of this rule and a copy of form DRC-12 accompanied by a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in R313-21;

(iv) within 30 days of any transfer, shall report in writing to the Director the name and address of the person receiving the depleted uranium pursuant to the transfer;

(v) shall not export depleted uranium except in accordance with a license issued by the Nuclear Regulatory Commission pursuant to 10 CFR Part 110; and

(vi) shall pay annual fees pursuant to R313-70.

(e) Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by R313-21-21(5)(a) is exempt from the requirements of R313-15 and R313-18 of these rules with respect to the depleted uranium covered by that general license.

R313-21-22. General Licenses*--Radioactive Material Other Than Source Material.

NOTE: *Different general licenses are issued in this section, each of which has its own specific conditions and requirements.

(1) RESERVED.

(2) Certain items and self-luminous products containing radium-226.

(a) A general license is hereby issued to a person to acquire, receive, possess, use, or transfer, in accordance with the provisions of Subsections R313-21-22(2)(b), R313-21-22(2)(c), and R313-21-22(2)(d), radium-226 contained in the following products manufactured prior to November 30, 2007.

(i) Antiquities originally intended for use by the general public. For the purposes of Subsection R313-21-22(2)(a), antiquities mean products originally intended for use by the general public and distributed in the late 19th and early 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads.

(ii) Intact timepieces containing greater than 37 kilobecquerels (1 uCi), nonintact timepieces, and timepiece hands and dials no longer installed in timepieces.

(iii) Luminous items installed in air, marine, or land

vehicles.

(iv) All other luminous products provided that no more than 100 items are used or stored at the same location at one time.

(v) Small radium sources containing no more than 37 kilobecquerels (1 uCi) of radium-226. For the purposes of Subsection R313-21-22(2)(a), "small radium sources" means discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations such as cloud chambers and spinthariscopes, electron tubes, static eliminators, or as designated by the Director.

(b) Persons who acquire, receive, possess, use, or transfer radioactive material under the general license issued in Subsection R313-21-22(2)(a) are exempt from the provisions of Rules R313-15, R313-18, and Sections R313-12-51 and R313-19-50, to the extent that the receipt, possession, use, or transfers of radioactive material is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to a person specifically licensed under Rule R313-22.

(c) A person who acquires, receives, possesses, uses, or transfers radioactive material in accordance with the general license in Subsection R313-21-22(2)(a):

(i) Shall notify the Director should there be an indication of possible damage to the product so that it appears it could result in a loss of the radioactive material. A report containing a brief description of the event, and the remedial action taken, must be furnished to the Director within 30 days.

(ii) Shall not abandon products containing radium-226. The product, and radioactive material from the product, may only be disposed of according to Section R313-15-1008 or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by the Director.

(iii) Shall not export products containing radium-226 except in accordance with 10 CFR Part 110.

(iv) Shall dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with Federal or State solid or hazardous waste laws, inluding the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005, by transfer to a person authorized to receive radium-226 under Rule R313-22 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State or as otherwise approved by the Director.

(v) Shall respond to written requests from the Director to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the Director a written justification using the method stated in Section R313-12-110.

(d) The general license in R313-21-22(2)(a) does not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226, except that timepieces may be disassembled and repaired.

(3) RESERVED.

(4) Certain detecting, measuring, gauging or controlling devices and certain devices for producing light or an ionized atmosphere.*

NOTE: *Persons possessing radioactive material in devices under a general license in R313-21-22(4) before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of R313-21-22(4) in effect on January 14, 1975.

(a) A general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and state or local government agencies to own, acquire, receive, possess, use or transfer, in accordance with the provisions of R313-21-22(4)(b), (c) and (d), radioactive material, excluding special nuclear material, contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

(b)(i) The general license in R313-21-22(4)(a) applies only to radioactive material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in:

(A) a specific license issued by the Director pursuant to R313-22-75(4); or

(B) an equivalent specific license issued by the Nuclear Regulatory Commission or an Agreement State; or

(C) An equivalent specific license issued by a State with provisions comparable to R313-22-75.*

NOTE: *Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in 21 CFR 179.21.

(ii) The devices must have been received from one of the specific licensees described in R313-21-22(4)(b)(i) or through a transfer made under R313-21-22(4)(c)(ix).

(c) Any person who owns, acquires, receives, possesses, uses or transfers radioactive material in a device pursuant to the general license in R313-21-22(4)(a):

(i) shall assure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited are maintained thereon and shall comply with all instructions and precautions provided by the labels;

(ii) shall assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six-month intervals or at other intervals as are specified in the label; however:

(A) Devices containing only krypton need not be tested for leakage of radioactive material, and

(B) Devices containing only tritium or not more than 3.7 megabecquerel (100 uCi) of other beta, gamma, or both, emitting material or 0.37 megabecquerel (10 uCi) of alpha emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose;

(iii) shall assure that other testing, installation, servicing, and removal from installation involving the radioactive materials, its shielding or containment, are performed:

(A) in accordance with the instructions provided by the labels; or

(B) by a person holding a specific license pursuant to R313-22 or from the Nuclear Regulatory Commission, an Agreement State, or a Licensing State to perform such activities;

(iv) shall maintain records showing compliance with the requirements of R313-21-22(4)(c)(ii) and (iii). The records shall show the results of tests. The records also shall show the dates of performance of, and the names of persons performing, testing, installation, servicing, and removal from the installation the radioactive material and its shielding or containment. The licensee shall retain these records as follows:

(A) Each record of a test for leakage of radioactive material required by R313-21-22(4)(c)(ii) shall be retained for three years after the next required leak test is performed or until the sealed source is transferred or disposed of;

(B) Each record of a test of the on-off mechanism and indicator required by R313-21-22(4)(c)(ii) shall be retained for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of;

(C) Each record that is required by R313-21-22(4)(c)(iii)

shall be retained for three years from the date of the recorded event or until the device is transferred or disposed of;

(v) shall immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 185 becquerel (0.005 uCi) or more removable radioactive material. The device may not be operated until it has been repaired by the manufacturer or other person holding a specific license to repair the device that was issued by the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State. The device and any radioactive material from the device may only be disposed of by transfer to a person authorized by a specific license to receive the radioactive material in the device or as otherwise approved by the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State. A report containing a brief description of the event and the remedial action taken; and, in the case of detection of 185 becquerel (0.005 uCi) or more removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use, must be furnished to the Director within 30 days. Under these circumstances, the criteria set out in R313-15-402 may be applicable, as determined by the Director on a case-by-case basis;

(vi) shall not abandon the device containing radioactive material;

(vii) shall not export the device containing radioactive materials except in accordance with 10 CFR 110;

(viii)(A) shall transfer or dispose of the device containing radioactive material only by export as provided by R313-21-22(4)(c)(vii), by transfer to another general licensee as authorized in R313-21-22(4)(c)(ix), to a person authorized to receive the device by a specific license issued under R313-22, to an authorized waste collector under R313-25, or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State, or a Licensing State , or as otherwise approved under R313-21-22(4)(c)(viii)(C);

(B) shall furnish a report to the Director within 30 days after transfer of a device to a specific licensee or export. The report must contain:

(I) the identification of the device by manufacturer's or initial transferor's name, model number, and serial number;

(II) the name, address, and license number of the person receiving the device, the license number is not applicable if exported; and

(III) the date of the transfer;

(C) shall obtain written approval from the Director before transferring the device to any other specific licensee not specifically identified in R313-21-22(4)(c)(viii)(A); however, a holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if the holder:

(I) verifies that the specific license authorizes the possession and use, or applies for and obtains an amendment to the license authorizing the possession and use;

(II) removes, alters, covers, or clearly and unambiguously augments the existing label (otherwise required by R313-21-22(4)(c)(i)) so that the device is labeled in compliance with R313-15-904; however, the manufacturer, model number, and serial number must be retained;

(III) obtains the manufacturer's or initial transferor's information concerning maintenance that would be applicable under the specific license (such as leak testing procedures); and

(IV) reports the transfer under R313-21-22(4)(c)(viii)(B);

(ix) shall transfer the device to another general licensee only if:

(A) the device remains in use at a particular location. In this case, the transferor shall give the transferee a copy of R313-21-22(4), R313-12-51, R313-15-1201, and R313-15-1202, and any safety documents identified in the label of the device. Within 30 days of the transfer, the transferor shall report to the Director:

(I) the manufacturer's or initial transferor's name;

(II) the model number and serial number of the device transferred;

(III) the transferee's name and mailing address for the location of use; and

(IV) the name, title, and phone number of the responsible individual identified by the transferee in accordance with R313-21-22(4)(c)(xii) to have knowledge of and authority to take actions to ensure compliance with the appropriate regulations and requirements; or

(B) the device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee;

(x) shall comply with the provisions of R313-15-1201 and R313-15-1202 for reporting radiation incidents, theft or loss of licensed material, but shall be exempt from the other requirements of R313-15 and R313-18;

(xi) shall respond to written requests from the Director to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by submitting a letter to the Director and provide written justification as to why it cannot comply;

(xii) shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard;

(xiii)(A) shall register, in accordance with R313-21-22(4)(c)(xiii)(B) and (C), devices containing at least 370 megabecquerel (ten mCi) of cesium-137, 3.7 megabecquerel (0.1 mCi) of strontium-90, 37 megabecquerel (one mCi) of cobalt-60, 3.7 megabecquerel (0.1 mCi) of radium-226, or 37 megabecquerel (one mCi) of americium-241 or any other transuranic, (elements with atomic number greater than uranium-92), based on the activity indicated on the label. Each address for a location of use, as described under R313-21-22(4)(c)(xiii)(C)(IV) represents a separate general licensee and requires a separate registration and fee;

(B) if in possession of a device meeting the criteria of R313-21-22(4)(c)(xiii)(A), shall register these devices annually with the Director and shall pay the fee required by R313-70. Registration shall include verifying, correcting, or adding, as appropriate, to the information provided in a request for registration received from the Director. The registration information must be submitted to the Director within 30 days of the date of the request for registration or as otherwise indicated in the request. In addition, a general licensee holding devices meeting the criteria of R313-21-22(4)(c)(xiii)(A) is subject to the bankruptcy notification requirement in R313-19-34(5) and (6);

(C) in registering devices, the general licensee shall furnish the following information and any other information specifically requested by the Director:

(I) name and mailing address of the general licensee;

(II) information about each device: the manufacturer or initial transferor, model number, serial number, the radioisotope and activity as indicated on the label;

(III) name, title, and telephone number of the responsible

person designated as a representative of the general licensee under R313-21-22(4)(c)(xii);

(IV) address or location at which the device(s) are used, stored, or both. For portable devices, the address of the primary place of storage;

(V) certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information; and

(VI) certification by the responsible representative of the general licensee that they are aware of the requirements of the general license; and

(D) persons generally licensed by the Nuclear Regulatory Commission, an Agreement State, or Licensing State with respect to devices meeting the criteria in R313-21-22(4)(c)(xiii)(A) are not subject to registration requirements if the devices are used in areas subject to Division jurisdiction for a period less than 180 days in any calendar year. The Director will not request registration information from such licensees;

(xiv) shall report changes to the mailing address for the location of use, including changes in the name of a general licensee, to the Director within 30 days of the effective date of the change. For a portable device, a report of address change is only required for a change in the device's primary place of storage; and

(xv) may not hold devices that are not in use for longer than 2 years. If devices with shutters are not being used, the shutter must be locked in the closed position. The testing required by R313-21-22(4)(c)(ii) need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they must be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in standby.

(d) The general license in R313-21-22(4)(a) does not authorize the manufacture or import of devices containing radioactive material.

(e) The general license provided in R313-21-22(4)(a) is subject to the provisions of R313-12-51 through R313-12-53, R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100.

(5) Luminous safety devices for aircraft.

(a) A general license is hereby issued to own, receive, acquire, possess and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

(i) each device contains not more than 370.0 gigabecquerel (10 Ci) of tritium or 11.1 gigabecquerel (300 mCi) of promethium-147; and

(ii) each device has been manufactured, assembled or initially transferred in accordance with a specific license issued by the Nuclear Regulatory Commission or an Agreement State, or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the Director or an Agreement State to the manufacturer or assembler of the device pursuant to licensing requirements equivalent to those in R313-22-75(5).

(b) Persons who own, receive, acquire, possess or use luminous safety devices pursuant to the general license in R313-21-22(5) are exempt from the requirements of R313-15 and R313-18, except that they shall comply with the provisions of R313-15-1201 and R313-15-1202.

(c) This general license does not authorize the manufacture, assembly, repair, or import of luminous safety devices containing tritium or promethium-147.

(d) This general license does not authorize the export of luminous safety devices containing tritium or promethium-147.

(e) This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

(f) This general license is subject to the provisions of R313-12-51 through R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100.

(6) Ownership of radioactive material. A general license is hereby issued to own radioactive material without regard to quantity. Notwithstanding any other provisions of R313-21, this general license does not authorize the manufacture, production, transfer, receipt, possession, use, import, or export of radioactive material except as authorized in a specific license.

(7) Calibration and reference sources.

(a) A general license is hereby issued to own, receive, acquire, possess, use and transfer, in the form of calibration or reference sources, americium-241, plutonium or radium-226 in accordance with the provisions of Subsections R313-21-22(7)(b) and (c), to a person who holds a specific license issued by the Director which authorizes that person to receive, possess, use and transfer radioactive material.

(b) The general license in Subsection R313-21-22(7)(a) applies only to calibration or reference sources which have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued by the Nuclear Regulatory Commission pursuant to 10 CFR 32.57 or 10 CFR 70.39 or which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the Director, or an Agreement State which authorizes manufacture of the sources for distribution to persons generally licensed, or in accordance with a specific license issued by a State with requirements equivalent to 10 CFR 32.57 or 10 CFR 70.39.

(c) The general license provided in Subsection R313-21-22(7)(a) is subject to the provisions of Sections R313-12-51 through R313-12-53, R313-12-70, and Rules R313-14, R313-19-34, R313-19-41, R313-19-61, R313-19-100, R313-15 and R313-18. In addition, persons who own, receive, acquire, possess, use or transfer one or more calibration or reference sources pursuant to the general license in Subsection R313-21-22(7)(a):

(i) shall not possess at any one time, at any one location of storage or use, more than 185.0 kilobecquerel (5 uCi) of americium-241, 185.0 kilobecquerel (5 uCi) of plutonium, or 185.0 kilobecquerel (5 uCi) of radium-226 in such sources;

(ii) shall not receive, possess, use or transfer a source unless the source, or the storage container, bears a label which includes one of the following statements or a substantially similar statement which contains the information called for in the following statement:

The receipt, possession, use and transfer of this source, Model No. ....., Serial No. ....., are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL

THIS SOURCE CONTAINS (AMERICIUM-241)(PLUTONIUM)(RADIUM-226)*

DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

.....

Typed or printed name of the manufacturer or initial transferor

NOTE: *Show the name of the appropriate material.

(iii) shall not transfer, abandon, or dispose of a source except by transfer to a person authorized by a license issued by the Director, the Nuclear Regulatory Commission, or an Agreement State to receive the source;

(iv) shall store a source, except when the source is being used, in a closed container adequately designed and constructed

to contain americium-241, plutonium, or radium-226 which might otherwise escape during storage; and

(v) shall not use a source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(d) A general license issued pursuant to Subsection R313-21-22(7)(a) does not authorize the manufacture, import, or export of calibration or reference sources containing americium-241, plutonium, or radium-226.

(8) RESERVED.

(9) General license for use of radioactive material for certain in vitro clinical or laboratory testing.*

NOTE: *The New Drug provisions of the Federal Food, Drug and Cosmetic Act also govern the availability and use of any specific diagnostic drug in interstate commerce.

(a) A general license is hereby issued to any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital to receive, acquire, possess, transfer or use, for the following stated tests, in accordance with the provisions of R313-21-22(9) (b), (c), (d), (e), and (f) the following radioactive materials in prepackaged units for use in in-vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

(i) iodine-125, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(ii) iodine-131, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(iii) carbon-14, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(iv) hydrogen-3 (tritium), in units not exceeding 1.85 megabecquerel (50 uCi) each;

(v) iron-59, in units not exceeding 740.0 kilobecquerel (20 uCi) each;

(vi) cobalt-57, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(vii) selenium-75, in units not to exceed 370.0 kilobecquerel (10 uCi) each; or

(viii) mock iodine-125, reference or calibration sources, in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 185.0 becquerel (0.005 uCi) of americium-241 each.

(b) A person shall not receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by R313-21-22(9)(a) until that person has filed form DRC-07, "Registration Form-In Vitro Testing with Radioactive Material Under General License," with the Director and received a Certificate of Registration signed by the Director, or until that person has been authorized pursuant to R313-32 to use radioactive material under the general license in R313-21-22(9). The physician, veterinarian, clinical laboratory or hospital shall furnish on form DRC-07 the following information and other information as may be required by that form:

(i) name and address of the physician, veterinarian, clinical laboratory or hospital;

(ii) the location of use; and

(iii) a statement that the physician, veterinarian, clinical laboratory or hospital has appropriate radiation measuring instruments to carry out in vitro clinical or laboratory tests with radioactive material as authorized under the general license in Subsection R313-21-22(9)(a) and that the tests will be performed only by personnel competent in the use of radiation measuring instruments and in the handling of the radioactive material.

(c) A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by Subsection R313-21-22(9)(a) shall comply with the following:

(i) The general licensee shall not possess at any one time, pursuant to the general license in Subsection R313-21-22(9)(a) at any one location of storage or use, a total amount of iodine-125, iodine-131, selenium-75, iron-59, cobalt-57, or any combination, in excess of 7.4 megabecquerel (200 uCi).

(ii) The general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection.

(iii) The general licensee shall use the radioactive material only for the uses authorized by Subsection R313-21-22(9)(a).

(iv) The general licensee shall not transfer the radioactive material except to a person authorized to receive it pursuant to a license issued by the Director, the Nuclear Regulatory Commission, an Agreement State or Licensing State, nor transfer the radioactive material in a manner other than in the unopened, labeled shipping container as received from the supplier.

(v) The general licensee shall dispose of the Mock Iodine-125 reference or calibration sources described in Subsection R313-21-22(9)(a)(viii) as required by Section R313-15-1001.

(vi) The general licensee shall pay annual fees pursuant to Rule R313-70.

(d) The general licensee shall not receive, acquire, possess, or use radioactive material pursuant to Subsection R313-21-22(9)(a):

(i) Except as prepackaged units which are labeled in accordance with the provision of a specific license issued pursuant to R313-22-75(7) or in accordance with the provisions of a specific license issued by the Nuclear Regulatory Commission, or an Agreement State, or before November 30, 2007, in accordance with the provisions of a specific license issued by a State with comparable provisions to 10 CFR 32.71 (2010) which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3(tritium), iron-59, selenium-75, cobalt-57, or Mock Iodine-125 to persons generally licensed under Subsection R313-21-22(9) or its equivalent, and

(ii) Unless the following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

"This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians in the practice of veterinary medicine, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority.

.....

Name of Manufacturer"

(e) The physician, veterinarian, clinical laboratory or hospital possessing or using radioactive material under the general license in Subsection R313-21-22(9)(a) shall report in writing to the Director, changes in the information previously furnished in the "Registration Form-In Vitro Testing with Radioactive Material Under General License", form DRC -07. The report shall be furnished within 30 days after the effective date of the change.

(f) Any person using radioactive material pursuant to the general license of Subsection R313-21-22(9)(a) is exempt from the requirements of Rules R313-15 and R313-18 with respect to radioactive material covered by that general license, except that persons using the Mock Iodine-125 described in Subsection R313-21-22(9)(a)(viii) shall comply with the provisions of Sections R313-15-1001, R313-15-1201 and R313-15-1202.

(10) Ice Detection Devices.

(a) A general license is hereby issued to own, receive, acquire, possess, use and transfer strontium-90 contained in ice detection devices, provided each device contains not more than 1.85 megabecquerel (50 uCi) of strontium-90 and each device has been manufactured or initially transferred in accordance with a specific license issued by the Nuclear Regulatory Commission, or each device has been manufactured in accordance with the specifications contained in a specific license issued by the Director, an Agreement State, or a Licensing State to the manufacturer of the device pursuant to licensing requirements equivalent to those in 10 CFR 32.61.

(b) Persons who own, receive, acquire, possess, use or transfer strontium-90 contained in ice detection devices pursuant to the general license in Subsection R313-21-22(10)(a):

(i) shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from over-heating to the device, discontinue use of the device until it has been inspected, tested for leakage and repaired by a person holding a specific license from the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State to manufacture or service the device; or shall dispose of the device pursuant to the provisions of Section R313-15-1001;

(ii) shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereon; and

(iii) are exempt from the requirements of Rules R313-15 and R313-18 except that the persons shall comply with the provisions of Sections R313-15-1001, R313-15-1201 and R313-15-1202.

(c) This general license does not authorize the manufacture, assembly, disassembly, repair, or import of strontium-90 in ice detection devices.

(d) This general license is subject to the provision of Sections R313-12-51 through R313-12-53, R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100 of these rules.

KEY: radioactive materials, general licenses, source materials
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R313. Environmental Quality, Radiation Control.
R313-22. Specific Licenses.
R313-22-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe the requirements for the issuance of specific licenses.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

R313-22-2. General.

The provisions and requirements of Rule R313-22 are in addition to, and not in substitution for, other requirements of these rules. In particular the provisions of Rule R313-19 apply to applications and licenses subject to Rule R313-22.

R313-22-4. Definitions.

"Alert" means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by off-site response organizations to protect persons off-site.

"Nationally tracked source" is a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in Appendix E of 10 CFR 20.1001 to 20.2402 (2010), which is incorporated by reference. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

"Principal activities" means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

"Site Area Emergency" means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by off-site response organizations to protect persons off-site.

R313-22-30. Specific License by Rule.

A license by rule is issued in the following circumstances, without the necessity of filing an application for a specific license as required by Subsection R313-22-32(1), and the licensee shall be subject to the applicable provisions of Sections R313-22-33, R313-22-34, R313-22-35, R313-22-36 and R313-22-37:

(1) When a site must be timely remediated of contamination by radioactive materials that are subject to licensing under these rules but are unlicensed;

(2) When radioactive materials existing as a result of improper handling, spillage, accidental contamination, or unregulated or illegal possession, transfer, or receipt, must be stored and those materials have not been licensed under these rules.

R313-22-32. Filing Application for Specific Licenses.

(1) Applications for specific licenses shall be filed on a form prescribed by the Director.

(2) The Director may, after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Director to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Applications shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's behalf.

(4) An application for a license may include a request for a license authorizing one or more activities.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Director, provided the references are clear and specific.

(6)(i) Except as provided in R313-22 (6)(ii), (iii) or (iv) of this section, an application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source must either---

(A) Identify the source or device by manufacturer and model number as registered with the sealed source and device registry under R313-22-210; or

(B) Contain the information identified in R313-22-210.

(ii) For sources or devices manufactured before October 23, 2012 that are not registered with sealed source and device registry under R313-22-210 and for which the applicant is unable to provide all categories of information specified in R313-22-210, the application must include:

(A) All available information identified in R313-22-210 concerning the source, and, if applicable, the device; and

(B) Sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

(iii) For sealed sources and devices allowed to be distributed without registration of safety information in accordance with 10 CFR 32.210(g)(1) (2015), the applicant may supply only the manufacturer, model number, and radionuclide and quantity.

(iv) If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

(7) As provided by Section R313-22-35, certain applications for specific licenses filed under these rules shall contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before January 1, 1995, this submittal may follow the renewal application but shall be submitted on or before January 1, 1995.

(8)(a) Applications to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Section R313-22-90, "Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release", shall contain either:

(i) An evaluation showing that the maximum dose to a individual off-site due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted under Subsection R313-22-32(8)(a)(i):

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would

be lower than the release fraction shown in Section R313-22-90 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Section R313-22-90;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in Section R313-22-90; or

(vii) Other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted under Subsection R313-22-32(8)(a)(ii) shall include the following information:

(i) Facility description. A brief description of the licensee's facility and area near the site.

(ii) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(iii) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(iv) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(v) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers on-site, and a description of the program for maintaining equipment.

(vi) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the Director; also responsibilities for developing, maintaining, and updating the plan.

(viii) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured on-site workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Director immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency.

NOTE: These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499 or other state or federal reporting requirements, including 40 CFR 302, 2010.

(ix) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the Director.

(x) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site including the use of team training for the scenarios.

(xi) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations and biennial on-site exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises although recommended is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(xiii) Hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Director. The licensee shall provide any comments received within the 60 days to the Director with the emergency plan.

(9) An application from a medical facility, educational institution, or Federal facility to produce Positron Emmission Tomography (PET) radioactive drugs for non-commercial transfer to licensees in its consortium authorized for medical use under Rule R313-32 shall include:

(a) A request for authorization for the production of PET radionuclides or evidence of an existing license issued pursuant to 10 CFR Part 30 or equivalent Agreement State requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides.

(b) Evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in Subsection R313-22-75(9)(a)(ii).

(c) Identification of the individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in Rule R313-32.

(d) Information identified in Subsection R313-22-75(9)(a)(iii) on the PET drugs to be noncommercially transferred to members of its consortium.

R313-22-33. General Requirements for the Issuance of Specific Licenses.

(1) A license application shall be approved if the Director determines that:

(a) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these rules in a manner as to minimize danger to public health and safety or the environment;

(b) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or the environment;

(c) the applicant's facilities are permanently located in Utah, otherwise the applicant shall seek reciprocal recognition as required by Section R313-19-30;

(d) the issuance of the license will not be inimical to the health and safety of the public;

(e) the applicant satisfies applicable special requirements

in Sections R313-22-50 and R313-22-75, and Rules R313-24, R313-25, R313-32, R313-34, R313-36, or R313-38; and

(f) in the case of an application for a license to receive and possess radioactive material for commercial waste disposal by land burial, or for the conduct of other activities which the Director determines will significantly affect the quality of the environment, the Director, before commencement of construction of the plant or facility in which the activity will be conducted, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. The Director shall respond to the application within 60 days. Commencement of construction prior to a response and conclusion shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility.

R313-22-34. Issuance of Specific Licenses.

(1) Upon a determination that an application meets the requirements of the Act and the rules of the Board, the Director will issue a specific license authorizing the proposed activity in a form and containing conditions and limitations as the Director deems appropriate or necessary.

(a) Specific licenses for a new license application shall have an expiration date five years from the end of the month in which it is issued.

(b) Specific licenses for a renewed license shall expire ten years after the expiration date of the previous version of the license.

(c) Notwithstanding R313-22-34(1)(b), if during the review of the license renewal application, the Director determines issues that need to be reassessed sooner than the ten year renewal interval, the Director may shorten the renewal interval on a case by case basis. Examples of issues that may result in a shortened renewal interval includes new technologies, new company management, poor regulatory compliance, or other situations that would warrant increased attention.

(2) The Director may incorporate in licenses at the time of issuance, additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of radioactive material subject to Rule R313-22 as the Director deems appropriate or necessary in order to:

(a) minimize danger to public health and safety or the environment;

(b) require reports and the keeping of records, and to provide for inspections of activities under the license as may be appropriate or necessary; and

(c) prevent loss or theft of material subject to Rule R313-22.

R313-22-35. Financial Assurance and Recordkeeping for Decommissioning.

(1)(a) Applicants for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall also be submitted when a combination of radionuclides is involved if R divided by 10^5 is greater than one, where R is defined here as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference.

(b) Holders of, or applicants for, a specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, or when a combination of isotopes is involved if R, as defined in Subsection R313-22-35(1)(a), divided by 10^{12} is greater than one, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(c) Applicants for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(2) Applicants for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Subsection R313-22-35(4), or authorizing the possession and use of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either:

(a) submit a decommissioning funding plan as described in Subsection R313-22-35(5); or

(b) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection R313-22-35(4) using one of the methods described in Subsection R313-22-35(6). Applicants for a specific license authorizing the possession and use of source material in a readily dispersible form shall submit a certification that financial assurance for decommissioning has been provided in the amount of $225,000 by October 20, 2007. For an applicant subject to this subsection, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6) shall be submitted to the Director before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Director, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements in Subsection R313-22-35(6).

(3)(a) Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1) or (2), shall provide financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(b) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(1), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in Section R313-22-35. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(c) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(2), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(d) A licensee who has submitted an application before October 20, 2006, for renewal of license in accordance with Section R313-22-37, shall provide financial assurance for decommissioning in accordance with Subsections R313-22-35(1) and (2).

(e) Waste collectors and waste processors, as defined in Appendix G of 10 CFR 20.1001 to 20.2402, 2010, which is incorporated by reference, shall provide financial assurance in

an amount based on a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall include the cost of disposal of the maximum amount (curies) of radioactive material permitted by the license, and the cost of disposal of the maximum quantity, by volume, of radioactive material which could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of Rule R313-15.

(f) Holders of a specific license issued prior to October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)(g), shall submit a decommissioning funding plan to the Director on or before October 20, 2007. Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)(g), shall submit a decommissioning funding plan to the Director as a part of the license application.

(g) Applicants for a specific license authorizing the possession and use of radioactive materials in sufficient quantities that require financial assurance and recordkeeping for decommissioning under Section R313-22-35 shall assure that all documents submitted to the Director for the purpose of demonstrating compliance with financial assurance and recordkeeping requirements meet the applicable criteria contained in the Nuclear Regulatory Commission's document NUREG-1757, Volume 3, "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness" (9/2003).

(h) Documents provided to the Director under Subsection R313-22-35(3)(g) shall provide that legal remedies be sought in a court of appropriate jurisdiction within Utah.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit an amount of financial assurance listed in this table must do so during a license application or as part of an amendment to an existing license. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

TABLE

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10^4 is greater than one but R divided by 10^5 is less than or equal to one:	$1,125,000
Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10^3 is greater than one but R divided by 10^4 is less than or equal to one:	$225,000
Greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in sealed sources or plated foils. For combination of radionuclides, if R, as defined in R313-22-35(1)(a), divided by 10^{10} is greater than one, but R divided by 10^{12} is less than or equal to one:	$113,000

(5) A decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from Subsection R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates shall be adjusted at intervals not to exceed 3 years. The decommissioning funding plan shall also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6).

(6) Financial assurance for decommissioning shall be provided by one or more of the following methods:

(a) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities;

(b) A surety method, insurance, or other guarantee method. These methods shall guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(8). A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of Section R313-22-35. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(9). A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of Section R313-22-35 or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. A surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

(i) the surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date the issuer notifies the Director, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Director within 30 days after receipt of notification of cancellation,

(ii) the surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency, and

(iii) the surety method or insurance shall remain in effect until the Director has terminated the license;

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in

Subsection R313-22-35(6)(b);

(d) In the case of Federal, State or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in Subsection R313-22-35(4) and indicating that funds for decommissioning will be obtained when necessary; or

(e) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(7) Persons licensed under Rule R313-22 shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), licensees shall transfer all records described in Subsections R313-22-35(7)(a) through (d) to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Director considers important to decommissioning consists of the following:

(a) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(b) as-built drawings and modification of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(c) except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, including all of the following:

(i) all areas designated and formerly designated as restricted areas as defined under Section R313-12-3;

(ii) all areas outside of restricted areas that require documentation under Subsection R313-22-35(7)(a);

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented under Section R313-15-1109; and

(iv) all areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in Sections R313-15-401 through R313-15-406, or apply for approval for disposal under Section R313-15-1002; and

(d) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(8) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), the parent company shall meet one of the following criteria:

(i) The parent company shall have all of the following:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

(B) Net working capital and tangible net worth each at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used; or

(ii) The parent company shall have all of the following:

(A) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

(B) Tangible net worth at least six times the current decommissioning cost estimate, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if certification is used.

(b) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the Director within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(c)(i) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(ii) If the parent company no longer meets the requirements of Subsection R313-22-35(8)(a) the licensee shall send notice to the Director of intent to establish alternative financial assurance as specified in Section R313-22-35. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(d) The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(i) The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Director, as evidenced by the return receipts.

(ii) If the licensee fails to provide alternate financial assurance as specified in Section R313-22-35 within 90 days after receipt by the licensee and Director of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(iii) The parent company guarantee and financial test provisions shall remain in effect until the Director has terminated the license.

(iv) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate State or Federal Government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and

examined by a Federal or State agency.

(9) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), a company shall meet all of the following criteria:

(i) Tangible net worth at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(ii) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(iii) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

(b) To pass the financial test, a company shall meet all of the following additional requirements:

(i) The company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934;

(ii) The company's independent certified public accountant shall have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Director within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(iii) After the initial financial test, the company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(c) If the licensee no longer meets the requirements of Subsection R313-22-35(9)(a), the licensee shall send immediate notice to the Director of its intent to establish alternate financial assurance as specified in Section R313-22-35 within 120 days of such notice.

(d) The terms of a self-guarantee which an applicant or licensee furnishes shall provide that:

(i) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Director, as evidenced by the return receipt.

(ii) The licensee shall provide alternative financial assurance as specified in Section R313-22-35 within 90 days following receipt by the Director of a notice of a cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the Director has terminated the license or until another financial assurance method acceptable to the Director has been put in effect by the licensee.

(iv) The licensee shall promptly forward to the Director and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the Director within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of Subsection R313-22-35(9)(a).

(vi) The applicant or licensee shall provide to the Director a written guarantee, a written commitment by a corporate officer, which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Director, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

R313-22-36. Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas.

(1) A specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under Section R313-22-37 no less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license, the existing license expires at the end of the day on which the Director makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) A specific license revoked by the Director expires at the end of the day on the date of the Director's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by an Order issued by the Director.

(3) A specific license continues in effect, beyond the expiration date if necessary, with respect to possession of radioactive material until the Director notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(a) limit actions involving radioactive material to those related to decommissioning; and

(b) continue to control entry to restricted areas until they are suitable for release so that there is not an undue hazard to public health and safety or the environment.

(4) Within 60 days of the occurrence of any of the following, a licensee shall provide notification to the Director in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release so that there is not an undue hazard to public health and safety or the environment, or submit within 12 months of notification a decommissioning plan, if required by Subsection R313-22-36(7), and begin decommissioning upon approval of that plan if:

(a) the license has expired pursuant to Subsections R313-22-36(1) or (2); or

(b) the licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment; or

(c) no principal activities under the license have been conducted for a period of 24 months; or

(d) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment.

(5) Coincident with the notification required by Subsection R313-22-36(4), the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to Section R313-22-35 in conjunction with a license issuance or renewal or as required by Section R313-22-36. The amount of the financial assurance must be increased, or

may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to Subsection R313-22-36(7)(d)(v).

(a) A licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so on or before August 15, 1997.

(b) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Director.

(6) The Director may grant a request to extend the time periods established in Subsection R313-22-36(4) if the Director determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to Subsection R313-22-36(4). The schedule for decommissioning set forth in Subsection R313-22-36(4) may not commence until the Director has made a determination on the request.

(7)(a) A decommissioning plan shall be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Director and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(b) The Director may approve an alternate schedule for submittal of a decommissioning plan required pursuant to Subsection R313-22-36(4) if the Director determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(c) Procedures such as those listed in Subsection R313-22-36(7)(a) with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(d) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) a description of planned decommissioning activities;

(iii) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) a description of the planned final radiation survey; and

(v) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in Subsection R313-22-36(8).

(e) The proposed decommissioning plan will be approved by the Director if the information therein demonstrates that the decommissioning will be completed as soon as practical and that the health and safety of workers and the public will be adequately protected.

(8)(a) Except as provided in Subsection R313-22-36(9), licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practical but no later than 24 months following the initiation of decommissioning.

(b) Except as provided in Subsection R313-22-36(9), when decommissioning involves the entire site, the licensee shall request license termination as soon as practical but no later than 24 months following the initiation of decommissioning.

(9) The Director may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Director determines that the alternative is warranted by consideration of the following:

(a) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(b) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(c) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(d) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(e) other site-specific factors which the Director may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(10) As the final step in decommissioning, the licensee shall:

(a) certify the disposition of all licensed material, including accumulated wastes, by submitting a completed Form DRC-14 or equivalent information; and

(b) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406. The licensee shall, as appropriate:

(i) report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters--removable and fixed--for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(11) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Director determines that:

(a) radioactive material has been properly disposed;

(b) reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) documentation is provided to the Director that:

(i) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406; or

(ii) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in

Sections R313-15-401 through R313-15-406.

R313-22-37. Renewal of Licenses.

Application for renewal of a specific license shall be filed on a form prescribed by the Director and in accordance with Section R313-22-32.

R313-22-38. Amendment of Licenses at Request of Licensee.

Applications for amendment of a license shall be filed in accordance with Section R313-22-32 and shall specify the respects in which the licensee desires the license to be amended and the grounds for the amendment.

R313-22-39. Director Action on Applications to Renew or Amend.

In considering an application by a licensee to renew or amend the license, the Director will use the criteria set forth in Sections R313-22-33, R313-22-50, and R313-22-75 and in Rules R313-24, R313-25, R313-32, R313-34, R313-36, or R313-38, as applicable.

R313-22-50. Special Requirements for Specific Licenses of Broad Scope.

Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons who are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(1) The different types of broad licenses are set forth below:

(a) A "Type A specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license, for any authorized purpose. The quantities specified are usually in the multicurie range.

(b) A "Type B specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100 for any authorized purpose. The possession limit for a Type B broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column I. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column I, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(c) A "Type C specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100, for any authorized purpose. The possession limit for a Type C broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column II. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column II, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(2) An application for a Type A specific license of broad scope shall be approved if all of the following are complied with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has engaged in a reasonable number of activities involving the use of radioactive material; and

(c) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) the establishment of a radiation safety committee composed of such persons as a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive material;

(ii) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(iii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety committee of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(2)(c)(iii)(B) prior to use of the radioactive material.

(3) An application for a Type B specific license of broad scope shall be approved if all of the following are complied with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(ii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety officer of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(3)(b)(iii)(B) prior to use of the radioactive material.

(4) An application for a Type C specific license of broad scope shall be approved, if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant submits a statement that radioactive material will be used only by, or under the direct supervision of individuals, who have received:

(i) a college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering; and

(ii) at least forty hours of training and experience in the safe handling of radioactive material, and in the characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, and biological hazards of

exposure to radiation appropriate to the type and forms of radioactive material to be used; and

(c) the applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, recordkeeping, material control and accounting, and management review necessary to assure safe operations.

(5) Specific licenses of broad scope are subject to the following conditions:

(a) unless specifically authorized by the Director, persons licensed pursuant to this section shall not:

(i) conduct tracer studies in the environment involving direct release of radioactive material;

(ii) receive, acquire, own, possess, use, or transfer devices containing 100,000 curies (3.7 PBq) or more of radioactive material in sealed sources used for irradiation of materials;

(iii) conduct activities for which a specific license issued by the Director under Section R313-22-75, and Rules R313-25, R313-32 or R313-36 is required; or

(iv) add or cause the addition of radioactive material to a food, beverage, cosmetic, drug or other product designed for ingestion or inhalation by, or application to, a human being.

(b) Type A specific licenses of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.

(c) Type B specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.

(d) Type C specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used, by or under the direct supervision of, individuals who satisfy the requirements of Subsection R313-22-50(4).

R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.

(1) Licensing the introduction of radioactive material in exempt concentrations into products or materials, and transfer of ownership or possession of the products and materials.

(a) The authority to introduce radioactive material in exempt concentrations into equipment, devices, commodities or other products may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555; and

(b) The manufacturer, processor or producer of equipment, devices, commodities or other products containing exempt concentrations of radioactive materials may obtain the authority to transfer possession or control of the equipment, devices, commodities, or other products containing exempt concentrations to persons who are exempt from regulatory requirements only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Licensing the distribution of radioactive material in exempt quantities. 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 who are exempted from regulatory requirements may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(3) Reserved

(4) Licensing the manufacture and distribution of devices to persons generally licensed under Subsection R313-21-22(4).

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Subsection R313-21-22(4) or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(i) the applicant satisfies the general requirements of Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(iii) the device has been registered in the Sealed Source and Device Registry.

(A) the device can be safely operated by persons not having training in radiological protection,

(B) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that a person will receive in one year, a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1), and

(C) under accident conditions, such as fire and explosion, associated with handling, storage and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

TABLE

Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye	150.0 mSv (15 rems)
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter	2.0 Sv (200 rems)
Other organs	500.0 mSv (50 rems); and

(iii) each device bears a durable, legible, clearly visible label or labels approved by the Director, which contain in a clearly identified and separate statement:

(A) instructions and precautions necessary to assure safe installation, operation and servicing of the device; documents such as operating and service manuals may be identified in the label and used to provide this information,

(B) the requirement, or lack of requirement, for leak testing, or for testing an "on-off" mechanism and indicator, including the maximum time interval for testing, and the identification of radioactive material by radionuclide, quantity of radioactivity, and date of determination of the quantity, and

(C) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) "The receipt, possession, use and transfer of this device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of the Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION -RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(II) "The receipt, possession, use and transfer of this device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of a

Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(D) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in Section R313-15-901, and the name of the manufacturer or initial distributor.

(E) Each device meeting the criteria of Subsection R313-21-22(4)(c)(xiii)(A), bears a permanent label, for example, embossed, etched, stamped, or engraved, affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in Section R313-15-901.

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Director will consider information which includes, but is not limited to:

(i) primary containment, or source capsule;

(ii) protection of primary containment;

(iii) method of sealing containment;

(iv) containment construction materials;

(v) form of contained radioactive material;

(vi) maximum temperature withstood during prototype tests;

(vii) maximum pressure withstood during prototype tests;

(viii) maximum quantity of contained radioactive material;

(ix) radiotoxicity of contained radioactive material; and

(x) operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under Subsection R313-21-22(4), or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with this activity or activities, and basis for these estimates. The submitted information shall demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1).

(d)(i) If a device containing radioactive material is to be transferred for use under the general license contained in Subsection R313-21-22(4), each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(i)(A) through (E) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) a copy of the general license contained in Subsection R313-21-22(4); if Subsections R313-21-22(4)(c)(ii) through (iv) or R313-21-22(4)(c)(xiii) do not apply to the particular device, those paragraphs may be omitted;

(B) a copy of Sections R313-12-51, R313-15-1201, and R313-15-1202;

(C) a list of services that can only be performed by a specific licensee;

(D) Information on acceptable disposal options including estimated costs of disposal; and

(E) An indication that the Division's policy is to issue civil penalties for improper disposal.

(ii) If radioactive material is to be transferred in a device for use under an equivalent general license of the Nuclear Regulatory Commission, an Agreement State, or Licensing State, each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(ii)(A) through (D) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) A copy of an Agreement State's or Licensing State's regulations equivalent to Sections R313-12-51, R313-15-1201, R313-15-1202, and Subsection R313-21-22(4) or a copy of 10 CFR 31.5, 10 CFR 31.2, 10 CFR 30.51, 10 CFR 20.2201, and 10 CFR 20.2202. If a copy of the Nuclear Regulatory Commission regulations is provided to a prospective general licensee in lieu of the Agreement State's or Licensing State's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State or Licensing State; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

(B) A list of services that can only be performed by a specific licensee;

(C) Information on acceptable disposal options including estimated costs of disposal; and

(D) The name or title, address, and phone number of the contact at the Nuclear Regulatory Commission, Agreement State, or Licensing State from which additional information may be obtained.

(iii) An alternative approach to informing customers may be proposed by the licensee for approval by the Director.

(iv) Each device that is transferred after February 19, 2002 must meet the labeling requirements in Subsection R313-22-75(4)(a)(iii).

(v) If a notification of bankruptcy has been made under Section R313-19-34 or the license is to be terminated, each person licensed under Subsection R313-22-75(4) shall provide, upon request, to the Director, the Nuclear Regulatory Commission, or an appropriate Agreement State or Licensing State, records of final disposition required under Subsection R313-22-75(4)(d)(vii)(H).

(vi) Each person licensed under Subsection R313-22-75(4) to initially transfer devices to generally licensed persons shall comply with the requirements of Subsections R313-22-75(4)(d)(vi) and (vii).

(A) The person shall report all transfers of devices to persons for use under the general license under Subsection R313-21-22(4) and all receipts of devices from persons licensed under Subsection R313-21-22(4) to the Director. The report

must be submitted on a quarterly basis on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(B) The required information for transfers to general licensees includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(C) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(D) For devices received from a Subsection R313-21-22(4) general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(E) If the licensee makes changes to a device possessed by a Subsection R313-21-22(4) general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(F) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(G) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(H) If no transfers have been made to or from persons generally licensed under Subsection R313-21-22(4) during the reporting period, the report must so indicate.

(vii) The person shall report all transfers of devices to persons for use under a general license in the Nuclear Regulatory Commission's, an Agreement State's, or Licensing State's regulations that are equivalent to Subsection R313-21-22(4) and all receipts of devices from general licensees in the Nuclear Regulatory Commission's, Agreement State's, or Licensing State's jurisdiction to the Nuclear Regulatory Commission, or to the responsible Agreement State or Licensing State agency. The report must be submitted on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(A) The required information for transfers to general licensee includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of the device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(B) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(C) For devices received from a general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(D) If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(E) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(F) The report must clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(G) If no transfers have been made to or from a Nuclear Regulatory Commission licensee, or to or from a particular Agreement State or Licensing State licensee during the reporting period, this information shall be reported to the Nuclear Regulatory Commission or the responsible Agreement State or Licensing State agency upon request of the agency.

(H) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by Subsection R313-22-75(4)(d)(vii). Records required by Subsection R313-22-75(4)(d)(vii)(H) must be maintained for a period of three years following the date of the recorded event.

(5) Special requirements for the manufacture, assembly or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to persons generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 (2015) or their equivalent.

(6) Special requirements for license to manufacture or initially transfer calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, and 10 CFR 70.39 (2015), or their equivalent.

(7) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection R313-21-22(9) will be approved if:

(a) the applicant satisfies the general requirements

specified in Section R313-22-33;

(b) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding 370 kilobecquerel (ten uCi) each;

(ii) iodine-131 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iii) carbon-14 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iv) hydrogen-3 (tritium) in units not exceeding 1.85 megabecquerel (50 uCi) each;

(v) iron-59 in units not exceeding 740.0 kilobecquerel (20 uCi) each;

(vi) cobalt-57 in units not exceeding 370 kilobecquerel (ten uCi) each;

(vii) selenium-75 in units not exceeding 370 kilobecquerel (ten uCi) each; or

(viii) mock iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each;

(c) prepackaged units bear a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 370 kilobecquerel (ten uCi) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1.85 megabecquerel (50 uCi) of hydrogen-3 (tritium); 740.0 kilobecquerel (20 uCi) of iron-59; or Mock Iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each; and

(ii) displaying the radiation caution symbol described in Section R313-15-901 and the words, "CAUTION, RADIOACTIVE MATERIAL", and "Not for Internal or External Use in Humans or Animals";

(d) one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(i) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the Nuclear Regulatory Commission or of a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

.....

Name of Manufacturer"

(ii) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....

Name of Manufacturer"

(e) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in Section R313-15-1001.

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61, 32.62, 2015 ed. are met.

(9) Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive material for medical use under R313-32.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy; or

(D) operating as a nuclear pharmacy within a medical institution; or

(E) registered with a State Agency as a Positron Emission Tomography (PET) drug production facility.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant satisfies the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a)(ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iv), or an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear

pharmacist as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference);

(B) this individual meets the requirements specified in Rule R313-32 (incorporating 10 CFR 35.55(b) and 10 CFR 35.59 by reference) and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iv).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), as an authorized nuclear pharmacist if:

(A) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator produced radioactive material, and

(B) The individual practiced at a pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

(v) Shall provide to the Director:

(A) a copy of each individual's certification by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or Agreement State as specified in Rule R313-32 (incorporating 10 CFR 35.55(a) by reference) with the written attestation signed by a preceptor as required by Rule R313-32 (incorporating 10 CFR 35.55(b)(2) by reference); or

(B) the Nuclear Regulatory Commission or Agreement State license; or

(C) the permit issued by a licensee or Commission master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(D) the permit issued by a U.S. Nuclear Commission master materials licensee; or

(E) documentation that only accelerator produced radioactive materials were used in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007 or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

(F) a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and R313-22-75(9)(b)(ii)(C), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under Rule R313-32 for use as a calibration, transmission, or reference source or for the uses listed in Rule R313-32 (incorporating 10 CFR 35.400, 10 CFR 35.500, 10 CFR 35.600, and 35.1000 by reference) will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Director for distribution to persons licensed pursuant to Rule R313-32 (incorporating 10 CFR 35.18, 10 CFR 35.400, 10 CFR 35.500, and 10 CFR 35.600 by reference) or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) the source or device has been registered in the Sealed Source and Device Registry.

(e) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(f) in determining the acceptable interval for test of leakage of radioactive material, the Director shall consider information that includes, but is not limited to:

(i) primary containment or source capsule,

(ii) protection of primary containment,

(iii) method of sealing containment,

(iv) containment construction materials,

(v) form of contained radioactive material,

(vi) maximum temperature withstood during prototype tests,

(vii) maximum pressure withstood during prototype tests,

(viii) maximum quantity of contained radioactive material,

(ix) radiotoxicity of contained radioactive material, and

(x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Director will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Director may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11)(a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DRC-12; or

(B) a copy of the general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(5) and a copy of the Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DRC-12 with a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(5);

(v) report to the Director all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(5). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Director and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(5) during the reporting period, the report shall so indicate;

(vi) provide certain other reports as follows:

(A) report to the Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the Nuclear Regulatory Commission general license in 10 CFR 40.25 (2010);

(B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(5),

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person,

(D) if no transfers have been made to Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the Nuclear Regulatory Commission, and

(E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device transferred, and compliance with the report requirements of Subsection R313-22-75(11).

R313-22-90. Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release. Refer to Subsection R313-22-32(8).

TABLE

Radioactive Material(1)	Release Fraction	Quantity (curies)
Actinium-228	0.001	4,000
Americium-241	.001	2
Americium-242	.001	2
Americium-243	.001	2
Antimony-124	.01	4,000
Antimony-126	.01	6,000
Barium-133	.01	10,000
Barium-140	.01	30,000
Bismuth-207	.01	5,000
Bismuth-210	.01	600
Cadmium-109	.01	1,000
Cadmium-113	.01	80

Calcium-45	.01	20,000
Californium-252 (20 mg)	.001	9
Carbon-14	.01	50,000
	Non CO	
Cerium-141	.01	10,000
Cerium-144	.01	300
Cesium-134	.01	2,000
Cesium-137	.01	3,000
Chlorine-36	.5	100
Chromium-51	.01	300,000
Cobalt-60	.001	5,000
Copper-64	.01	200,000
Curium-242	.001	60
Curium-243	.001	3
Curium-244	.001	4
Curium-245	.001	2
Europium-152	.01	500
Europium-154	.01	400
Europium-155	.01	3,000
Germanium-68	.01	2,000
Gadolinium-153	.01	5,000
Gold-198	.01	30,000
Hafnium-172	.01	400
Hafnium-181	.01	7,000
Holmium-166m	.01	100
Hydrogen-3	.5	20,000
Iodine-125	.5	10
Iodine-131	.5	10
Indium-114m	.01	1,000
Iridium-192	.001	40,000
Iron-55	.01	40,000
Iron-59	.01	7,000
Krypton-85	1.0	6,000,000
Lead-210	.01	8
Manganese-56	.01	60,000
Mercury-203	.01	10,000
Molybdenum-99	.01	30,000
Neptunium-237	.001	2
Nickel-63	.01	20,000
Niobium-94	.01	300
Phosphorus-32	.5	100
Phosphorus-33	.5	1,000
Polonium-210	.01	10
Potassium-42	.01	9,000
Promethium-145	.01	4,000
Promethium-147	.01	4,000
Ruthenium-106	.01	200
Radium-226	.001	100
Samarium-151	.01	4,000
Scandium-46	.01	3,000
Selenium-75	.01	10,000
Silver-110m	.01	1,000
Sodium-22	.01	9,000
Sodium-24	.01	10,000
Strontium-89	.01	3,000
Strontium-90	.01	90
Sulfur-35	.5	900
Technetium-99	.01	10,000
Technetium-99m	.01	400,000
Tellurium-127m	.01	5,000
Tellurium-129m	.01	5,000
Terbium-160	.01	4,000
Thulium-170	.01	4,000
Tin-113	.01	10,000
Tin-123	.01	3,000
Tin-126	.01	1,000
Titanium-44	.01	100
Vanadium-48	.01	7,000
Xenon-133	1.0	900,000
Yttrium-91	.01	2,000
Zinc-65	.01	5,000
Zirconium-93	.01	400
Zirconium-95	.01	5,000
Any other beta-gamma emitter	.01	10,000
Mixed fission products	.01	1,000
Mixed corrosion products	.01	10,000
Contaminated equipment, beta-gamma	.001	10,000
Irradiated material, any form other than solid noncombustible	.01	1,000
Irradiated material, solid noncombustible	.001	10,000
Mixed radioactive waste, beta-gamma	.01	1,000
Packaged mixed waste, beta-gamma(2)	.001	10,000
Any other alpha emitter	.001	2
Contaminated equipment, alpha	.0001	20
Packaged waste, alpha(2)	.0001	20
Combinations of radioactive materials listed above(1)	-----	-----

(1) For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Section R313-22-90 exceeds one.

(2) Waste packaged in Type B containers does not require an emergency plan.

R313-22-100. Limits for Broad Licenses. Refer to Section R313-22-50.

TABLE

RADIOACTIVE MATERIAL	COLUMN I	COLUMN II
	CURIES	
Antimony-122	1	0.01
Antimony-124	1	0.01
Antimony-125	1	0.01
Arsenic-73	10	0.1
Arsenic-74	1	0.01
Arsenic-76	1	0.01
Arsenic-77	10	0.1
Barium-131	10	0.1
Barium-140	1	0.01
Beryllium-7	10	0.1
Bismuth-210	0.1	0.001
Bromine-82	10	0.1
Cadmium-109	1	0.01
Cadmium-115m	1	0.01
Cadmium-115	10	0.1
Calcium-45	1	0.01
Calcium-47	10	0.1
Carbon-14	100	1
Cerium-141	10	0.1
Cerium-143	10	0.1
Cerium-144	0.1	0.001
Cesium-131	100	1
Cesium-134m	100	1
Cesium-134	0.1	0.001
Cesium-135	1	0.01
Cesium-136	10	0.1
Cesium-137	0.1	0.001
Chlorine-36	1	0.01
Chlorine-38	100	1
Chromium-51	100	1
Cobalt-57	10	0.1
Cobalt-58m	100	1
Cobalt-58	1	0.01
Cobalt-60	0.1	0.001
Copper-64	10	0.1
Dysprosium-165	100	1
Dysprosium-166	10	0.1
Erbium-169	10	0.1
Erbium-171	10	0.1
Europium-152 (9.2h)	10	0.1
Europium-152 (13y)	0.1	0.001
Europium-154	0.1	0.001
Europium-155	1	0.01
Fluorine-18	100	1
Gadolinium-153	1	0.01
Gadolinium-159	10	0.1
Gallium-72	10	0.1
Germanium-71	100	1
Gold-198	10	0.1
Gold-199	10	0.1
Hafnium-181	1	0.01
Holmium-166	10	0.1
Hydrogen-3	100	1
Indium-113m	100	1
Indium-114m	1	0.01
Indium-115m	100	1
Indium-115	1	0.01
Iodine-125	0.1	0.001
Iodine-126	0.1	0.001
Iodine-129	0.1	0.01
Iodine-131	0.1	0.001
Iodine-132	10	0.1
Iodine-133	1	0.01
Iodine-134	10	0.1
Iodine-135	1	0.01
Iridium-192	1	0.01
Iridium-194	10	0.1
Iron-55	10	0.1
Iron-59	1	0.01
Krypton-85	100	1
Krypton-87	10	0.1
Lanthanum-140	1	0.01
Lutetium-177	10	0.1

Manganese-52	1	0.01
Manganese-54	1	0.01
Manganese-56	10	0.1
Mercury-197m	10	0.1
Mercury-197	10	0.1
Mercury-203	1	0.01
Molybdenum-99	10	0.1
Neodymium-147	10	0.1
Neodymium-149	10	0.1
Nickel-59	10	0.1
Nickel-63	1	0.01
Nickel-65	10	0.1
Niobium-93m	1	0.01
Niobium-95	1	0.01
Niobium-97	100	1
Osmium-185	1	0.01
Osmium-191m	100	1
Osmium-191	10	0.1
Osmium-193	10	0.1
Palladium-103	10	0.1
Palladium-109	10	0.1
Phosphorus-32	1	0.01
Platinum-191	10	0.1
Platinum-193m	100	1
Platinum-193	10	0.1
Platinum-197m	100	1
Platinum-197	10	0.1
Polonium-210	0.01	0.0001
Potassium-42	1	0.01
Praseodymium-142	10	0.1
Praseodymium-143	10	0.1
Promethium-147	1	0.01
Promethium-149	10	0.1
Radium-226	0.01	0.0001
Rhenium-186	10	0.1
Rhenium-188	10	0.1
Rhodium-103m	1,000	10
Rhodium-105	10	0.1
Rubidium-86	1	0.01
Rubidium-87	1	0.01
Ruthenium-97	100	1
Ruthenium-103	1	0.01
Ruthenium-105	10	0.1
Ruthenium-106	0.1	0.001
Samarium-151	1	0.01
Samarium-153	10	0.1
Scandium-46	1	0.01
Scandium-47	10	0.1
Scandium-48	1	0.01
Selenium-75	1	0.01
Silicon-31	10	0.1
Silver-105	1	0.01
Silver-110m	0.1	0.001
Silver-111	10	0.1
Sodium-22	0.1	0.001
Sodium-24	1	0.01
Strontium-85m	1,000	10
Strontium-85	1	0.01
Strontium-89	1	0.01
Strontium-90	0.01	0.0001
Strontium-91	10	0.1
Strontium-92	10	0.1
Sulphur-35	10	0.1
Tantalum-182	1	0.01
Technetium-96	10	0.1
Technetium-97m	10	0.1
Technetium-97	10	0.1
Technetium-99m	100	1
Technetium-99	1	0.01
Tellurium-125m	1	0.01
Tellurium-127m	1	0.01
Tellurium-127	10	0.1
Tellurium-129m	1	0.01
Tellurium-129	100	1
Tellurium-131m	10	0.1
Tellurium-132	1	0.01
Terbium-160	1	0.01
Thallium-200	10	0.1
Thallium-201	10	0.1
Thallium-202	10	0.1
Thallium-204	1	0.01
Thulium-170	1	0.01
Thulium-171	1	0.01
Tin-113	1	0.01
Tin-125	1	0.01
Tungsten-181	1	0.01
Tungsten-185	1	0.01
Tungsten-187	10	0.1
Vanadium-48	1	0.01
Xenon-131m	1,000	10
Xenon-133	100	1
Xenon-135	100	1
Ytterbium-175	10	0.1
Yttrium-90	1	0.01
Yttrium-91	1	0.01
Yttrium-92	10	0.1
Yttrium-93	1	0.01
Zinc-65	1	0.01
Zinc-69m	10	0.1
Zinc-69	100	1
Zirconium-93	1	0.01
Zirconium-95	1	0.01
Zirconium-97	1	0.01
Any radioactive material other than source material, special nuclear material, or alpha-emitting radioactive material not listed above	0.1	0.001

R313-22-201. Serialization of Nationally Tracked Sources.

Each licensee who manufacturers a nationally tracked source after October 19, 2007, shall assign a unique serial number to each nationally tracked source. Serial numbers must be composed only of alpha-numeric characters.

R313-22-210. Registration of Product Information.

Licensees who manufacture or initially distribute a sealed source or device containing a sealed source whose product is intended for use under a specific license or general license are deemed to have provided reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and the environment if the sealed source or device has been evaluated in accordance with 10 CFR 32.210 (2015) or equivalent regulations of an Agreement State.

R313-22-211. Inactivation of Certificates of Registration of Sealed Sources and Devices.

Licensees who no longer manufacture or initially transfer any of the sealed sources or devices covered by a particular certificate issued in accordance with the requirements of R313-22-210 shall request inactivation of the registration certificate in accordance with 10 CFR 32.211 (2015) or equivalent regulations of an Agreement State.

KEY: specific licenses, decommissioning, broad scope, radioactive materials

August 26, 2015 19-3-104

Notice of Continuation September 23, 2011 19-3-108

R343. Financial Institutions, Nondepository Lenders.
R343-10. Title Lenders Registration with the Nationwide Database.
R343-10-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-24-201(4).

(2) This rule applies to title lenders that are required to register with the nationwide database.

(3) This rule establishes initial and renewal registration requirements for title lenders.

R343-10-2. Definitions.

(1) "Commissioner" means the Commissioner of Financial Institutions.

(2) "Department" means the Department of Financial Institutions.

(3) "Form MU1" means the Uniform Company License/Registration and Consent form adopted by the nationwide database.

(4) "NMLS" means the Nationwide Mortgage Licensing System located at http://mortgage.nationwidelicensingsystem.org/.

R343-10-3. Renewal of Current Registered Title Lenders.

(1) On or after November 1, 2015, title lenders that are registered with the department shall renew a registration through the NMLS.

(a) Title lenders that do not have a record in NMLS will be required to complete a Form MU1 on the NMLS website.

(b) Title lenders that have a record in NMLS and have submitted a company Form MU1 are not required to reenter their company information. Those with a record will complete the appropriate registration for Utah.

R343-10-4. Initial Registration of Title Lenders.

(1) On or after November 1, 2015, persons seeking authorization to transact business as a title lender in Utah or with a Utah resident may register with the department through the NMLS.

(a) Title lenders that do not have a record in NMLS will be required to complete a Form MU1 on the NMLS website.

(b) Title lenders that have a record in NMLS and have submitted a company Form MU1 are not required to reenter their company information. Those with a record will complete the appropriate registration for Utah.

R343-10-5. Fees.

(1) Title lenders filing an original registration through the NMLS shall pay the department an original registration fee as set forth in Subsection 7-1-401(8).

(2) Title lenders renewing a registration through NMLS shall pay an annual fee as set forth in Subsection 7-1-401(5).

(3) Title lenders renewing a registration through the NMLS in 2015, which have previously paid an annual fee in 2015, are not required to pay a second annual fee to the Department for 2015.

(4) Title lenders shall pay to the NMLS all fees required by NMLS.

KEY: title lenders, fees
August 12, 2015 **7-24-201(4)**

R357. Governor, Economic Development.
R357-1. Rural Fast Track Program.
R357-1-1. Authority.

(1) Subsection 63N-3-104 permits the administrator to make rules governing the following aspects of the Rural Fast Track Program:

(a) the content of the application form;

(b) who qualifies as an employee; and

(c) the verification procedure.

R357-1-2. Application Form.

(1) An application shall:

(a) be required that details company information including company name, federal tax ID, mailing and street address, telephone number, company capabilities, project description, submission requirements, and other information that is deemed necessary by the Governor's Office of Economic Development.

(b) include financial statements demonstrating profitability and must accompany the application.

R357-1-3. Employees.

(1) The company must have at least 2 employees who are paid a salary. Each new incremental job added must be paid a salary. GOED will verify and use the county average annual wage based on the most recently published data from the United States Census Bureau.

(a) GOED will verify and use the county population of 30,000 or less based on the most recently published data from the United States Census Bureau.

(2) An application can be made based on job (FTE) creation in a rural community.

(a) Definition of FTE: "FTE" means an individual full time employee of Applicant's Utah Business that is a Utah Resident and employed at least 30 hours per week (excluding lunch) during each week.

(b) When counting FTEs, if an FTE has its employment with Applicant terminated for any reason before completion of the applicable RFT Disbursement Period, another person otherwise meeting the requirements described above may be promptly hired full time to fill the terminated FTE's position and complete the year of qualifying full-time employment. In such case, Applicant and the Administrator would count the combined contribution of these two (2) full time employees as one (1) FTE. A replacement will need to be hired within 60 days for the position to remain qualifying for FTE purposes during a given RFT disbursement period.

R357-1-4. Economic Opportunity.

(1) An application can be made based upon a unique Economic Opportunity in a rural community.

(a) Definition of Rural Fast Track Economic Opportunity: "Economic opportunity" means a unique business situation or community circumstance which lends itself to the furtherance of the economic interests of the state and the local community by providing a catalyst or stimulus to the growth or retention, or both, of commerce and industry in the state.

R357-1-5. Verification.

(1) Procedure for verifying FTE and disbursing funds on post performance basis:

(a) Request Letter

(i) Claim for credits earned and request for disbursement of funds on company letterhead.

(ii) The request should summarize the number of jobs claimed multiplied against the incentive dollars per employee and the total dollar amount requested.

(iii) Company tax ID number

(iv) Address and addressee for where the check is to be sent

(b) Support Document

(i) Summarizes the claim for credits earned by outlining the types of jobs and number of jobs that meet the minimum earnings threshold and is usually produced in spreadsheet form.

(ii) A base year document is created at the time of incentive approval and is used as a template for this summary document and will be sent to the company by the Administrator. Document will include requested information about the new jobs listed and compared against the base number of employees in the company at the time of the application.

(iii) Department of Workforce Services filing of quarterly unemployment insurance forms covering the disbursement period.

(c) Letter of Compliance

(i) A letter verifying the accuracy of the information supplied to claim the incentive. Completed and signed by company officer.

KEY: economic opportunity, job creation, rural economic development, Rural Fast Track Program
December 28, 2007 63N-3-104
Notice of Continuation April 13, 2012

R357. Governor, Economic Development.
R357-2. Targeted Business Tax Credit.
R357-2-1. Purpose.

The purpose of this rule is to define what constitutes substantial new employment, new capital development, a project, and to establish a general formula for determining the allocated cap amount for each business applicant.

R357-2-2. Authority.

UCA 63N-2-302 requires the office make rules establishing the manner by which the allocation cap amount is determined and what constitutes substantial new employment, new capital development, and a project.

R357-2-3. Definitions.

(1) As used in this Rule;

(a) "Available Tax Credit" means the unencumbered amount of the annual $300,000 tax credit provided for in 63N-2-302(2).

(b) "Executive Committee" means the Executive Committee of the Governor's Rural Partnership Board provided for in UCA 63C-10-102(5)

(c) "Full Time Equivalent Employee" means an individual full time employee of the business applicant's Utah Business that is a Utah Resident and employed at least 30 hours per week (excluding lunch) during each week.

(d) "New Capital Development" means any new

(i) facility with construction costs of $100,000 or more, which includes additions to existing facilities and the enclosure of space that was not previously fully enclosed;

(ii) remodeling, site, or utility project with costs of $100,000 or more; or

(iii) purchase of real property.

(e) "Project" means the plan as described in the application submitted to The Office of Rural Development by the business applicant including the projects objectives, projections, and scope.

(f) "Substantial New Employment" means new full time equivalent employees the Business Applicant will add in the following three tax year(s) as specified in the application and where substantial is measured and determined by the Executive Committee of the Governor's Rural Partnership Board in relation to:

(i) The economic impact on the community in which the project will occur, including:

(A) salary and wages of the new full time equivalent employees in comparison to the county average wage;

(B) whether or not health and other benefits will be provided to all the new full time equivalent employees in addition to the salary and wages;

(C) the business applicant's declared number of projected new full time equivalent employees in comparison to the overall county employment numbers provided by the Department of Work Force Services;

(D) the amount of new full time equivalent employees in comparison to the business applicant's current number of full time equivalent employees; and

(E) any other factors that the Executive Committee considers as substantial new employment.

(2) For all other relevant terms not defined in this rule, the definitions set forth in UCA 63N-2-301 shall apply.

R357-2-4. Application Procedure.

Applications will be reviewed in January and February of each calendar year, and all applications should be submitted by January 31. The Office of Rural Development may consider applications submitted between January 31 and June 1 of the calendar year if approved by a majority vote of the Executive Committee of the Governor's Rural Partnership Board. No applications will be considered between June 1 and December 31st of the calendar year.

R357-2-5. Formula for Allocation Cap Amount for Each Business Applicant.

(1) Each business applicant's application will be reviewed, scored, and ranked by the Executive Committee, as follows:

(a) A weighted score will be given to each application in the following subcategories:

(i) project;

(ii) projected new capital development; and

(iii) projected substantial new employment

(2) The scoring criteria will be provided to business applicants via the targeted business tax credit application.

(3) The Executive Committee shall award a targeted business income tax credits to the top ranking projects in descending order, based on the available tax credit and until the cap is reached as set forth in UCM 63N-2-304(2).

(4) Awards shall be given over a three year period.

(5) Awards may be allocated as follows:

(a) $50,000 tax credit for one year of the award, and $25,000 tax credit for two of the three years; or

(b) The Executive Committee may elect to award available tax credit in a proportionate amount based upon the scores of each application during the solicitation period; or

(c) The Executive Committee may elect to award available tax credits in an equal amount to each business applicant during the solicitation period

(2) No business applicant shall receive an award that is in excess of the available tax credit.

KEY: rural business, tax credits
November 8, 2014 63N-2-302

R357. Governor, Economic Development.
R357-3. Refundable Economic Development Tax Credit.
R357-3-1. Authority.

(1) Subsection 63N-2-104 requires the office to make rules establishing the conditions that a business entity must meet to qualify for a tax credit under 63N-2-101 et seq. of the Utah Code Annotated.

R357-3-2. Definitions.

(1) Terms in these rules are used as defined in UCA 63N-2-103.

(2) "Administrator" means the internal staff position created by the Executive Director of GOED.

(3) "Direct investment within the geographic boundaries" means that the applicant for the tax credit will invest in a new commercial project in the economic development zones.

(4) "Employee," "Employee Position" or "Full Time Equivalent (FTE)" means an employee, or leased employee via a third party vendor, who is a Utah resident working at and dedicated to the new commercial project. Each position shall be entitled to the same basic health insurance, retirement and other benefits, if any, given by the new commercial project to its other FTEs excluding those benefits given to any of the new commercial project's executive and other highly compensated employees, except in the case where an FTE is a leased employee, in which case such leased employee should be entitled to comparable benefits as other leased employees.

(a) When counting FTEs, if an FTE has his or her employment with the new commercial project terminated for any reason before completion of the applicable year, another FTE otherwise meeting the requirements described above may be hired full-time to fill the terminated FTE's position and complete the year of qualifying full-time employment, so long as such position is filled within 60 days for a non-exempt FTE and 90 days for an exempt employee.

(5) "GOED" means The Governor's Office of Economic Development.

(6) "High Paying Jobs" means:

(a) jobs associated with a new commercial project when the aggregate average wage is at least 100% of the average county wage, if the new commercial project is located within a rural county;

(b) jobs associated with a new commercial project when the aggregate average wage is at least 125% of the average county wage, if the new commercial project is located within an urban county; or

(c) upon application from an urban county, GOED may consider jobs associated with a new commercial project when the aggregate average wage is at least 100% of the average county wage, if the new commercial project would provide substantive unique benefit to the county, as determined by the GOED Board.

(d) "Rural County" means the following counties:
(i) Beaver;
(ii) Box Elder;
(iii) Cache;
(iv) Carbon;
(v) Daggett;
(vi) Duchesne;
(vii) Emery;
(viii) Garfield;
(ix) Grand;
(x) Iron;
(xi) Juab;
(xii) Kane;
(xiii) Millard;
(xiv) Morgan;
(xv) Piute;
(xvi) Rich;
(xvii) San Juan;
(xviii) Sanpete;
(xix) Sevier;
(xx) Summit;
(xxi) Tooele;
(xxii) Uintah;
(xxiii) Wasatch;
(xxiv) Washington; and
(xxv) Wayne.

(7) "Urban County" means the following counties:
(i) Davis;
(ii) Salt Lake;
(iii) Utah; and
(iv) Weber.

(8) "Wages" means gross earnings, including company contributed medical benefits, bonuses, and overtime pay.

R357-3-3. Application Process.

(1) In order to apply for an Economic Development Tax Incentive, a business entity must submit an application in a form prescribed by GOED.

(2) In order to verify the information submitted in the application, the company may be required to supply additional information, which may include:
(a) Balance Sheets;
(b) Income Statements;
(c) Cash Flow Statements;
(d) Tax filings;
(e) Market analyses;
(f) Competing states' incentive offers;
(g) Corporate structure;
(h) Workforce data;
(i) Forecasted new state revenue associated with the new commercial project;
(j) Forecasted incremental job creation associated with the new commercial project;
(k) Forecasted wages associated with the new commercial project; or
(l) Other information as determined by GOED within its reasonable discretion.

(3) Information provided by the business entity is subject to the Government Records Access and Management Act. The business entity has the option, at its sole discretion and responsibility, to designate what information provided is private or protected subject to UCA 63G-2-302 and/or UCA 63G-2-305.

(4) GOED will review the applications to consider at least the following factors:

(a) Whether the new commercial project meets the criteria set forth in UCA 63N-2-104 and UCA 63N-2-105;

(b) Whether the company is projecting positive long term growth;

(c) The overall benefit to the State of the new commercial project;

(d) The uniqueness of the economic opportunity;

(e) Other factors that, in conjunction with (a) through (d), would mitigate the loss or potential loss of new state and local revenues in the state, high paying jobs, new economic growth, or that address the factors set forth in UCA 63N-2-102 and 104.

(5) Pursuant to UCA 63N-3-110, the GOED Board of Economic Development shall determine which industries shall be targeted for economic development.

R357-3-4. Factors to Be Considered in Authorizing an Economic Development Tax Credit Award.

(1) The amount and duration of the tax credit award shall be determined on a case-by-case basis. Factors to be considered include but are not limited to:

(a) Whether the industry has been determined by the

GOED Board as a targeted industry;

(b) The competitive nature of the project, including whether the Company has secured real estate for its new commercial project at the time of application;

(c) To what extent other states have available incentives for the new commercial project, and the competitiveness of the other incentives, if known;

(d) Comparison to previously incented projects in size and scope, and in conjunction with other factors listed;

(e) The economic environment, including the unemployment rate and the underemployment rate, at the time the new commercial project or business entity applies;

(f) The location of the new commercial project;

(g) The average wage level of the forecasted jobs created;

(h) What terms would result in the most effective incentive for the new commercial project;

(i) The overall benefit to the State of the new commercial project;

(j) The demonstrated support of the local community for the project; and

(k) Other factors as reasonably determined by the administrator in consultation with the GOED Board.

(2) All annual tax credits shall be based on actual incremental taxes paid by the business entity or withheld on behalf of employees of a new commercial project.

(3) GOED shall propose a tax credit structure based on the factors set forth in this rule in a combination GOED deems the most effective and beneficial in weighing the benefits of the State, local community, and company.

(a) GOED shall propose the tax credit terms and structure to the GOED Economic Development Board prior to making a final offer to the business entity.

(4) The GOED Economic Development Board may advise GOED Executive Director regarding the Tax Credit Offer.

(5) If the Executive Director of GOED approves an Economic Development Tax Credit, GOED shall provide a tax credit offer letter to a business entity that includes:

(a) The proposed terms of the Economic Development Tax Credit, including the maximum amount of aggregate annual tax credits and the time period over which the Tax Credits may be claimed;

(b) the documentation that will be required each year in order to claim a tax credit for the following tax year as outlined in the Agreement.

(6) If the applicant intends to accept the incentive offer, it shall counter-execute the tax credit offer letter.

(7) If the Executive Director of GOED denies an application for an Economic Development Tax Credit, GOED shall provide a letter to the business entity that includes:

(a) Notice of the application denial;

(b) Reason for denial; and

(c) Notice that the business entity can reapply for a tax credit if changes to the proposed new commercial project are made.

R357-3-5. Application for and Verification of Information Supporting an Annual Economic Development Tax Credit.

(1) In order to receive a tax credit certificate during the term of an EDTIF agreement, a business entity must demonstrate to GOED's satisfaction, that the business entity has satisfied all of the criteria set forth in UCA 63N-2-103 and 63N-2-104, that the new commercial project resulted in new incremental tax revenue, that the contractual incremental job creation at the required wage criteria was achieved, and that the business entity is otherwise in compliance with the contractual requirements.

(a) If the jobs, wage, and other contractual criteria are met then a tax credit award is calculated annually based on the new commercial project's new state revenue performance for the disbursement period.

(2) In general, tax revenue shall be verified in the following ways with additional verification to be determined by GOED as needed:

(a) Employee Withholding Taxes: Report the employee withholding taxes remitted to the Utah State Tax Commission and dates paid.

(b) Vendor Paid Sales Tax: Report the Utah sales tax paid to vendors, total invoice amounts, and taxable total purchase amount.

(c) Corporate Income Taxes: Report the corporate tax in a format prescribed by GOED including Use Taxes from the annual, quarterly or monthly Utah Sales and Use Tax Return TC-62 form report the Line 4 "Goods purchased tax free and used by you" amounts and date the taxes where remitted to the Utah tax commission.

(d) If the new commercial project is not inclusive of the Company's total Utah operation, documentation supporting the apportionment of corporate tax liability to the project is required. The apportionment methodology must be approved by the GOED Administrator and documented.

(3) In order to verify direct investment in an Economic Development Zone, when requested by GOED the applicant shall provide:

(a) a lease agreement or occupancy permit that shows that the new commercial project is located in the economic development zone, during the first applicable year.

(4) In order to verify new incremental jobs, GOED may review:

(a) Aggregate Employee data from the Department of Workforce Services; or

(b) Company or a Payroll vendor for the new commercial project provided a list that included the following information but is not limited to: the number of employees, the gross wages paid including overtime pay, bonuses and other compensation, and the taxes withheld for each employee of the new commercial project.

(5) In order to verify creation of new incremental jobs and to determine whether such jobs comply with the wage requirement, GOED shall consider and/or the applicant shall provide:

(a) The employee data provided by the Department of Workforce Services, the business entity, or the private professional employment or payroll organization.

(b) If a business entity fails to produce sufficient documentation to demonstrate increased state revenue and compliance with the terms of their contract, GOED shall either request additional information or deny the tax credit pursuant to UCA 63N-2-105(4).

R357-3-6. Requests for Modification of the Tax Credit Offer or Contract.

(1) GOED may modify, or a business entity may apply to modify, the terms of a tax credit agreement as set forth below.

(2) Nonsubstantive Modifications: GOED and the business entity may, by written amendment, make nonsubstantive modifications to the tax credit contract if:

(a) Necessary to correct clerical errors made in the initial application, the offer, the contract, or the tax credit;

(b) Necessary to make technical changes, including but not limited to: changing the business entity's legal name, timeline change subject to subsection (c) below, any other condition that does not alter the tax incentive amount or violate any state or federal law;

(c) For the purposes of this section, a timeline change of no more than 24 months is generally considered "nonsubstantive".

(d) all nonsubstantive modifications shall be documented and maintained by the GOED staff.

(3) Substantive Modifications: Under extraordinary

circumstances, a business entity may apply to GOED to modify the terms of the tax credit agreement if:

(a) There is a substantial change to new commercial project plan; and

(b) Modifying the terms of the tax credit would benefit the State.

(4) Substantive Modifications be will brought to the GOED Executive Director for final approval after open consultation and comment with the GOED Board of Economic Development.

KEY: economic development, tax credit, jobs
April 13, 2015 63N-2-104
Notice of Continuation May 30, 2013

R357. Governor, Economic Development.
R357-4. Government Procurement Private Proposal Program.
R357-4-1. Purpose.

The purpose of the administrative rule is to describe the required procedures for submission, review and processing of an initial proposal, fee, and a detailed proposal, and the preparation of a project agreement.

R357-4-2. Authority.

(1) These administrative rules are made pursuant to authority granted under 63N-13-203(2)(c), 63N-13-205(5), 63N-13-206(1)(b), 63N-13-208(1)(h)(i), 63N-13-209(3)(f), and 63N-210(3)(i).

R357-4-3. Definitions.

(1) Terms in these rules are used as defined in UCA 63N-13-202.

R357-4-4. Initial and Detailed Proposal -- Protected and Public Portions.

(1) An initial proposal submitted to the Committee in accordance with UCA 63N-13-205 is a protected record under UCA 63G-2-305, and shall be protected from all public disclosure during initial review by the Committee, the Governor's Office of Planning and Budget, the affected department and any directly affected state entity or school district.

(2) If the Committee determines to move forward with a project beyond the initial review, the following portions of an initial proposal shall be made public once the chief procurement officer initiates a procurement process in accordance with UCA 63G-6-408.5:

(a) conceptual description of the project;

(b) description of the economic benefit of the project to the state and the affected department;

(c) information concerning the products, services, and supplies currently being provided by the state, that are similar to the project;

(d) Notwithstanding the portions of an initial proposal that may be made public under this subsection, all proprietary information provided in an initial and detailed proposal shall remain a protected record under UCA 63G-2-305.

(3) Portions of an initial proposal not excepted in subsection (2) shall remain a protected record under UCA 63G-2-305. Protected portions include but are not limited to:

(a) Trade secrets as defined in UCA 13-24-2;

(b) Commercial information or non-individual financial information satisfying the requirements of UCA 63G-2-305; and

(c) Other information submitted by a private entity and not excepted in subsection (2) that, if disclosed prior to the execution of a project agreement, would adversely affect the financial interest or bargaining position of the public entity in accordance with UCA 13-24-2.

(4) A private entity requesting protection from public disclosure under this rule must satisfy the requirements of Title 63G, Chapter 2, Government Records Access and Management Act upon submission of the initial proposal or the detailed proposal, including the statement of business confidentiality required by UCA 63G-2-309.

R357-4-5. Initial Proposal - Fee.

(1) A private entity submitting an initial proposal shall pay a fee when the initial proposal is submitted.

(2) The amount of the fee shall be based on one percent of the project cost estimate submitted with an initial proposal. The minimum fee shall be $5,000 and the maximum fee shall be $50,000.

(3) Forty percent of the fee shall be allocated to reviewing the private entity's initial proposal and shall be non-refundable.

(4) Thirty percent of the fee shall be allocated to reviewing a detailed proposal and shall be refunded if for any reason the Committee does not review the private entity's detailed proposal.

(5) Thirty percent of the fee shall be allocated to preparing a project agreement and shall be refunded if for any reason the director does not prepare a project agreement for the private entity.

R357-4-6. Process and Time Requirements.

(1) A private entity may submit an initial proposal for a project to the Committee at any time. Within 30 days after receipt, the Committee shall review the initial proposal and determine, in its sole discretion, whether to move forward with a project in accordance with UCA 63N-13-206. If the Committee determines to move forward with the project, the Committee shall immediately submit a copy of the initial proposal to any affected department, directly affected state entity, school district and the Governor's Office of Planning and Budget.

(2) Within 30 days from receipt of the initial proposal, an affected department shall provide the Committee with any comment, suggestion or modification to the initial proposal or the project. The affected department shall include any comment, suggestion or modification from any directly affected state entity or school district that receives a copy of the proposal in accordance with Section 63N-13-206(4).

(3) Within 30 days from receipt of the initial proposal, the Governor's Office of Planning and Budget shall prepare an economic feasibility report containing the information required by Section 63N-13-206(3)(b).

(4) Within 30 days from the receipt of the comments, suggestions or modification from the affected department and the economic feasibility report, the Committee shall determine, in its sole discretion, whether to move forward with a project to the detailed proposal stage. If the Committee determines to move forward with the project, the Committee shall immediately submit a copy of the initial proposal, including any comment, suggestion or modification adopted by the Committee and incorporated into the initial proposal, to the chief procurement officer and the Executive Appropriations Committee, in accordance with Section 63N-13-206(5), with any protected portions of the initial proposal clearly identified.

(5) The chief procurement officer shall take action under 63G-6-408.5 to initiate and complete a procurement process within 60 days from the receipt of the initial proposal, in compliance with Tile 63G, Chapter 56, Utah Procurement Code.

(6) The chief procurement officer shall review each detailed proposal submitted pursuant to such procurement process and submit each detailed proposal that complies with UCA 63N-13-208(1) to the Committee for review and to the Governor's Office of Planning and Budget for the purpose of updating the economic feasibility report.

(7) Within 30 days from receipt of the updated economic feasibility report, the Committee shall determine, in its sole discretion, whether to approve the detailed proposal. If approved by the Committee, the board shall determine whether to approve the detailed proposal as soon as reasonably practicable.

(8) The affected department, directly affected state entity or school district may dispute the detailed proposal and submit any comment, suggestion or modification to the Committee and the Governor's Office of Planning and Budget within 15 days following the board's final decision. Within 15 days, the Governor's Office of Planning and Budget shall determine whether to proceed with a project agreement.

(9) If an appropriation or alternative funding is necessary for a project that is the subject of a detailed proposal, the

Committee shall work with the office to submit, within 30 days following the board's final decision, a report requesting funding to the Governor's Office of Planning and Budget and the Executive Appropriations Committee detailing the position of the board, the affected department, directly affected state entity and the school district, as applicable. The filing of such report shall not interfere with the execution of the project agreement.

(10) Within 30 days from board and, if applicable, Governor's Office of Planning and Budget, approval of a detailed proposal, the director and the private entity shall, in good faith and in consultation with the affected department and a directly affected state entity or school district, prepare, negotiate and enter into a project agreement in accordance with Section 63N-13-210.

(11) The review, processing and, if applicable, procurement of an initial proposal, a detailed proposal or a project agreement under this rule shall be subject to such time modification as the Committee may deem to be necessary to accommodate the specific needs of each project or to be in the best interests of the state.

KEY: procurment, purchasing, Private Proposal Program
November 21, 2008 63N-13-203(2)(c)
Notice of Continuation November 19, 2013 63N-13-205(5)
63N-13-206(1)(b)
63N-13-208(1)(h)(i)
63N-13-209(3)(f)
63N-210(3)(I)

R357. Governor, Economic Development.
R357-5. Motion Picture Incentive Fund.
R357-5-1. Authority.

(1) Subsection 63N-8-104 requires the office to make rules establishing the standards that a motion picture company, and digital media, company must meet to qualify for a motion picture incentive and the criteria for determining the amount of the motion picture incentive under 63N-8 of the Utah Code Annotated.

R357-5-2. Definitions.

(1) Terms in these rules are used as defined in UCA 63N-8-102.

R357-5-3. Motion Picture Incentive Conditions -- Motion Picture Company.

(1) A motion picture company may qualify for a motion picture incentive under 63N-8 only if:

(a) the motion picture company is producing a production within the state that is:

(i) a television series; or

(ii) a made-for-television movie; or

(iii) a motion picture, including feature films and independent films; and

(b) the motion picture company has obtained financing and financing is in place for the production; and

(c) the economic impact of the production's dollars left in the state represents new incremental economic activity in the state; and

(d) as of the motion picture incentive application date, as determined the office, has not started principle photography of the production in the state; and

(e) is a state-approved production.

(2) The office may give preference to a production that:

(a) stimulates economic activity in rural areas of the state; or

(b) has Utah content, such as recognizing that a production was made in the state or uses Utah as Utah in the production.

(3) The office, with advice from the board, may enter into an agreement with a motion picture company authorizing a motion picture incentive if the motion picture company meets the standards under subsection (1) and:

(a) the motion picture incentive does not exceed 20% of the dollars left in the state by the motion picture company; and

(b) if post-performance cash, the post-performance cash motion picture incentive does not exceed $500,000 per production under Part 18 and is issued in accordance with 63N-8; and

(c) if a post-performance refundable tax credit, the post-performance refundable tax credit certificate is issued in accordance with 63N-8 and Section 59-7-614.5 or 59-10-1108; and

(d) the motion picture incentive amount approved for the motion picture production follows the motion picture incentive application policy established by the office, which shall be posted on the office's public website.

(4) A motion picture company may be eligible for an additional 5% post-performance refundable tax credit motion picture incentive, in addition to the 20% post-performance refundable tax credit motion picture incentive under subsection (3) if:

(a) the motion picture company employs a significant, as determined by the office, percentage of cast and crew from Utah; or

(b) highlights the State of Utah and the Utah Film Commission in the motion picture production credits; or

(c) other promotional opportunities as agreed upon by the office and the motion picture company; and

(d) the total motion picture incentive granted to the motion picture company for a state-approved motion picture production does not exceed 25% of the dollars left in state.

(5) A motion picture company is eligible for a motion picture incentive only if the office has entered into an agreement under subsection (3) with the motion picture company under 63N-8.

R357-5-4. Motion Picture Incentive Conditions -- Digital Media Company.

(1) A digital media company may qualify for a motion picture incentive under 63N-8 only if:

(a) the digital media project is producing all or part of production within the state that is:

(i) an interactive entertainment production; or

(ii) an animated production; and

(b) the digital media company has obtained financing and financing is in place for the production; and

(c) the economic impact of the digital media project's new state revenue represents new incremental economic activity in the state; and

(d) is produced for distribution in commercial or education markets, which shall include projects intended for Internet or wireless distribution; and

(e) as of the motion picture incentive application date, as determined the office, has not started project production in the state; and

(f) is a state-approved production.

(2) The office, with advice from the board, may enter into an agreement with a digital media company authorizing a motion picture incentive if the digital media company meets the standards under subsection (1) and (2) and:

(a) the motion picture incentive does not exceed 20% of the new state revenue paid by the digital media company; and

(b) does not exceed 20% of the dollars left in state by the digital media company; and

(c) is in the form of a post-performance refundable tax credit certificate under 63N-8 and under Section 59-7-614.5 or 59-10-1108; and

(d) economic modeling is considered to evaluate the costs and benefits of the digital media project to the state and local governments in determining the motion picture incentive amount; and

(e) the motion picture incentive amount approved for the digital media production follows the motion picture incentive application policy established by the office, which shall be posted on the office's public website.

(3) A digital media company is eligible for a motion picture incentive only if the office has entered into an agreement under subsection (2) with the digital media company under 63N-8.

R357-5-5. Funding -- Post-Performance Refundable Tax Credit.

(1) The office may issue up to $6,793,700 in post-performance refundable tax credit certificates under 59-7-614.5 or 59-10-1108 in a fiscal year to either a motion picture, or digital media, company.

(2) If the office does not issue post-performance refundable tax credit certificates in a fiscal year totaling the amount authorized under 63N-8, it may carry over that amount for issuance in subsequent fiscal years.

(3) Post-performance refundable tax credits are nontransferable and can only be issued to the state-approved motion picture, or digital media, company who submits the motion picture incentive application and is approved by the office with advice from the Board.

R357-5-6. Funding -- Post-Performance Cash.

(1) The office may only issue funds appropriated by the

state legislature to the restricted account created with the general fund known as the Motion Picture Incentive Account to a motion picture company.

(2) Post-performance cash is nontransferable and can only be issued to the state-approved motion picture company who submits the motion picture incentive application and is approved by the office with advice from the Board.

KEY: economic development, motion picture, digital media, new state revenue
June 30, 2011 63N-8-104

R357. Governor, Economic Development. **May 1, 2013** **63N-2-801**

R357-6. Technology and Life Science Economic Development and Related Tax Credits.

R357-6-1. Purpose.

(1) The purpose of these rules is to provide:

(a) the criteria upon which the Governor's Office of Economic Development will determine whether to award tax credits to applicants;

(b) the procedures for documenting the Governor's Office of Economic Development's application of this criteria;

(c) the procedures by which the Governor's Office of Economic Development issues tax credit certificates;

(d) the available tax credits for which applicants may apply.

R357-6-2. Authority.

(1) UCA 63N-2-807 requires the office to make rules establishing criteria to prioritize the issuance of tax credits among applicants and to establish procedures for documenting the office's application of the criteria.

R357-6-3. Definitions.

(1) Terms in these rules are used as defined in UCA 63N-2-802.

R357-6-4. Conditions.

(1) Applicants shall use the application form provided by the office and follow the procedures and requirements set forth in UCA 63N-2-805 for obtaining a tax credit certificate.

(2) Applicants shall submit the application form to the office to be eligible to receive a tax credit, quarterly throughout the fiscal year as set forth in UCA 63N-2-808, on or before the following quarterly deadlines:

(a) September 1; and

(b) December 1; and

(c) March 1; and

(d) June 1.

(3) The office shall review and rank for approval accepted applications based upon the following criteria:

(a) The overall economic impact on the state related to providing tax credits, taking into account such factors as:

(i) the number of new incremental jobs to Utah; or

(ii) capital investment in the state; or

(iii) new state revenues; or

(iv) any combination of Subsections (i), (ii), or (iii).

(4) The office shall keep a record of the review and ranking of applications based on the criteria in subsection (2).

(5) The office, with advice from the board, may enter into an agreement with a business entity authorizing a tax credit if the business entity meets the standards under subsections (2) and (3) and according to the requirements and procedures set forth in UCA 63N-2-809.

(6) A business entity is eligible for an economic development tax credit only if the office has entered into an agreement under subsection (4) with the business entity.

R357-6-5. Available Tax Credits.

(1) An applicant may seek one of two types of tax credits, drawn from funds expressly set aside by the Legislature:

(a) a refundable tax credit for generating state tax revenue; or

(b) a non-refundable tax credit for investment in certain life sciences establishments.

(2) Eligibility shall be determined by:

(a) statutory requirements; and

(b) the criteria listed in R357-6-4(2).

KEY: economic development, life sciences, new state revenue

R357. Governor, Economic Development.
R357-7. Utah Capital Investment Board.
R357-7-1. Purpose.

(1) The purpose of these rules is to establish criteria and procedures for the allocation and issuance of contingent tax credits to designated investors.

R357-7-2. Authority.

(1) U.C.A. 63N-6-203, 63N-6-401, 63N-6-406, 63N-6-408 requires the Utah Capital Investment Board to make rules establishing the manner by which it allocates, issues, certifies, transfers and redeems contingent tax credits.

R357-7-3. Definitions.

(1) "Act" means the Utah Venture Capital Enhancement Act U.C.A. 63N-6.

(2) "Actual Return" means the actual aggregate amount of moneys or the fair market value of property received from a fund of funds by a designated investor, with respect to an investment amount for which a certificate is issued, including amounts received as returns of invested capital or returns on invested capital and amounts received in excess of invested capital, in whatever form received for the period from the date of the closing to the applicable maturity date.

(3) "Board" means the Utah Capital Investment Board created under U.C.A. 63N-6-103(1).

(4) "Certificate" or "tax credit certificate" means a document constituting a contract between the state of Utah and a holder and evidencing a tax credit that has been issued and, subject to the contingencies described on the certificate that may become available to the holder.

(5) "Certificate register" means the register to be maintained by the board recording the name, address, and taxpayer identification number of each holder and the maximum potential amount of the tax credits represented by each certificate issued to each holder.

(6) "Certified tax credits" means tax credits that have been verified by the board to the commission and to the holder of the certificate that represents such tax credits.

(7) "Closing" means a time when a certificate is issued to a designated investor in exchange for a commitment to contribute cash to the capital of a fund of funds.

(8) "Commission" means the Utah State Tax Commission.

(9) "Commitment" means either a binding obligation undertaken at closing to invest in a fund of funds in the future or an actual investment made in a fund of funds, but without counting the same amount twice.

(10) "Contingencies" shall mean the conditions under which a tax credit may be claimed and shall include each of the following;

(a) The condition that the tax credits may only be used to the extent that the actual return on the investment amount associated with the certificate is less than the applicable scheduled return on such investment amount, and then only to the extent such tax credit becomes a certified tax credit.

(b) The condition that the amount of the total verified tax credits represented by such certificate that may be claimed during any redemption year will be limited to the amount certified by the board to the commission.

(c) The condition that no amount of the tax credit may be claimed prior to a maturity date stated on the certificate; and

(d) The condition that the receipt by the designated investor of an actual return on the investment amount associated with the certificate equal to the scheduled return on such investment amount will result in the cancellation of the tax credit certificate.

(11) "Corporation" means the Utah Capital Investment Corporation created under Section U.C.A. 63N-6-301.

(12) "Day" means any weekday Monday through Friday that is not a legal holiday of the state of Utah.

(13) "Designated investor" means a natural person or an entity, other than the corporation, that has committed to contribute capital to a fund of funds, and such person's or entity's successors or assignees.

(14) "Designated purchaser" means:

(a) a person who enters into a written undertaking with the board to purchase a commitment; or

(b) a transferee who assumes the obligations to make the purchase described in the commitment.

(15) "Fiscal year" means the fiscal year for the state of Utah.

(16) "Fund of funds" means any private, for-profit limited partnership or limited liability company established by the corporation to which a designated investor commits to make a capital contribution.

(17) "Holder" means a holder of a tax certificate, either as a designated investor or as a transferee of a designated investor, as reflected on the certificate register.

(18) "Investment amount" means the amount of cash contributed by a designated investor to a fund of funds with respect to which a certificate has been issued.

(19) "Maturity date" means a specific date or dates specified in a certificate, representing the earliest date of which a holder of the certificate may use it.

(20) "Percentage of Return" means the percentage represented by the quotient of (1) the actual return for a designated investor on the investment amount associated with a certificate divided by (2) the scheduled return for such designated investor on such investment amount.

(21) "Portfolio entity" means a venture capital fund or direct investment entity in which a fund of funds makes an investment.

(22) "Rate of return" means Internal Rate of Return calculated inclusive of all cash flows both positive and negative in addition to the fair market value of unrealized investments.

(23) "Redeem" means, with respect to a certificate, to present such certificate to the commission as payment due on or after the date of such presentation.

(24) "Redemption reserve" means the reserve established by the corporation to facilitate the cash redemption of certificates.

(25) "Redemption year" means each calendar year for which certified tax credits associated with a certificate may first be utilized.

(26) "Scheduled return" means the scheduled return, whether in money or property, (including returns of and returns on investment) with respect to an investment amount associated with a certificate issued to a designated investor in a fund of funds determined in accordance with the limited partnership agreement or the operating agreement of such fund of funds for the period from the date of the closing to the applicable maturity date. If relevant for determining the amount of the scheduled return, the board shall presume that a verified credit will be transferred at 100 percent of the amount stated on the certified tax credit. It shall be the burden of a designated investor to show that the certified tax credit cannot be transferred without discounting the amount stated on such credit.

(27) "Tax credit" means a contingent, refundable tax credit authorized by U.C.A. 63N-6-406(4)(c).

R357-7-4. Requirements of the Utah Capital Investment Corporation.

(1) Within 20 days prior to each closing, the corporation shall deliver a written report to the board containing the following information:

(a) a copy of the certificate of limited partnership or articles of organization of the fund of funds for which a closing is scheduled;

(b) a summary of the terms of the anticipated investments in such fund of funds as contained in the limited partnership agreement or the operating agreement of the funds of funds;

(c) a statement of the anticipated date of the closing; and

(d) evidence that the designated investor is an accredited investor.

(2) No less than two days prior to each closing, the corporation shall deliver to the board a signed statement of an officer of the corporation certifying the names, addresses, and taxpayer identification numbers of the persons expected to be designated investors at the closing, the total amount of the capital commitments expected to be received at the closing, the maximum amount of tax credits to be represented by each certificate to be issued at the closing, the date of the anticipated closing, the maturity date or dates for each certificate to be issued at closing, the contingencies applicable to the tax credits, and the calculation formula for determining the scheduled return.

R357-7-5. Allocation and Issuance of Certificates.

(1) Certificates shall be issued only by the board and only with respect to an actual capital commitment to a fund of funds. The board shall not issue a certificate until it has verified that the Utah Fund of Funds has agreed to treat the tax credits as a loan from the state of Utah, and the terms for the repayment of the loan.

(2) Following receipt of the certification of the corporation, the board shall issue a certificate to each such designated investor at closing.

(3) The maximum amount of the tax credits represented by each certificate shall be calculated in accordance with the limited partnership agreement or operating agreement of the applicable fund of funds or loan agreement between a designated investor and a fund of funds and will be subject to the limitations stated in the U.C.A. 63N-6-406(2)(a)(c).

(4) A tax credit certificate shall contain, or incorporate by reference to another document, each of the following:

(a) the name, address, and tax identification number of the holder;

(b) the amount of the investment commitment;

(c) all of the contingencies applicable to the tax credits;

(d) the date of issuance of the certificate;

(e) the maximum amount of the tax credit represented by the certificate;

(f) the maturity date of the certificate;

(g) the formula to be used to determine the total amount of return owed to the designated investor;

(h) if the certificate is issued upon a transfer after certification, the amount of the certified tax credits represented by such certificate and the redemption year(s); and

(i) the credit code to use to claim the credit on the Utah State tax return.

(5) All other requirements as set forth in U.C.A. 63N-6-406(6).

R357-7-6. Procedures for Certification of Tax Credits.

(1) At any time after the applicable maturity date for a certificate, the holder may present such certificate to the board for certification no later than June 30 of the calendar year maturity date stated on the certificate.

(2) Prior to certification the board will verify that no funds are available in the redemption reserve account.

(3) The corporation, and any entity with which the corporation has entered into agreements pursuant to the investments and financial transactions described in U.C.A. 63N-6-301(2)(c), shall provide all documents that the board finds are, or may become, necessary for the board to certify the amount of tax credits to be issued pursuant to the chapter. Such documents include but are not limited to the following:

(a) Financial transactions related to the corporation, the Utah Fund of Funds, designated investors, lenders, or portfolio entities.

(b) Financial documents, loan agreements, and security instruments to which any of the corporation, the Utah Fund of Funds, designated investors, lenders, or a portfolio entity is a party.

(c) Investment agreements to which any of the corporation, Utah Fund of Funds, designated investors, lenders, or a portfolio entity is a party.

(d) All legal documents and correspondence outlined herein to which any of the corporation, the Utah Fund of Funds, designated investors, lenders, or a portfolio entity is a party.

(e) All documents and financial information necessary to calculate the actual return, scheduled return, and the percentage of return.

(f) Any other documents the board deems necessary to assess compliance with this chapter or to correctly verify the amount of tax credits related to a certificate issued pursuant to this chapter.

(4) Within 30 days of the receipt of all documents and information pursuant to subsection (3) the board shall establish and certify the amount of tax credits related to that certificate, if any, which may be initially used in each redemption year.

(5) The board shall issue to the holder of such certificate a certification setting forth (a) the amount of certified tax credits represented by such certificate (if any) and (b) the amount of certified tax credits represented by such certificate and redemption year (if any).

(6) If the certified certificate has more than one maturity date, the board shall issue to the holder a certificate for the certified tax credits. The certified certificate will contain no contingencies. The board shall issue one or more balance certificates for any maturity dates for which the tax credits are not then being certified.

(7) Certificates being certified for a maturity date shall be certified pro rata with all other certificates being certified for the same maturity date.

(8) If a contingent certificate has more than one maturity date, the most recent maturity date prior to the date on which the certificate was presented to the board for certification shall be the maturity date used for purposes of certification under this rule.

(9) Once a tax credit has been certified, the board will notify the Commission of such certification within 7 days.

R357-7-7. Contractual Nature of Certificates; Irrevocability of Tax Credits.

(1) Upon the issuance of a certificate, the entitlement of a holder to use the tax credits represented by the certificate shall be final and permanent, subject only to the contingencies expressly stated or incorporated by reference in the certificate, and such entitlement shall not be subject to any further condition, reduction, modification, amendment, change, revocation, or recapture.

(2) The entitlement of a holder to claim tax credits represented by a certificate shall constitute a contract between the state of Utah on the one hand and such holder and the holder's successors and assignees on the other hand which shall not be subject to modification, amendment, change or rescission without prior written consent of the holder as of the date of any such purported action. No such modification, amendment, change or recession to which a holder may have agreed shall be binding upon any of the successors or assignees of such holder unless it is stated in the text of the certificate issued to such successor assignee.

(3) The entitlement of a holder to claim tax credits represented by such certificate shall not be affected in any way or become subject to forfeiture or recapture by:

(a) Action or inaction of the holder or designated investor;

(b) The transfer by the designated investor of all our any portion of the designated investor's interest in a fund of funds;

(c) The determination after the closing that a fund of funds was not organized or did not make its investments in accordance with the requirements of the Act or these rules;

(d) The invalidity or illegality for any reason of the existence or functions of the board, a fund of funds, or the corporation or any portfolio entity for any reason;

(e) The bankruptcy, insolvency, reorganization, merger, consolidation, dissolution or liquidation of the board, a fund of funds, or the corporation or any portfolio entity for any reason; or

(f) The level, timing or degree of success of any fund of funds or any portfolio entities, or the extent to which venture capital funds that are portfolio entities are invested in Utah venture capital projects, or are successful in accomplishing any economic development objective.

(4) If the legal existence of the board, a fund of funds, the corporation or the commission is ended or some or all of its respective functions are transferred to another entity at any time prior to the full use of 100 percent of the tax credits that could potentially be represented by all of the certificates, the board or its successor (or the state of Utah if the legal existence of the board ends or the board ceases to have the requisite authority and there is no successor with such authority) shall adopt such rules as may be necessary to ensure the continuity and effectiveness of the entitlement of each holder to use the tax credits represented by such holder's certificate.

R357-7-8. Transfer of Tax Credit Certificates.

(1) Certificates shall be transferrable by the holders and any subsequent holders to any transferee or transferees.

(2) Transfer of a certificate may be effected only by the holder's surrender of the certificate to the board with an endorsement in favor of the transferee, or transferees, and a statement containing the name, address and tax identification number of the transferee, and a written request for the board to issue a replacement certificate or certificates in the name of the transferee(s) (as well as, in any case where the transferor request that more than one replacement certificate be issued, a statement by the transferor that sets forth the aggregate amount of tax credits represented by the transferred certificate that are to be represented by each replacement certificate).

(3) Within 20 days after the surrender and endorsement of a certificate, the board shall issue a replacement certificate or certificates in the name of the transferee(s). Once a transferor of a certificate has surrendered a certificate to the board, such transferor may no longer use the tax credits represented by such a certificate.

(4) A holder shall have the right to pledge and grant security interests in certificates and tax credits held by such holder as collateral for loans to or other obligations of the holder.

R357-7-9. Cancellation of Tax Credits Upon Receipt of the Scheduled Return.

(1) Tax credits represented by a certificate are subject to cancellation only as provided in the certificate and upon receipt by the designated investor of an actual return equal to the designated investor's scheduled return with respect to such certificate.

(2) At the time of each distribution to a designated investor in a fund of funds, the corporation shall determine the amount of tax credits related to each certificate that have been cancelled and have become null and void by reason of such distribution, if any, and shall certify such amount to the board.

(a) After any such certification, the board shall certify to the holder of each such certificate, at the holder's address as shown on the certificate register, and to the commission the amount of tax credits that are deemed to have been cancelled and to be null and void.

(b) If at any time prior to a certification of a certificate the actual return of a designated investor shall equal the designated investor's scheduled return with respect to such a certificate, and all other conditions for cancellation contained in the certificate have been met, the corporation shall so certify to the board.

(c) After any such certification, the board shall certify to such holder at the holder's address shown on the certificate register and to the commission that such certificates shall be deemed to have been cancelled and to be null and void. Tax credits that are cancelled may be reissued with respect to the same or another fund of funds.

R357-7-10. Lost or Mutilated Tax Credit Certificates.

Upon receipt of evidence satisfactory to the board of the loss, theft, destruction or mutilation of any certificate, and in case of any such loss, theft or destruction, upon delivery of any indemnity agreement satisfactory to the board, or in case of any such mutilation, upon surrender and cancellation of such certificate, the board shall issue an deliver to the holder a replacement certificate within twenty days.

R357-7-11. Redeeming the Tax Credit Certificates.

(1) Once certified by the board, the holder of the tax credit certificate may present such certificate to the commission for redemption subject to the following provisions:

(a) The contingent tax credit certified by the board shall be claimed for a tax year of the designated investors, or transferee, that begins during the same year as the stated maturity date listed on such certificate. The designated investor (or a transferee of the Certified Contingent Credit) may submit to the commission at any time following the date of such certification by the board, but no later than the general filing deadline for Utah State tax returns (including extensions) for the redemption year.

(b) The person or entity claiming a refund must timely file a Utah State tax return claiming a refundable credit; and no other filing or forms or actions are necessary, and no other conditions apply, for obtaining a refund in respect of such tax credit. The commission will manually process a tax return with a claim for refund certified by the board and will pay the amount indicated on such tax return (such payment generally, but not always, made within ninety (90) days from the date for such return (the "Due Date")). If the board notified the commission of the filing of a claim for refund by the designated investor, the commission will take steps to expedite the refund.

(2) There is no limitation on a person:

(a) filing more than one claim for refund with the commission, or

(b) receiving more than one refund from the commission, in each case, in any one calendar year or other twelve (12) month period.

(3) If an entity is not otherwise a Utah taxpayer, its taxable year, for purposes of the Utah Act, shall be considered to end annually on the same date that its tax year ends for US federal income tax purposes. For a disregarded entity that is not otherwise a Utah taxpayer, such entity may designate any date on which its taxable year ends by stating such date on the Utah tax return on which it files its claim for refund.

(4) If the investor or any transferee is a corporation or other business organization or entity included in a combined Utah state tax return, and such tax return claims a tax credit, the commission will treat such tax credit as a refundable credit for the combined group.

R357-7-12. Criteria and Procedures for Assessing the Likelihood of Future Certificate Redemptions by Designated

Investors.

(1) On an annual basis, the corporation staff and/or the Allocation Manager will provide the board with a comprehensive report including the following:

(a) a detailed accounting of cash outflows and cash inflows from fund investments during the year.

(b) a detailed accounting of payments made to lenders or equity investors during the year.

(c) a detailed accounting of management fees paid to the corporation during the year.

(d) a detailed accounting of increases or decreases in unrealized value during the year.

(e) a five year projection of cash flows with sensitivity around investment returns, interest rates, and distribution pacing.

(f) third party audit of the Utah Fund of Funds including asset valuation.

(g) verification of individual portfolio fund IRR.

R357-7-13. Target Rate of Return or Range of Returns on Venture Capital Investments of the Utah Fund of Funds.

The target rate of return on venture capital investments of the Utah Fund of Funds is a minimum of 5%. The corporation will submit to the board annually a detailed accounting of the calculation of the rate of return. It is understood by the board that the fund that returns in the early years of the fund will likely be negative.

R357-7-14. Certificate Registry.

A certificate register detailing all transactions involving the certificates shall be held and maintained at the Office of the Utah Treasurer.

KEY: economic development, capital investments
September 11, 2014 63N-6-203

R357. Governor, Economic Development.
R357-9. Alternative Energy Development Tax Incentives.
R357-9-1. Purpose.

(1) The purpose of these rules is to establish:

(a) The standards an alternative energy entity shall meet to qualify for a tax credit;

(b) The procedures by which the Governor's Office of Economic Development issues tax credit certificates.

R357-9-2. Authority.

(1) UCA 63N-2-703 requires the office to make rules setting the standards an alternative energy entity shall meet to qualify for a tax credit.

R357-9-3. Definitions.

(1) Terms in these rules are used as defined in UCA 63N-2-702.

R357-9-4. Standards.

(1) Applicants shall use the application form provided by the office and follow the procedures and requirements set forth in UCA 63N-2-704 for obtaining a tax credit certificate.

(2) The office shall review accepted applications based upon the following criteria:

(a) Compliance with the requirements set forth in UCA 63N-2-703;

(b) The overall economic impact on the state related to providing the tax credit, taking into account such factors as:

(i) the number of new incremental jobs to Utah; or

(ii) capital investment in the state; or

(iii) new state revenues; or

(iv) any combination of Subsections (i), (ii), or (iii).

(3) The office shall keep a record of the review of applications based on the criteria in subsection (2).

(4) The office, with advice from the board, may enter into an agreement with a business entity authorizing a tax credit if the business entity meets the standards under subsections (2) and (3) and according to the requirements and procedures set forth in UCA 63N-2-704.

(5) A business entity is eligible for an economic development tax credit only if the office has entered into an agreement under subsection (4) with the business entity.

KEY: economic development, alternative energy, tax credits
May 1, 2013 63N-2-701

R357. Governor, Economic Development.
R357-11. Technology Commercialization and Innovation Program (TCIP).
R357-11-1. Purpose.

(1) The purpose of the Technology Commercialization and Innovation Act is to catalyze and enhance growth of technologies by encouraging interdisciplinary research activity and targeted areas, facilitating the transition of technologies out of the higher education to enhance job creation, and to support the commercialization of technologies developed by small businesses to enhance job creation.

R357-11-2. Authority.

(1) UCA 63N-3-204(2)(b) requires the office to make rules to regulate the Technology Commercialization Innovation Program ("TCIP") grant structure and awards and to recapture awards when a recipient fails to maintain a presence in Utah for at least five years after the award is made, as set forth in these rules.

R357-11-3. Definitions.

(1) This rule adopts the definitions set forth in 63N-3-203.

(2) "Board" means the Board of Business Development set forth in 63N-1-301.

(3) "Derivative Technology" means: Incremental advance or new of application of an existing technology.

(4) "Developmental Research Phase" means: A phase in which the technology is not beyond a basic concept as determined by the office.

(5) "New technology means" Intellectual property not previously marketed or generated revenue for any entity.

(6) Qualified Pre-screening entity "means" A University's Technology Transfer Office or the USTAR Technology Outreach Innovation Program. This term only applies to University team applicants.

(7) Solicitation Cycle Means: A granting cycle from application to grant distribution to be held at least once a year or more depending on availability of funds. All dates for any solicitation may be found on the TCIP website.

(8) "TCIP" means the Technology Commercialization and Innovation Program as defined in Utah Code Section 63N-3-203(6).

R357-11-4. General Grant Requirements.

(1) An applicant can only receive a TCIP award totaling an amount defined in policy per new technology. Policy shall be available on the TCIP website.

(2) An applicant may not submit more than one application in the same solicitation cycle if the applicant has more than one new technology that meets the eligibility requirement for a TCIP grant.

(a) Only one new technology project per applicant will be funded in an solicitation cycle.

(3) An applicant that has generated more than $500,000 in revenue from the proposed new or derivative technology is not eligible for a TCIP grant.

(4) An applicant that has raised more than $3,000,000 in total prior funding, including equity and debt based financing, is not eligible for the TCIP grant.

(5) An Applicant may apply for a TCIP grant up to three times for a specific new technology. If, after the third application TCIP does not fund the technology, TCIP will reject subsequent applicants for the same new technology without further review.

R357-11-5. Matching Funds.

(1) Matching funds may be considered in granting an award. If considered a grant recipient must show proof of the matching funds.

(2) Matching funds may be raised and spent at any time prior to submitting an invoice to the TCIP

(a) Grant recipient must submit bank statements (for Licensees) or financial statements (for Universities) demonstrating that the matching funds were available during the match period.

(b) Matching funds do not have to be in place at the time of the application, but must be in place before TCIP funds are disbursed within the contract period of one year.

R357-11-6. Applicant Specific Requirements.

(1) University Teams: In order to apply for a grant or loan under the TCIP program, a University Team must satisfy the following initial criteria:

(a) The technology must be organized by faculty led university team;

(b) The technology must have completed the developmental research phase; and

(c) The applicant must be pre-screened by a qualified pre-screening entity.

(d) The qualified pre-screening entity must certify that the technology meets the criteria set forth in (a) and (b) of this section, and the certification must be provided before grant is awarded.

(2) Small Businesses: In order to apply for a grant or loan under the TCIP program, a small business must satisfy the following initial criteria:

(a) The applicant must be a "small business" as defined by the Federal Small Business Administration's definition and meet the criteria set forth in UCA Section 63N-3-203(5).

(3) A University-licensee is also be eligible if it meets the definitions in (a) above.

R357-11-7. Review of Applications and Awards.

(1) Applicants who successfully meet the eligibility requirements set forth in R357-11-4 and R357-11-5 and R357-11-6 may submit their application for the TCIP grant through the online registration portal.

(2) The Executive Director of GOED or the director's designee will evaluate the applications received in each solicitation cycle. The Executive Director or the designee may use the following criteria, as defined by the Executive Director or the designee, to evaluate applications for TCIP grants:

(a) Quality, diversity, and number of jobs created in Utah,

(b) Quality of Management and Leadership, including experience with commercialization of new technologies as demonstrated by grant applicant's application and proposal;

(c) Strength of the new technology and potential for commercialization;

(d) Size and Growth of the market of the proposed technology

(e) Applicant's ability to market the technology and the credibility of their "go-to-market" strategy.

(f) Availability of matching funds and the source and relevance of those funds as set forth in R357-11-5

(g) Whether the project combines or coordinates related research at two or more institutions of higher education;

(h) Any other criteria deemed necessary or valuable to the selection process.

(3) Additionally, each applicant's application will be compared against and with the strength of all other applicants' applications and proposals within the same solicitation cycle.

(4) The Executive Director may assemble an outside review team to review the criteria set forth above and to make recommendations regarding the application.

(5) The Executive Director or his designee shall propose funding allocations to the Board.

(6) After the Board provides its advice, the Executive Director or the designee shall determine which applications

should be prioritized for funding.

(7) Applications will be prioritized and funded based on the criteria set forth in (1)-(3). Award letters will be provided setting forth the terms of the grant offer.

R357-11-8. Requirements for Grant Recipients.

(1) Contract

(a) An applicant who is awarded a TCIP grant must sign a contract with the State of Utah prior to receiving any funds

(2) Sub-Contracts

(a) Grant Recipients are prohibited from subcontracting with another entity to administer the new technology funded by the Grant.

(3) Time in State

(a) Grant recipients will be expected to retain their company, and supported technology, and exploit the technology in the State of Utah for a minimum period of five years from the date of their agreement with the State.

(b) Any applicant who fails to maintain a manufacturing or service location in the state or who fails to exploit the new technology from a location in the state will be subject to recapture of the grant funding, subject to the provisions of Utah Code Section 63N-3-204(2)(d) and R357-11-8.

(4) Authorization to disclose tax information

(a) Licensee grant recipients will be required to sign an authorization to disclose tax records for up to five years from the date of their agreement with the State.

(5) Mentoring Program

(a) Grant awardees may be required to participate in the TCIP Mentoring Program in order to secure funding.

(b) If a grant award is contingent on participation in the TCIP Mentoring Program, an awardee will be required to show active participation in the program prior to receiving any or part of the grant funding as outlined in recipient's contract.

R357-11-9. Funding.

(1) TCIP funding is for developing existing research to the point of commercialization, bridging the "funding gap" between research dollars and manufacturing dollars.

(2) TCIP funding may be used to:

(a) Purchase equipment;

(b) Purchase supplies;

(c) Fund graduate/undergraduate students for time directly applicable to center commercialization activities related to the new technology;

(d) Fund faculty salaries directly applicable to center commercialization and related to the new technology;

(e) Fund product development activities (prototypes, models, simulations);

(f) Fund technology transfer activities (trade shows, brochures, etc.);

(g) Fund market analysis;

(h) Pay for consulting fees directly applicable to center commercialization;

(i) Pay for business manager or marketing manager salaries directly applicable to center commercialization activities; or

(j) Other purposes approved by GOED in writing.

(3) Carryover Funds

(a) The budget described in the contract is designated for the particular fiscal year and is an integral part of the contract. Upon the expiration of the contract, residual funds under the contract can only be accessed by amending the contract as described above.

(4) Invoicing Requirement

(a) Funds are disbursed on a reimbursement basis. To receive funds from the program, an invoice of actual expenses of the funded center should be submitted by the awardee at least quarterly.

(b) Every invoice must include:

(i) Contract Number;

(ii) Name of entity and Principal Investigator.;

(iii) Billing Period; and

(iv) Current and Cumulative Amounts.

R357-11-10. Reporting Requirements.

(1) Reporting and Monitoring

(a) Grant awardees or mentor will be required to submit a report of activities, achievements and expenses, etc. as specified in the awardees contract.

(b) Grant awardees or mentor will be required to comply with the State's request for information pertaining to the economic impact to the State, at least annually for up to five years from date of the agreement.

(c) Grant awardees or mentor will also be required to respond to additional periodic reporting to the TCIP Director, Governor's Office of Economic Development and GOED Board, and the Legislature, at any time during the agreement period and thereafter for two additional years.

(d) Universities and Small Businesses should also expect periodic site visits from TCIP Director or board members. Such visits will be scheduled at mutually convenient times.

R357-11-11. Recapture.

(1) In order to receive grant funding under these provisions, an applicant must commit to maintain a manufacturing location or service location in the State of Utah for at least five years from the date that the grant award letter is issued.

(2) Maintaining a manufacturing and service location means that the applicant will perform at least X percent of the grant activities listed above in the State of Utah, will exploit the technology into a commercial project in Utah and will maintain working operations in the State for at least five years from the date the grant award letter is issued.

(3) If the applicant fails to maintain a manufacturing a service location in Utah for at least five years from the date the grant award letter is issued, the entire grant amount may be subject to recapture.

(4) A repayment by an applicant shall be prorated based on the number of full ears the applicant operated in the state from the date of the awarded grant.

(5) Should an applicant fail to comply with the requirements to maintain an manufacturing and service location in Utah for the purpose of exploiting the new technology that is the subject of the grant, the Office will issue a Notice of Agency Action for Recapture.

(6) The Notice of Agency Action shall contain the grounds for recapture, and the prorated amount of the recapture, if any.

KEY: technology, innovation, commercialization, small business

March 23, 2015 63N-3-204(2)

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-3. Children's Hearing Aid Program.
R398-3-1. Definitions.

a. "Hearing aid" is any traditional non-surgical device providing acoustic amplification.

b. "CHAP" is Children's Hearing Aid Program.

c. "CSHCN" is the Department's Bureau of Children with Special Health Care Needs.

d. "L and D" is loss and damage, referring to warranty or insurance coverage for hearing aids.

e. "Managing audiologist" is a non-Department licensed audiologist with expertise in pediatric audiology who is responsible for the provision of hearing aids and follow-up care to eligible children.

R398-3-2. Purpose and Authority.

The purpose of this rule is to set forth the process to identify children who are financially eligible to receive services under the program and describe how the department will review and pay for services provided to a child under the program.

This rule is authorized by Section 26-10-11(5) which provides that the department shall make rules regarding implementation of the hearing aid program.

R398-3-3. Process to Identify Children Who Are Financially Eligible for Services.

(1) Participant financial eligibility

a. Children younger than six years old, with hearing loss who do not yet own a hearing aid or for whom current amplification is no longer appropriate may be eligible for hearing aids under this program.

b. Participant must complete and submit CSHCN Financial Form (PFR) with application to the managing audiologist.

c. Upon request, the family must provide a copy of the most recent federal income tax filing to CHAP to verify family income as reported by the child's parents. If the federal income tax filing is unavailable, the parents may submit the prior three months' check stubs to extrapolate annual income.

d. Family must be at or below 300% of Federal Poverty Level.

e. This is a one-time per ear benefit per child.

R398-3-4. Process to Review and Pay for Services Provided to a Child.

(1) Applications

a. Participant application

i. Must be completed by parent or guardian.

ii. If a child is under three years of age, the child shall participate in a Part C Early Intervention program.

iii. Application must be submitted to managing audiologist with:

1. Proof of denial for Medicaid or evidence that family is ineligible for Medicaid.

2. Evidence of non-coverage by current insurance provider.

i. Family/guardian shall provide coverage for all out-of-warranty repairs.

ii. If L and D is claimed during the warranty period, the family shall provide supplemental hearing aid insurance including L and D.

iii. Child will receive hearing aids directly from managing audiologist.

a. Audiologist qualifications and application

i. Hearing aid must be fit by a licensed audiologist.

ii. A separate application must be submitted for each child.

(2) Review of applications

a. All applications will be reviewed for completeness and eligibility by the Advisory Committee chair or UDOH designee.

b. Eligibility shall be communicated to the managing audiologist.

(3) Payment process

a. Within 30 days of hearing aid fitting, the managing audiologist will submit the Payment Request Cover Sheet with all supporting documentation.

b. UDOH will review documentation to assure that managing audiologist has submitted all items listed in payment request.

c. Payments will go directly to the managing audiologist or their designee.

KEY: hearing aids
August 21, 2015 **26-10-11**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-302. Eligibility Requirements.
R414-302-1. Authority and Purpose.

This rule is authorized by Section 26-1-5 and Section 26-18-3 and establishes eligibility requirements for Medicaid and the Medicare Cost Sharing programs.

R414-302-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule.

R414-302-3. Citizenship and Alienage.

(1) The Department incorporates by reference 42 CFR 435.406 October 1, 2012 ed., which requires applicants and recipients to be United States (U.S.) citizens or qualified aliens and to provide verification of their U.S. citizenship or lawful alien status.

(2) The definitions in R414-1 and R414-301 apply to this rule.

(3) The Department shall decide if a public or private organization no longer exists or is unable to meet an alien's needs. The Department shall base the decision on the evidence submitted to support the claim. The documentation submitted by the alien must be sufficient to prove the claim.

(4) One adult household member must declare the citizenship status of all household members who will receive Medicaid.

(5) A qualified alien, as defined in 8 U.S.C. 1641 who was residing in the U.S. before August 22, 1996, may receive full Medicaid, Qualified Medicare Beneficiaries (QMB), Specified Low-Income Medicare Beneficiaries (SLMB), or Qualifying Individuals (QI) services.

(6) A qualified alien, as defined in 8 U.S.C. 1641 newly admitted into the U.S. on or after August 22, 1996, may receive full Medicaid, QMB, SLMB, or QI services after five years have passed from the person's date of entry into the U.S.

(7) The Department accepts as verification of citizenship documents from federally recognized Indian tribes evidencing membership or enrollment in such tribe including those with international borders as required under Section 211(b)(1) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3, or as prescribed by the Secretary.

(8) The Department provides reasonable opportunity for applicants or clients to present satisfactory documentation of citizenship as required under Section 211(b)(2) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(9) The Department considers that an infant born to a mother who is eligible for Medicaid at the time of the infant's birth has provided satisfactory evidence of citizenship. The Department does not require further verification of citizenship for the infant as required under Section 211(b)(3) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(10) The Department adopts and incorporates by reference 42 CFR 435.949 and 42 CFR 435.952, October 1, 2012 ed.

(a) The Department shall verify citizenship and immigration status requirements through the Federal Data Services Hub or through other electronic match systems approved by the Secretary.

(b) If the Department cannot verify citizenship or immigration status through an electronic match system or the electronic data is not reasonably compatible with the client statement, the client must provide verification of citizenship and identity as described in 42 CFR 435.407.

R414-302-4. Utah Residence.

(1) The Department adopts and incorporates by reference 42 CFR 435.403, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsection 1902(b) of the Compilation of the Social Security Laws, in effect May 8, 2013.

(2) The Department considers an individual who establishes state residency to be a resident of the state during periods of temporary absence, if the individual intends to return to the state when the purpose for the temporary absence ends.

R414-302-5. Deprivation of Supports.

(1) The Department adopts and incorporates by reference the definition of "dependent child" found in 42 CFR 435.4, October 1, 2012 ed.

(2) A child who lives with two parents is deprived of support if at least one parent is working less than 100 hours a month.

(3) A child is not considered deprived of support if any of the following situations is true:

(a) The parent is absent because of military service;

(b) The parent is absent for employment, schooling, training or another temporary purpose;

(c) The parent will return to live in the home within 30 days from the date of the application;

(d) The parent is the primary child care provider and care is frequent enough that the child is not deprived of support, care and guidance.

(4) A parent is incapacitated if the parent meets one of the following criteria:

(a) The parent receives SSI;

(b) The parent is recognized as 100% disabled by the Veteran's Administration;

(c) The parent is determined disabled by the State Medicaid Disability Office or the Social Security Administration;

(d) The parent provides written documentation completed by a medical professional engaged in the practice of mental health therapy, which states that the parent is incapacitated and the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity substantially reduces the parent's ability to work or care for the child. Full-time employment, however, nullifies the parent's claim of incapacity. The written documentation must be completed by one of the following medical professionals:

(i) Medical Doctor (MD);

(ii) Doctor of Osteopathy (DO);

(iii) Advanced Practice Registered Nurse (APRN);

(iv) Physician Assistant; or

(v) Mental Health Therapist who is either a psychologist, licensed clinical social worker, certified social worker, marriage and family therapist, professional counselor, MD, DO, or APRN.

R414-302-6. Residents of Institutions.

(1) The Department provides Medicaid coverage to individuals who are residents of institutions subject to the limitations related to residents of public institutions, patients in an institution for mental diseases who do not meet the age criteria, and patients in an institution for tuberculosis as defined in 42 CFR 435.1009, October 1, 2012 ed., which is incorporated by reference. The Department also adopts and incorporates by reference the definitions in 42 CFR 435.1010, 2012 ed.

(2) The Department does not consider persons under the age of 18 to be residents of an institution if they are living temporarily in the institution while arrangements are being made for other placement.

(3) The Department does not consider an individual who resides in a temporary shelter for a limited period of time as a resident of an institution.

(4) The Department considers ineligible residents of institutions for mental disease (IMD) who are ages 21 through

64 as non-residents while on conditional or convalescent leave from the institution. A resident of an IMD who is under 21 years of age, or is under 22 years of age and enters an IMD before reaching 21 years of age, is considered to be a resident while on conditional or convalescent leave from the institution.

(5) For individuals under 22 years of age who become residents of an IMD before reaching 21 years of age, the Department limits Medicaid eligibility to individuals residing in the Utah State Hospital.

R414-302-7. Social Security Numbers.

(1) The Department adopts and incorporates by reference 42 CFR 435.910, October 1, 2012 ed., which requires the social security number (SSN) of each applicant or beneficiary, specifies the exceptions to requiring the SSN, and specifies agency verification responsibilities. The Department adopts Section 1137 of the Compilation of the Social Security Laws, in effect May 8, 2013, which is incorporated by reference.

(2) Acceptable proof of an SSN is an electronic match, a social security card, or an official document from the Social Security Administration, which identifies the correct number. Acceptable proof of an application for an SSN is a social security receipt that confirms the individual has applied for an SSN.

(3) The Department requires a new proof of application for an SSN at each recertification if the SSN has not previously been provided.

(4) The Department may assign a unique Medicaid identification number to an applicant or beneficiary who meets one of the exceptions to the requirement to provide an SSN.

R414-302-8. Application for Other Possible Benefits.

(1) The Department adopts and incorporates by reference 42 CFR 435.608, October 1, 2012 ed., which requires applicants for and recipients of medical assistance to apply for and take all reasonable steps to receive other possible benefits.

(2) The Department may not require an applicant for or recipient of medical assistance to apply for an income benefit if the applicant's or recipient's income is not counted for the purpose of determining eligibility for medical assistance for either that individual or any other household member.

(3) Individuals who may be eligible for Medicare Part B benefits must apply for Medicare Part B and, if eligible, become enrolled in Medicare Part B to be eligible for Medicaid. The state pays the applicable monthly premium and cost-sharing expenses for Medicare Part B for individuals who are eligible for both Medicaid and Medicare Part B.

(4) Individuals whose eligibility is determined using non-Modified Adjusted Gross Income (MAGI) methodologies and who may be eligible for a Veterans Administration (VA) apportionment payment of benefits, as defined by the VA, must apply for those benefits.

R414-302-9. Third Party Liability.

(1) The Department adopts and incorporates by reference 42 CFR 433.138(b), October 1, 2012 ed., on the collection of health insurance information. The Department also adopts and incorporates by reference Section 1915(b) of the Compilation of the Social Security Laws, in effect September 9, 2013.

(2) The Department requires clients to report any changes in third party liability information within 30 days.

(3) The Department considers a client uncooperative if the client knowingly withholds third party liability information without good cause.

(4) The Department shall decide whether employer provided group health insurance would be cost effective for the state to purchase as a benefit of Medicaid.

(5) The Department requires clients residing in selected communities to be enrolled in a Health Maintenance Organization as their primary care provider. The Department shall enroll clients who do not make a selection in a Health Maintenance Organization that the Department selects. The Department shall notify clients of the Health Maintenance Organization that they will be enrolled in and allowed ten days to contact the Department with a different selection. If the client fails to notify the Department to make a different selection within ten days, the enrollment shall become effective for the next benefit month.

R414-302-10. Assignment of Rights and Medical Support Enforcement.

The Department adopts and incorporates by reference 42 CFR 433.145 through 433.148, and 435.610, October 1, 2012 ed., which spell out the assignment of rights to the state to collect from liable third parties and to cooperate in establishing paternity and medical support.

R414-302-11. Financial Responsibility.

(1) The Department adopts and incorporates by reference 42 CFR 435.602(a), October 1, 2012 ed., on the financial responsibility of family members.

(2) The Department shall apply the requirements of 42 CFR 435.603 for all individuals eligible for coverage groups subject to the Modified Adjusted Gross Income (MAGI) methodology.

KEY: state residency, citizenship, third party liability, Medicaid
September 1, 2015 26-18-3
Notice of Continuation January 23, 2013

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.
R414-304-1. Authority and Purpose.

(1) This rule is established under the authority of Section 26-18-3.

(2) The purpose of this rule is to establish the income eligibility criteria for determining eligibility for medical assistance programs.

R414-304-2. Definitions.

(1) The definitions in Rule R414-1, Rule R414-301, and Rule R414-303 apply to this rule. In addition:

(a) "Aid to Families with Dependent Children" (AFDC) means a State Plan for aid that was in effect on June 16, 1996.

(b) "Allocation for a spouse" means an amount of income that is the difference between the Social Security Income (SSI) federal benefit rate for a couple minus the federal benefit rate for an individual.

(c) "Basic maintenance standard" or "BMS" means the income level for eligibility for Medicaid coverage of the medically needy based on the number of family members who are counted in the household size.

(d) "Benefit month" means a month or any portion of a month for which an individual is eligible for medical assistance.

(e) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(f) "Deeming" or "deemed" means a process of counting income from a spouse or a parent, or the sponsor of a qualified alien, to decide what amount of income after certain allowable deductions, if any, must be considered income to the applicant or recipient.

(g) "Eligible spouse" means the member of a married couple who is either aged, blind or disabled.

(h) "Factoring" means that the eligibility agency calculates the monthly income by prorating income to account for months when an individual receives a fifth payment when paid weekly, or a third paycheck with paid every other week. Weekly income is factored by multiplying the weekly income amount by 4.3 to obtain a monthly amount. Income paid every other week is factored by multiplying the bi-weekly income by 2.15 to obtain a monthly amount.

(i) "Family Medicaid" means medical assistance for families caring for dependent children and is a general term used to refer to Medicaid coverage for medically needy parents, caretaker relatives, pregnant women, and children.

(j) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse, the spouse of the client, and the parents of a dependent child.

(k) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(l) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(m) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(n) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(o) "Income anticipating" means using current facts regarding rate of pay and number of working hours, and reasonably expected future income changes, to anticipate future monthly income.

(p) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(q) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(r) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that lead to gainful employment.

(s) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount will not exceed one-third of the SSI federal benefit rate plus $20.

(t) "Temporarily absent" means a member of a household is living away from the home for a period of time but intends to return to the home when the reason for the temporary absence is accomplished. Reasons for a temporary absence may include an absence for the purpose of education, medical care, visits, military service, temporary religious service or other volunteer service such as the Peace Corps.

R414-304-3. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Unearned Income Provisions.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, 416.1163 through 416.1166, and Appendix to Subpart K of 416, April 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws in effect January 1, 2013, to determine income and income deductions for Medicaid eligibility. The Department may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count Veterans Administration (VA) payments for aid and attendance or the portion of a VA payment that an individual receives because of unusual medical expenses. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

(3) The eligibility agency may only count as income the portion of a VA check to which the individual is legally entitled.

(4) The eligibility agency may not count as income Social Security Administration (SSA) reimbursements of Medicare premiums.

(5) The eligibility agency may not count as income the value of special circumstance items if the items are paid for by donors.

(6) For aged, blind and disabled Medicaid, the eligibility agency shall count as income two-thirds of current child support that an individual receives in a month for the disabled child. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division.

(7) The eligibility agency shall count as income of the child, child support payments received from a parent or guardian for past months or years.

(8) The agency shall use countable income of the parent to determine the amount of income that will be deemed from the parent to the child to determine the child's eligibility.

(9) For aged, blind and disabled Institutional Medicaid, court-ordered child support payments collected by the Office of Recovery Services (ORS) for a child who resides out-of-home in a Medicaid 24-hour care facility are not counted as income to the

child. If ORS allows the parent to retain up to the amount of the personal needs allowance for the child's personal needs, that amount is counted as income for the child. All other current child support payments received by the child or guardian that are not subject to collection by ORS count as unearned income to the child.

(10) The eligibility agency shall count as unearned income the interest earned from a sales contract on either or both the lump sum and installment payments when the interest is received or made available to the client.

(11) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(12) Payments under a contract that provide for payments at set intervals or after completion of the contract period are not lump sum payments. The payments are subject to regular income counting rules. Retroactive payments from SSI and SSA reimbursements of Medicare premiums are not lump sum payments.

(13) The eligibility agency may not count as income educational loans, grants, and scholarships received from Title IV programs of the Higher Education Act or from Bureau of Indian Affairs educational programs, and may not count any other grants, scholarships, fellowships, or gifts that a client uses to pay for education. The eligibility agency shall count as income, in the month that the client receives them, any amount of grants, scholarships, fellowships, or gifts that the client uses to pay for non-educational expenses. Allowable educational expenses include:

(a) tuition;

(b) fees;

(c) books;

(d) equipment;

(e) special clothing needed for classes;

(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount; and

(g) child care necessary for school attendance.

(14) The eligibility agency may not count as income, payments from a qualified long-term care insurance partnership plan as defined in 42 U.S.C. 1396p(b)(1)(C)(iii), paid directly to a long-term care provider or collected by the Office of Recovery Services as a third-party liability source.

(15) Except for an individual eligible for the Medicaid Work Incentive (MWI) program, the following provisions apply to non-institutional medical assistance:

(a) For aged, blind and disabled Medicaid, the eligibility agency may not count income of a spouse or a parent to determine Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors are eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind or disabled person has more income after deductions than the allocation for a spouse, the eligibility agency shall deem the spouse's income to the aged, blind or disabled spouse to determine eligibility.

(c) The eligibility agency shall determine household size and whose income counts for aged, blind and disabled Medicaid as described below.

(i) If only one spouse is aged, blind or disabled:

(A) The eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The eligibility agency shall compare the combined income to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, the eligibility agency shall compare the combined income, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the eligibility agency may not count the ineligible spouse's income and may not include the ineligible spouse in the household size. Only the eligible spouse's income is compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it is compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged, blind or disabled, the eligibility agency shall combine the income of both spouses and compare to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount and one spouse receives SSI, the eligibility agency may only compare the income of the non-SSI spouse, after allowable deductions, to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds 100% of the federal poverty guideline, the eligibility agency shall compare the income of both spouses, after allowable deductions, to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, the eligibility agency shall deem income of the non-covered spouse to the covered spouse when that income exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, the eligibility agency may only count the covered spouse's income. In both cases, the countable income is compared to 100% of the two-person poverty guideline. If the countable income exceeds the limit, the eligibility agency shall compare the income, after allowable deductions, to the BMS.

(I) If the non-covered spouse has income to deem to the covered spouse, the eligibility agency shall compare the countable income, after allowable deductions, to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have income to deem to the covered spouse, the eligibility agency may only compare the covered spouse's income, after allowable deductions, to a one-person BMS to calculate the spenddown.

(iii) In determining eligibility under (c) for an aged or disabled person whose spouse is blind, both spouses' income is combined.

(A) If the combined income after allowable deductions is under 100% of the federal poverty guideline, the aged or disabled spouse will be eligible under the 100% poverty group defined in 1902(a)(10)(A)(ii) of the Social Security Act, and the blind spouse is eligible without a spenddown under the medically needy group defined in 42 CFR 435.301.

(B) If the combined income after allowable deductions is over 100% of poverty, both spouses are eligible with a spenddown under the medically needy group defined in 42 CFR 435.301.

(iv) If one spouse is disabled and working, the other is aged, blind or disabled and not working, and neither spouse is an SSI recipient nor a 1619(b) eligible individual, the working disabled spouse may choose to receive coverage under the MWI program. If both spouses want coverage, however, the eligibility agency shall first determine eligibility for them as a couple. If a spenddown is owed for them as a couple, they must meet the spenddown to receive coverage for both of them.

(d) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, the eligibility agency shall not deem income from a spouse who meets 1619(b) protected group criteria.

(e) The eligibility agency shall determine household size

and whose income counts for QMB, SLMB, and QI assistance as described below:

(i) If both spouses receive Part A Medicare and both want coverage, the eligibility agency shall combine income of both spouses and compare it to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare and the other spouse is aged, blind or disabled and does not receive Part A Medicare or does not want coverage, then the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse is counted. In both cases, the eligibility agency shall compare the countable income to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The agency shall combine countable income to the applicable percentage of the federal poverty guideline for a two-person household. If the deemed income of the ineligible spouse does not exceed the allocation for a spouse, only the eligible spouse's income is counted and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) The eligibility agency may not count SSI income to determine eligibility for QMB, SLMB or QI assistance.

(f) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the eligibility agency may not count the income of either parent to determine a child's eligibility for B or D Medicaid.

(g) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(16) For Institutional Medicaid, the eligibility agency may only count the client in the household size. Only the client's income and deemed income from an alien client's sponsor is counted to determine the cost of care contribution. The provisions in Rule R414-307 govern who to include in the household size and whose income is counted to determine eligibility for home and community-based waiver services and the cost-of-care contribution.

(17) The eligibility agency shall deem any unearned and earned income from an alien's sponsor and the sponsor's spouse when the sponsor signs an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall end sponsor deeming when the alien becomes a naturalized United States (U.S.) citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act, or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(b) The eligibility agency may not apply sponsor deeming to applicants who are eligible for Medicaid for emergency services only.

(18) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count as income the amount that is paid to the individual.

(19) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(20) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409, Pub. L. 112 240.

(21) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

R414-304-4. Medicaid Work Incentive Program Unearned Income Provisions.

(1) The Department adopts and incorporates by reference 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, and Appendix to Subpart K of 416, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws, effective January 1, 2013. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency shall allow the provisions found in Subsection R414-304-3(2) through (13), and (17) through (21).

(3) The eligibility agency shall determine income from an ineligible spouse or parent by the total of the earned and unearned income using the appropriate exclusions in 20 CFR 416.1161, except that court ordered support payments are not allowed as an income deduction.

(4) For the MWI program, the income of a spouse or parent is not considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other MWI program eligibility factors are eligible without paying a Medicaid buy-in premium.

(5) The eligibility agency shall determine household size and whose income counts for the MWI program as described below:

(a) If the MWI program individual is an adult and is not living with a spouse, the eligibility agency may only count the income of the individual. The eligibility agency shall include in the household size, any children of the individual who are under 18 years of age, or who are 18, 19, or 20 years of age and are full-time students. These children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income to 250% of the federal poverty guideline for the household size involved.

(b) If the MWI program individual is living with a spouse, the eligibility agency shall combine their income before allowing any deductions. The eligibility agency shall include in the household size the spouse and any children of the individual or spouse under 18 years of age, or who are 18, 19, or 20 years of age and are full-time students. These children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income of the MWI program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the MWI program individual is a child living with a parent, the eligibility agency shall combine the income of the MWI program individual and the parents before allowing any

deductions. The eligibility agency shall include in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students, who are living in the home or temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income of the MWI program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

R414-304-5. MAGI-Based Coverage Groups.

(1) The Department adopts and incorporates by reference 42 CFR 435.603, October 1, 2012 ed., which applies to the methodology of determining household composition and income using the Modified Adjusted Gross Income (MAGI)-based methodology.

(a) The eligibility agency shall count in the household size, the number of unborn children that a pregnant household member expects to deliver.

(b) The eligibility agency elects the option in 42 CFR 435.603(f)(3)(iv)(B).

(2) The eligibility agency may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(3) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(4) The eligibility agency shall count as income cash support received by an individual when:

(a) it is received from the tax filer who claims a tax exemption for the individual;

(b) the individual is not a spouse or child of the tax filer; and

(c) the cash support exceeds a nominal amount set by the Department.

(5) To determine eligibility for MAGI-based coverage groups, the eligibility agency deducts an amount equal to 5% of the federal poverty guideline for the applicable household size from the MAGI-based household income determined for the individual. This deduction is allowed only to determine eligibility for the eligibility group with the highest income standard for which the individual may qualify.

R414-304-6. Unearned Income Provisions for Medically Needy Family, Child and Pregnant Woman Non-Institutional and Institutional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831,October 1, 2012 ed., 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(vi)(A), 233.20(a)(4)(ii), October 1, 2012 ed., and Subsection 404(h)(4) of the Compilation of the Social Security Laws, in effect January 1, 2013. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count as income money loaned to the individual if the individual proves the money is from a loan that the individual is expected to repay.

(3) The eligibility agency may not count as income support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services.

(4) The eligibility agency may not count as income the value of food stamp assistance, USDA food donations or WIC vouchers received by members of the household.

(5) The eligibility agency may not count income that is received too irregularly or infrequently to count as regular income, such as cash gifts, up to $30 a calendar quarter per household member. Any amount that exceeds $30 a calendar quarter per household member counts as income when received. Irregular or infrequent income may be divided equally among all members of the household.

(6) The eligibility agency may not count as income the amount deducted from benefit income to repay an overpayment.

(7) The eligibility agency may not count as income the value of special circumstance items paid for by donors.

(8) The eligibility agency may not count as income payments for home energy assistance.

(9) The eligibility agency may not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, the eligibility agency may only count the amount that the client does not intend to use or that is more than what is needed for temporary housing.

(10) The eligibility agency may not count as income SSA reimbursements of Medicare premiums.

(11) The eligibility agency may not count as income payments from the Department of Workforce Services under the Family Employment program, the Working Toward Employment Program, and the Refugee Cash Assistance program. To determine eligibility for medically needy Medicaid, the eligibility agency shall count income that the client receives to determine the amount of these payments, unless the income is an excluded income for medical assistance programs under other laws or regulations.

(12) The eligibility agency may not count as income interest or dividends earned on countable resources. The eligibility agency may not count as income interest or dividends earned on resources that are specifically excluded by federal laws from being counted as available resources to determine eligibility for federally-funded, means-tested medical assistance programs, other than resources excluded by 42 U.S.C. 1382b(a).

(13) The eligibility agency may not count as income the increase in pay for a member of the armed forces that is called "hostile fire pay" or "imminent danger pay," which is compensation for active military duty in a combat zone.

(14) The eligibility agency shall count as income SSI and State Supplemental payments received by children who are included in the coverage under medically needy Medicaid programs for families, pregnant women and children.

(15) The eligibility agency shall count unearned rental income. The eligibility agency shall deduct $30 a month from the rental income. If the amount charged for the rental is consistent with community standards, the eligibility agency shall deduct the greater of either $30 or the following actual expenses that the client can verify:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property, including utility costs paid by the applicant or recipient;

(c) interest paid on a loan or mortgage made for upkeep or repair; and

(d) the value of a one-person food stamp allotment, if meals are provided to a boarder.

(16) The eligibility agency shall count deferred income when the client receives the income, the client does not defer the income by choice, and the client reasonably expects to receive the income. If the client defers the income by choice, the agency shall count the income according to when the client could receive the income. The eligibility agency shall count as income the amount deducted from income to pay for benefits like health insurance, medical expenses or child care in the month that the client could receive the income.

(17) The eligibility agency shall count the amount deducted from income to pay an obligation of child support, alimony or debts in the month that the client could receive the income.

(18) The eligibility agency shall count payments from trust funds as income in the month the payment is received by the

individual or made available for the individual's use.

(19) The eligibility agency may only count as income the portion of a VA check to which the individual is legally entitled.

(20) The eligibility agency shall count as income deposits to financial accounts jointly-owned between the client and one or more other individuals, even if the deposits are made by a non-household member. If the client disputes ownership of the deposits and provides adequate proof that the deposits do not represent income to the client, the eligibility agency may not count those funds as income. The eligibility agency may require the client to terminate access to the jointly-held accounts.

(21) The eligibility agency shall count as unearned income the interest earned from a sales contract on lump sum payments and installment payments when the interest payment is received by or made available to the client.

(22) The eligibility agency shall count current child support payments as income to the child for whom the payments are being made. If a payment is for more than one child, the agency shall divide that amount equally among the children unless a court order indicates otherwise. Child support payments received by a parent or guardian to repay amounts owed for past months or years are countable income to determine eligibility of the parent or guardian who receives the payments. If ORS collects current child support, the eligibility agency shall count the child support as current even if ORS mails the payment to the client after the month it is collected.

(23) The eligibility agency shall count payments from annuities as unearned income in the month that the client receives the payments.

(24) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count the amount paid to the individual.

(25) The eligibility agency shall deem both unearned and earned income from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall stop deeming income from a sponsor when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(b) The eligibility agency may not apply sponsor deeming to applicants who are eligible for emergency services only.

(26) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(27) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409 of the American Taxpayer Relief Act of 2012, Pub. L. No. 112 240, 126, Stat. 2313.

(28) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

R414-304-7. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Earned Income Provisions.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., and 20 CFR 416.1110 through 416.1112, April 1, 2012 ed. The Department may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) If an SSI recipient has a plan for achieving self-support approved by the (SSA), the eligibility agency may not count income set aside in the plan that allows the individual to purchase work-related equipment or meet self-support goals. This income may include earned and unearned income.

(3) The eligibility agency may not deduct from income expenses relating to the fulfillment of a plan to achieve self-support.

(4) For Aged, Blind and Disabled Medicaid, the eligibility agency may not count earned income used to compute a needs-based grant.

(5) For aged, blind and disabled Institutional Medicaid, the eligibility agency shall deduct $125 from earned income before it determines contribution towards cost of care.

(6) The eligibility agency shall include capital gains in the gross income from self-employment.

(7) To determine countable net income from self-employment, the eligibility agency shall allow a 40% flat rate exclusion off the gross self-employment income as a deduction for business expenses. For a self-employed individual who has allowable business expenses greater than the 40% flat rate exclusion amount and who also provides verification of the expenses, the eligibility agency shall calculate the self-employment net profit amount by using the deductions that are allowed under federal income tax rules.

(8) The eligibility agency may not allow deductions for the following business expenses:

(a) transportation to and from work;

(b) payments on the principal for business resources;

(c) net losses from previous tax years;

(d) taxes;

(e) money set aside for retirement; and

(f) work-related personal expenses.

(9) The eligibility agency may deduct net losses of self-employment from the current tax year from other earned income.

(10) The eligibility agency shall disregard earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541. The eligibility agency shall also exclude this income for individuals described in Subsections 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), 1902(a)(10)(A)(ii)(XIII) and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act. The eligibility agency may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost of care contribution for long-term care recipients.

(11) The eligibility agency shall count deductions from earned income that include insurance premiums, savings, garnishments, or deferred income in the month when the client could receive the funds.

R414-304-8. Earned Income Provisions for Medically Needy Family, Child and Pregnant Woman Non-Institutional and Institutional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.811, 435.831, October 1, 2012 ed., and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), October 1, 2012 ed. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count the income of a dependent child if the child is:

(a) in school or training full-time;

(b) in school or training part-time, which means the child is enrolled for at least half of the hours needed to complete a course, or is enrolled in at least two classes or two hours of school a day and employed less than 100 hours a month; or

(c) is in a job placement under the federal Workforce Investment Act.

(3) For medically needy Family Medicaid, the eligibility agency shall allow the AFDC $30 and one-third of earned income deduction if the wage earner receives Parent/Caretaker Relative Medicaid in one of the four previous months and this disregard is not exhausted.

(4) The eligibility agency shall determine countable net income from self-employment by allowing a 40 % flat rate exclusion off the gross self-employment income as a deduction for business expenses. If a self-employed individual provides verification of actual business expenses greater than the 40 % flat rate exclusion amount, the eligibility agency shall allow actual expenses to be deducted. The expenses must be business expenses allowed under federal income tax rules.

(5) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(6) For Family Medicaid, the eligibility agency shall deduct from the income of clients who work at least 100 hours in a calendar month a maximum of $200 a month in child care costs for each child who is under the age of two and $175 a month in child care costs for each child who is at least two years of age. The maximum deduction of $175 shall also apply to provide care for an incapacitated adult. The eligibility agency shall deduct from the income of clients who work less than 100 hours in a calendar month a maximum of $160 a month in child care costs for each child who is under the age of two and $140 a month for each child who is at least two years of age. The maximum deduction of $140 a month shall also apply to provide care for an incapacitated adult.

(7) For Family Institutional Medicaid, the eligibility agency shall deduct a maximum of $160 in child care costs from the earned income of clients who work at least 100 hours in a calendar month. The eligibility agency shall deduct a maximum of $130 in child care costs from the earned income of clients working less than 100 hours in a calendar month.

(8) The eligibility agency shall exclude earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.301(b)1, 435.308, 435.310 and individuals defined in Title XIX of the Social Security Act Section 1902(e)(1), (7), and Section 1925. The eligibility agency may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost of care contribution for long-term care recipients.

R414-304-9. Aged, Blind and Disabled Non-Institutional Medicaid and Medically Needy Family, Pregnant Woman and Child Non-Institutional Medicaid Income Deductions.

(1) The Department adopts and incorporates by reference the financial methodologies required by 42 CFR 435.601, and the deductions defined in 42 CFR 435.831, October 1, 2012 ed.

(2) For aged, blind and disabled individuals eligible under 42 CFR 435.301(b)(2)(iii), (iv), and (v), described more fully in 42 CFR 435.320, .322 and .324, the eligibility agency shall deduct from income an amount equal to the difference between 100% of the federal poverty guideline and the current BMS income standard for the applicable household size to determine the spenddown amount.

(3) To determine eligibility for and the amount of a spenddown under medically needy programs, the eligibility agency shall deduct from income health insurance premiums the client or a financially responsible family member pays providing coverage for the client or any family members living with the client in the month of payment. The eligibility agency shall also deduct from income the amount of a health insurance premium the month it is due when the Department pays the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Compilation of the Social Security Laws, except no deduction is allowed for Medicare premiums that the Department pays for recipients.

(a) The eligibility agency shall deduct the entire payment in the month it is due and may not prorate the amount.

(b) The eligibility agency may not deduct health insurance premiums to determine eligibility for the poverty-related medical assistance programs or coverage groups subject to the use of MAGI-based methodologies.

(4) To determine the spenddown under medically needy programs, the eligibility agency shall deduct from income health insurance premiums that the client or a financially responsible family member pays in the application month or during the three-month retroactive period. The eligibility agency shall allow the deduction either in the month paid or in any month after the month paid to the extent the full amount was not deducted in the month paid, but only through the month of application.

(5) To determine eligibility for medically needy coverage groups, the eligibility agency shall deduct from income medically necessary expenses that the client verifies only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, a client's spouse, a parent of a dependent client, a dependent sibling of a dependent client, a deceased spouse, or a deceased dependent child;

(b) Medicaid does not cover the medical bill and it is not payable by a third party;

(c) The medical bill remains unpaid or the client receives and pays for the medical service during the month of application or during the three months immediately preceding the date of application. The date that the medical service is provided on an unpaid expense is irrelevant if the client still owes the provider for the service. Bills for services that the client receives and pays for during the application month or the three months preceding the date of application can be used as deductions only through the month of application.

(6) The eligibility agency may not allow a medical expense as a deduction more than once.

(7) The eligibility agency may only allow as an income deduction a medical expense for a medically necessary service. The eligibility agency shall determine whether the service is medically necessary.

(8) The eligibility agency shall deduct medical expenses in the order required by 42 CFR 435.831(h)(1). When expenses have the same priority, the eligibility agency shall deduct paid expenses before unpaid expenses.

(9) A client who pays a cash spenddown may present proof of medical expenses paid during the coverage month and request a refund of spenddown paid up to the amount of bills paid by the client. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered

under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the Utah Medicaid State Plan;

(b) The expense must be for a service that the client receives during the benefit month;

(c) The Department may not refund any portion of any medical expense that the client uses to meet a Medicaid spenddown when the client assumes responsibility to pay that expense;

(d) A refund cannot exceed the actual cash spenddown amount paid by the client;

(e) The Department may not refund spenddown amounts that a client pays based on unpaid medical expenses for services that the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The client may use the unpaid bills to meet or reduce the spenddown that the client owes for a future month of Medicaid coverage to the extent that the bills remain unpaid at the beginning of the future month;

(f) The Department shall reduce the refund amount by the amount of any unpaid obligation that the client owes the Department.

(10) For poverty-related coverage groups and coverage groups subject to the MAGI-based methodologies, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency may not deduct medical costs from income to determine eligibility for poverty-related or MAGI-based medical assistance programs. An individual may not pay the difference between countable income and the applicable income limit to become eligible for poverty-related or MAGI-based medical assistance programs.

(11) When a client must meet a spenddown to become eligible for a medically needy program, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the eligibility agency told the client that the Medicaid provider may not use the provider's funds to pay the client's spenddown and that the provider may not loan the client money for the client to pay the spenddown.

(12) A client may meet the spenddown by paying the eligibility agency the amount with cash or check, or by providing proof to the eligibility agency of medical expenses that the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services that the client receives in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses may not be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the eligibility agency or by presenting a cash or check payment to the eligibility agency equal to the spenddown amount.

(13) The eligibility agency may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, the eligibility agency may not accept spenddown payments from a client if a Medicaid provider loans funds to the client to make a spenddown payment.

(14) The eligibility agency may only deduct the amount of prepaid medical expenses that equals the cost of services in a given month. The eligibility agency may not deduct from income any payments that a client makes for medical services in a month before the client receives the services.

(15) For non-institutional Medicaid programs, the eligibility agency may only deduct medically necessary expenses. The Department determines whether services for institutional care are medically necessary.

(16) The eligibility agency may not require a client to pay a spenddown of less than $1.

(17) Medical costs that a client incurs in a benefit month may not be used to meet spenddown when the client is enrolled in a Medicaid health plan. Bills for mental health services that a client incurs in a benefit month may not be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services that a client receives in a retroactive or application month that a client pays may be used to meet spenddown only if the Medicaid-contracted mental health provider does not provide the services.

R414-304-10. Medicaid Work Incentive Program Income Deductions.

(1) To determine eligibility for the MWI program, the eligibility agency shall deduct the following amounts from income to determine countable income that is compared to 250% of the federal poverty guideline:

(a) $20 from unearned income. If there is less than $20 in unearned income, the eligibility agency shall deduct the balance of the $20 from earned income;

(b) Impairment-related work expenses;

(c) $65 plus one-half of the remaining earned income;

(d) A current year loss from a self-employment business can be deducted only from other earned income.

(2) For the MWI program, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency may not deduct health insurance premiums and medical costs from income before comparing countable income to the applicable limit.

(3) The eligibility agency shall deduct from countable income the amount of health insurance premiums paid by the MWI-eligible individual or a financially responsible household member, to purchase health insurance for himself or other family members in the household before determining the MWI buy-in premium.

(4) An eligible individual may meet the MWI buy-in premium with cash, check or money order payable to the eligibility agency. The client may not meet the MWI premium with medical expenses.

(5) The eligibility agency may not require a client to pay a MWI buy-in premium of less than $1.

R414-304-11. Aged, Blind and Disabled Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts and incorporates by reference the financial methodologies required by 42 CFR 435.601 and the deductions defined in 42 CFR 435.725, 435.726, and 435.832, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 1902(r)(1) and 1924(d) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the eligibility agency shall deduct from income health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. The eligibility agency shall deduct health insurance premiums in the month the payment is due. The eligibility agency shall deduct the amount of a health insurance

premium for the month it is due if the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, except no deduction is allowed for Medicare premiums that the Department pays for recipients.

(b) The eligibility agency shall deduct from income the portion of a combined premium attributable to the institutionalized or waiver-eligible client if the combined premium includes a spouse or dependent family member. The client's portion must be paid from the funds of the institutionalized or waiver-eligible client.

(3) The eligibility agency may only deduct medical expenses from income under the following conditions:

(a) the client receives the medical service;

(b) Medicaid or a third party will not pay the medical bill;

(c) a paid medical bill can only be deducted through the month of payment. No portion of any paid bill can be deducted after the month of payment.

(4) To determine the cost of care contribution for long-term care services, the eligibility agency may not deduct medical or remedial care expenses that the Department is prohibited from paying when the client incurs the expenses for the transfer of assets for less than fair market value. The eligibility agency may not deduct medical or remedial care expenses that the Department is prohibited from paying under Section 1917(f) of the Social Security Act in effect January 1, 2013, when the equity value of the individual's home exceeds the limit set by law. The eligibility agency may not deduct the expenses during or after the month that the client receives the services even when the expenses remain unpaid.

(5) The eligibility agency may not allow a medical expense as an income deduction more than once.

(6) The eligibility agency may only allow as an income deduction a medical expense for a medically necessary service. The eligibility agency shall determine whether the service is medically necessary.

(7) The eligibility agency may only deduct the amount of prepaid medical expenses that equals the cost of services in a given month. The eligibility agency may not deduct from income any payments that a client makes for medical services in a month before the client receives the services.

(8) When a client must meet a spenddown to become eligible for a medically needy program or receive Medicaid under a home and community based care waiver, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the eligibility agency told the client that the Medicaid provider may not use the provider's funds to pay the client's spenddown and that the provider may not loan the client money for the client to pay the spenddown.

(9) A client may meet the spenddown by paying the eligibility agency the amount with cash or check, or by providing proof to the eligibility agency of medical expenses that the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services that the client receives in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses may not be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the eligibility agency or by presenting a cash or check payment to the eligibility agency equal to the spenddown amount.

(10) The eligibility agency may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, the eligibility agency may not accept spenddown payments from a client if a Medicaid provider loans funds to the client to make a spenddown payment.

(11) The eligibility agency shall require institutionalized clients to pay all countable income remaining after allowable income deductions to the institution in which they reside as their cost of care contribution.

(12) A client who pays a cash spenddown or a cost-of-care amount to the medical facility in which he resides, may present proof of medical expenses paid during the coverage month and request a refund of spenddown or cost-of-care paid up to the amount of bills. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary medical expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the Utah Medicaid State Plan;

(b) The expense must be for a service that the client receives during the benefit month;

(c) The eligibility agency may not refund any portion of any medical expense that the client uses to meet a Medicaid spenddown or to reduce his cost-of-care to the institution when the client assumes that payment responsibility;

(d) A refund cannot exceed the actual cash spenddown or cost-of-care amount paid by the client;

(e) The eligibility agency may not refund spenddown or cost-of-care amounts paid by a client based on unpaid medical expenses for services that the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The client may use these unpaid bills to meet or reduce the spenddown that the client owes for a future month of Medicaid coverage to the extent that the bills remain unpaid at the beginning of the future month;

(f) The Department shall reduce a refund by the amount of any unpaid obligation that the client owes the Department.

(13) The eligibility agency shall deduct a personal needs allowance for residents of medical institutions equal to $45.

(14) When a doctor verifies that a single person or a person whose spouse resides in a medical institution is expected to return home within six months of entering a medical institution or nursing home, the eligibility agency shall deduct a personal needs allowance equal to the BMS for one person defined in Subsection R414-304-13(6), for up to six months to maintain the individual's community residence.

(15) A client is not eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(16) Medical costs that a client incurs in a benefit month may not be used to meet spenddown when the client is enrolled in a Medicaid health plan. Bills for mental health services that a client incurs in a benefit month may not be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services that a client receives in a retroactive or application month that a client pays may be used to meet spenddown only if the Medicaid-contracted mental health provider does not provide the services.

R414-304-12. Budgeting.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.640, October 1, 2012 ed., and 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, October 1, 2012 ed.,

relating to financial responsibility and budgeting for non-MAGI-based Medicaid coverage groups.

(2) The Department adopts and incorporates by reference, 42 CFR 435.603(c), (d), (e), (g) and (h), October 1, 2012 ed., relating to household income and budgeting for MAGI-based Medicaid coverage groups.

(3) The eligibility agency shall do prospective budgeting to determine a household's expected monthly income.

(a) The eligibility agency shall include in the best estimate of MAGI-based income, reasonably predictable income changes such as seasonal income or contract income to determine the average monthly income expected to be received during the certification period.

(b) The eligibility agency shall prorate income over the eligibility period to determine an average monthly income.

(4) A best estimate of income based on the best available information is considered an accurate reflection of client income in that month.

(5) The eligibility agency shall use the best estimate of income to be received or made available to the client in a month to determine eligibility. For individuals eligible under a medically needy coverage group, the best estimate of income is used to determine the individual's spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) For non-MAGI-based coverage groups, the eligibility agency shall count income in the following manner:

(a) For QMB, SLMB, QI, MWI program, and aged, blind, disabled, and Institutional Medicaid income is counted as it is received. Income that is received weekly or every other week is not factored;

(b) For medically needy Family, Pregnant Woman and Child Medicaid programs, income that is received weekly or every other week is factored.

(8) Lump sums are income in the month received. Lump sum payments can be earned or unearned income.

(9) For non-MAGI-based coverage groups, income paid out under a contract is prorated over the time period the income is intended to cover to determine the countable income for each month. The prorated amount is used instead of actual income that a client receives to determine countable income for a month.

(10) To determine the average monthly income for farm and self-employment income, the eligibility agency shall determine the annual income earned during one or more past years, or other applicable time period, and factors in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income is adjusted during the year when information about changes or expected changes is received by the eligibility agency.

(11) Countable educational income that a client receives other than monthly income is prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months that classes are in session.

(12) Eligibility for retroactive assistance is based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method is used for the months in the retroactive period, except when the income was not being received during, and was not intended to cover those specific months in the retroactive period.

R414-304-13. Income Standards.

(1) The Department adopts and incorporates by reference Subsections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) The eligibility agency shall calculate the aged and disabled poverty-related Medicaid income standard as 100% of the federal non-farm poverty guideline. If an aged or disabled person's income exceeds this amount, the Basic Maintenance Standard (BMS) applies unless the disabled individual or a disabled aged individual has earned income. In that case, the income standards of the MWI program apply.

(3) The income standard for the MWI for disabled individuals with earned income is equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the BMS applies.

(a) The eligibility agency shall charge a MWI buy-in premium for the MWI program when the countable income of the eligible individual's or the couple's income exceeds 100% of the federal poverty guideline for the Aged and Disabled 100% poverty-related coverage group. When the eligible individual is a minor child, the eligibility agency shall charge a MWI buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one-person household.

(b) The premium is equal to 5% of income when income is over 100% but not more than 110% of the federal poverty guideline, 10% of income when income is over 110% but not over 120% of the federal poverty guideline, or 15% of income when income is over 120% of the federal poverty guideline. The premium is calculated using only the eligible individual's or eligible couple's countable income multiplied by the applicable percentage.

(4) The income limit for parents and caretaker relatives, pregnant women, and children under the age of 19 are defined in Section R414-303-4.

(5) To determine eligibility and the spenddown amount of individuals under medically needy coverage groups, the BMS applies.

(6) The BMS is as follows:

TABLE

Household Size	Basic Maintenance Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-14. Aged, Blind and Disabled Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.602, October 1, 2012 ed., and Subsections 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) The eligibility agency shall count the following individuals in the BMS for aged, blind and disabled Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for aged, blind and disabled Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemed income above the allocation for a spouse.

(3) The eligibility agency shall count the following individuals in the household size for the 100% of poverty aged or

disabled Medicaid program:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemed income above the allocation for a spouse.

(4) The eligibility agency shall count the following individuals in the household size for a QMB, SLMB, or QI case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemed income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemed income above the allocation for a spouse.

(5) The eligibility agency shall count the following individuals in the household size for the MWI program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children who are under the age of 18;

(e) children who are 18, 19, or 20 years of age if they are in school full-time.

(6) Eligibility for aged, blind and disabled non-institutional Medicaid and the spenddown, if any; aged and disabled 100% poverty-related Medicaid; and QMB, SLMB, and QI programs is based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on Section R414-304-3;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(7) Eligibility for the MWI program is based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(8) If a person is included in the BMS, it means that the eligibility agency shall count that family member as part of the household and also count his income and resources to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is included in the household size, it means that the eligibility agency shall count that family member as part of the household to determine what income limit applies, regardless of whether the agency counts that family member's income or whether that family member receives medical assistance.

R414-304-15. Medically Needy Family, Pregnant Woman and Child Medicaid Filing Unit.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.602, October 1, 2012 ed., and 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), October 1, 2012 ed.

(2) If a household includes individuals who meet the U.S. citizen or qualified alien status requirements and family members who do not meet U.S. citizen or qualified alien status requirements, the eligibility agency shall include the ineligible alien family members in the household size to determine the applicable income limit for the eligible family members. The ineligible alien family members may not receive regular Medicaid coverage, but may be able to qualify for Medicaid that covers emergency services only under other provisions of Medicaid law.

(3) The eligibility agency may exclude any unemancipated minor child from the Medicaid coverage group, and may exclude an ineligible alien child from the household size at the request of the named relative who is responsible for the children. An excluded child is considered an ineligible child and is not counted as part of the household size to determine what income limit is applicable to the family. The eligibility agency may not consider income and resources of an excluded child to determine eligibility or spenddown.

(4) The eligibility agency may not include a non-parent caretaker relative in the household size of the minor child.

(5) If anyone in the household is pregnant, the eligibility agency shall include the expected number of unborn children in the household size.

(6) If the parents voluntarily place a child in foster care and in the custody of a state agency, the eligibility agency shall include the parents in the household size.

(7) The eligibility agency may not include parents in the household size who have relinquished their parental rights.

(8) If a court order places a child in the custody of the state and the state temporarily places the child in an institution, the eligibility agency may not include the parents in the household size.

(9) If the eligibility agency includes or counts a person in the household size, that family member is counted as part of the household and his income and resources are counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS income level applies to determine eligibility for the client or family.

R414-304-16. Aged, Blind and Disabled Institutional Family Institutional Medicaid Filing Unit.

(1) For aged, blind and disabled institutional Medicaid, the eligibility agency may not use income of the client's parents or the client's spouse to determine eligibility and the contribution to cost-of-care.

(2) For family institutional Medicaid programs, the Department adopts and incorporates by reference 45 CFR 206.10(a)(1)(vii), October 1, 2012 ed.

(3) The eligibility agency shall determine eligibility and the contribution to cost of care, which may be referred to as a spenddown, using the income of the client and the income deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997. The eligibility agency shall end sponsor deeming when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

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R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-2. Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews.
R426-2-100. Authority and Purpose.

(1) This rule establishes types of providers that require a designation, the application process for a obtaining a designation and minimum designation requirements. The rule also establishes criteria for critical incident stress management and the process for quality assurance reviews.

R426-2-200. Pre-hospital Provider Designation Types.

The following type of provider shall obtain a designation from the Department:

(1) Quick Response Unit.

(2) Emergency Medical Service Dispatch Center.

R426-2-300. Quick Response Unit Minimum Designation Requirements.

A quick response unit shall meet the following minimum designation requirements:

(1) Have vehicle(s), equipment, and supplies that meet the current requirements of the Department for licensed and designated providers as found on the Bureau of EMS and Preparedness' web-site to carry out its responsibilities under its designation;

(2) Have location(s) for stationing its vehicle(s), equipment and supplies;

(3) Have a current dispatch agreement with a designated Emergency Medical Service Dispatch Center;

(4) Have a Department-certified training officer;

(5) Have a current plan of operations, which shall include:

(a) the names, EMS ID Number, and certification level of all personnel;

(b) operational procedures; and

(c) a description of how the designee proposes to interface with other EMS agencies;

(6) Have a current agreement with a Department-certified off-line medical director who will perform the following:

(a) develop and implement patient care standards which include written standing orders and triage, treatment, pre-hospital protocols, and/or pre-arrival instructions to be given by designated emergency medical dispatch centers;

(b) ensure the qualification of field EMS personnel involved in patient care and dispatch through the provision of ongoing continuing medical education programs and appropriate review and evaluation;

(c) develop and implement an effective quality improvement program, including medical audit, review, and critique of patient care;

(d) annually review triage, treatment, and transport protocols and update them as necessary;

(e) suspend from patient care, pending Department review, a field EMS personnel or dispatcher who does not comply with local medical triage, treatment and transport protocols, pre-arrival instruction protocols, or who violates any of the EMS rules, or who the medical director determines is providing emergency medical service in a careless or unsafe manner. The medical director must notify the Department within one business day of the suspension; and

(f) attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers.

(7) Have current treatment protocols approved by the agencies off-line medical director for the designated service level;

(8) Provide the Department with a copy of its certificate of insurance;

(9) Provide the Department with a letter of support from the licensed provider(s) in the geographical service area; and

(10) Not be disqualified for any of the following reasons:

(a) violation of Subsection 26-8a-504; or

(b) a history of disciplinary action relating to an EMS license, permit, designation or certification in this or any other state.

R426-2-400. Emergency Medical Service Dispatch Center Minimum Designation Requirements.

An emergency medical service dispatch center shall meet the following minimum designation requirements:

(1) Have in effect a selective medical dispatch system approved by the off-line medical director which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions; and

(c) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration;

(2) Provide pre-hospital arrival instructions by a certified Emergency Medical Dispatcher.

(3) Have a current updated plan of operations, which shall include:

(a) plan of operations to be used in a disaster or emergency;

(b) communication systems, and

(c) aid agreements with other designated medical service dispatch centers.

(4) Have a current agreement with a Department-certified off-line medical director.

(5) Have an ongoing medical call review quality assurance program; and

(6) Have a certified emergency medical dispatcher roster, which shall include:

(a) certified staff names, Department certification numbers and expiration dates; and

(b) national certification number and expiration dates.

R426-2-500. Designation Applications.

Any provider applying for designation shall submit to the Department: applications fees, complete application on Department approved forms, and documentation verifying that the provider meets the minimum requirements for the designation, as listed in this rule. The Department may determine other information is necessary for processing, and will provide a list of those requirements to the applicant. Additional items specific to the designation type are required as outlined below. A provider applying for re-designation shall submit an application as described above 90 days prior to the expiration of its designation.

R426-2-600. Quick Response Unit Designation Applications.

A Quick Response Unit shall provide:

(1) Name of the organization and its principles.

(2) Name of the person or organization financially responsible for the service and documentation from that entity accepting responsibility.

(3) If the applicant is privately owned, they shall submit certified copies of the document creating the entity.

(4) A description of the geographical area of service.

(5) A demonstrated need for the service.

R462-2-700. Emergency Medical Service Dispatch Center Designation Applications.

An Emergency Medical Service Dispatch Center shall provide:

(1) Name of the organization and its principles.

(2) Name of the person or organization financially responsible for the service provided by the designee and documentation from that entity accepting responsibility.

(3) If the applicant is privately owned, they shall submit certified copies of the document creating the entity.

(4) A description of the geographical area of service.

(5) A demonstrated need for the service.

R426-2-800. Criteria for Denial or Revocation of Designation.

(1) The Department may deny an application for a designation for any of the following reasons:

(a) failure to meet requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment, or staffing requirements;

(c) failure to meet requirements for renewal or upgrade;

(d) conduct during the performance of duties relating to its responsibilities as an EMS provider that is contrary to accepted standards of conduct for EMS personnel described in Sections 26-8a-502 and 26-8a-504;

(e) failure to meet agreements covering training standards or testing standards;

(f) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(g) a history of criminal activity by the licensee or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(h) falsifying or misrepresenting any information required for licensure or designation or by the application for either;

(i) failure to pay the required designation or permitting fees or failure to pay outstanding balances owed to the Department;

(j) failure to submit records and other data to the Department as required by statute or rule;

(k) misuse of grant funds received under Section 26-8a-207; and

(l) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant who has been denied a designation may request a Department review by filing a written request for reconsideration within thirty calendar days of the issuance of the Department's denial.

R426-2-900. Application Review and Award.

(1) If the Department finds that an application for designation is complete and that the applicant meets all requirements, it may approve the designation.

(2) Issuance of a designation by the Department is contingent upon the applicant's demonstration of compliance with all applicable rules and a successful Department quality assurance review.

(3) A designation may be issued for up to a four-year period. The Department may alter the length of the designation to standardize renewal cycles.

R426-2-1000. Change in Designated Service Level.

(1) A quick response unit may apply to provide a higher designated level of service by:

(a) submitting the applicable fees; and

(b) submitting an application on Department-approved forms to the Department.

(2) As part of the application, the applicant shall provide:

(a) a copy of the new treatment protocols for the higher level of service approved by the off-line medical director;

(b) an updated plan of operations demonstrating the applicant's ability to provide the higher level of service;

(c) a written assessment of the performance of the applicant's field performance by the applicant's off-line medical director; and

(d) provide the Department with a letter of support from the licensed provider(s) in the geographical service area.

(3) If the Department finds that the applicant has demonstrated the ability to provide the upgraded service, it shall issue a new designation reflecting the higher level of service.

R426-2-1100. Critical Incident Stress Management.

(1) The Department may establish a critical incident stress management (CISM) team to meet its public health responsibilities under Utah Code Section 26-8a-206.

(2) The CISM team may conduct stress debriefings, defusings, demobilizations, education, and other critical incident stress interventions upon request for persons who have been exposed to one or more stressful incidents in the course of providing emergency services.

(3) Individuals who serve on the CISM team must complete initial and ongoing training.

(4) While serving as a CISM team member, the individual is acting on behalf of the Department. All records collected by the CISM team are Department records. CISM team members shall maintain all information in strict confidence as provided in Utah Code Title 26, Chapter 3.

(5) The Department may reimburse a CISM team member for travel expenses incurred in performing his or her duties in accordance with state finance mileage reimbursement policy.

R426-2-1200. Quality Assurance Reviews.

(1) The Department may conduct quality assurance reviews of licensed and designated organizations and training programs on an annual basis or more frequently as necessary to enforce this rule;

(2) The Department shall conduct a quality assurance review prior to issuing a new license or designation.

(3) The Department may conduct quality assurance reviews on all personnel, vehicles, facilities, communications, equipment, documents, records, methods, procedures, materials and all other attributes or characteristics of the organization, which may include audits, surveys, and other activities as necessary for the enforcement of the Emergency Medical Services System Act and the rules promulgated pursuant to it.

(a) The Department shall record its findings and provide the organization with a copy.

(b) The organization must correct all deficiencies within 30 days of receipt of the Department's findings.

(c) The organization shall immediately notify the Department on a Department-approved form when the deficiencies have been corrected.

KEY: emergency medical services
August 21, 2015 26-8a

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-9. Trauma and EMS System Facility Designations.
R426-9-100. Authority and Purpose for Trauma System Standards.

(1) Authority - This rule is established under Title 26, Chapter 8a, 252, Statewide Trauma System, which authorizes the Department to:

(a) establish and actively supervise a statewide trauma system;

(b) establish, by rule, trauma center designation requirements and model state guidelines for triage, treatment, transport, and transfer of trauma patients to the most appropriate health care facility; and

(c) designate trauma care facilities consistent with the trauma center designation requirements and verification process established by the Department and applicable statutes.

(2) This rule provides standards for the categorization of all hospitals and the voluntary designation of Trauma Centers to assist physicians in selecting the most appropriate physician and facility based upon the nature of the patient's critical care problem and the capabilities of the facility.

(3) It is intended that the categorization process be dynamic and updated periodically to reflect changes in national standards, medical facility capabilities, and treatment processes. Also, as suggested by the Utah Medical Association, the standards are in no way to be construed as mandating the transfer of any patient contrary to the wishes of his attending physician, rather the standards serve as an expression of the type of facilities and care available in the respective hospitals for the use of physicians requesting transfer of patients requiring skills and facilities not available in their own hospitals.

R426-9-200. Trauma System Advisory Committee.

(1) The trauma system advisory committee, created pursuant to 26-8a-251, shall:

(a) be a broad and balanced representation of healthcare providers and health care delivery systems; and

(b) conduct meetings in accordance with committee procedures.

(2) The Department shall appoint committee members to serve terms from one to four years.

(3) The Department may re-appoint committee members for one additional term in the position initially appointed by the Department.

(4) Causes for removal of a committee member include the following:

(a) more than two unexcused absences from meetings within 12 calendar months;

(b) more than three excused absences from meetings within 12 calendar months;

(c) conviction of a felony; or

(d) change in organizational affiliation or employment which may affect the appropriate representation of a position on the committee for which the member was appointed.

R426-9-300. Trauma Center Categorization Guidelines.

The Department adopts as criteria for Level I, Level II, Level III, IV and Pediatric trauma center designation, compliance with national standards published in the American College of Surgeons document: Resources for Optimal Care of the Injured Patient 2014.

R426-9-400. Trauma Center Review Process.

(1) The Department shall conduct a quality review site visit of trauma centers and applicants to verify compliance with standards set in R426-9-300. In conducting each evaluation, the Department may consult with experts from the following disciplines:

(a) trauma surgery;

(b) emergency medicine;

(c) emergency or critical care nursing; and

(d) hospital administration.

(2) A consultant shall not assist the Department in evaluating a facility in which the consultant is employed, practices, or has any financial interest.

R426-9-500. Trauma Center Categorization Process.

The Department shall:

(1) Develop a survey document based upon the Trauma Center Criteria described in R426-9-300.

(2) Periodically survey all Utah hospitals which provide emergency trauma care to determine the maximum level of trauma care which each is capable of providing.

(3) Disseminate survey results to all Utah hospitals, and as appropriate, to state EMS agencies.

R426-9-600. Trauma Center Designation Process.

(1) Hospitals seeking voluntary designation and all designated Trauma Centers desiring to remain designated, shall apply for designation by submitting the following information to the Department at least 30 days prior to the date of the scheduled site visit:

(a) A completed and signed application and appropriate fees for trauma center verification;

(b) a letter from the hospital administrator of continued commitment to comply with current trauma center designation standards as applicable to the applicant's designation level;

(c) the data specified under R426-9-700 are current;

(d) Level I and Level II Trauma Centers must submit a copy of the Pre-review Questionnaire (PRQ) from the American College of Surgeons in lieu of the application in 1a above.

(e) Level III Level IV and Level V trauma centers must submit a complete Department approved application.

(2) Hospitals desiring to be designated as Level I and Level II Trauma Centers must be verified by the American College of Surgeons (ACS) within three (3) months of the expiration date of previous designation and must submit a copy of the full ACS report detailing the results of the ACS site visit. A Department representative must be present during the entire ACS verification or consultation visit. Hospitals desiring to be Level III or Level IV Trauma Centers must be designated by hosting a formal site visit by the Department.

(3) The Department and its consultants may conduct observation, review and monitoring activities with any designated trauma center to verify compliance with designation requirements.

(4) Trauma centers shall be designated for a period of three years unless the designation is rescinded by the Department for non-compliance to standards set forth in R426-9-600 or adjusted to coincide with the American College of Surgeons verification timetable.

(5) The Department shall disseminate a list of designated trauma centers to all Utah hospitals, and state EMS agencies, and as appropriate, to hospitals in nearby states which refer patients to Utah hospitals.

R426-9-700. Data Requirements for an Inclusive Trauma System.

(1) All hospitals shall collect, and monthly submit to the Department, Trauma Registry information necessary to maintain an inclusive trauma system. Designated trauma centers shall provide such data in an electronic format. The Department shall provide funds to hospitals, excluding designated trauma centers, for the data collection process. The inclusion criteria for a trauma patient are as follows:

(a) ICD9 Diagnostic Codes between 800 and 959.9 (trauma); and

(b) At least one of the following patient conditions:

(i) Injury resulted in death;
(ii) Admitted to the hospital for 24 hours or longer;
(iii) Patient transferred in or out of reporting hospital via EMS transport; and
(iv) Patient transported via air ambulance, independent of hospital admission or hospital transfer status.
(c) Exclusion criteria are ICD9 Diagnostic Codes:
(i) 930-939.9 (foreign bodies)
(ii) 905-909.9 (late effects of injury)
(iii) 910-924.9 (superficial injuries, including blisters, contusions, abrasions, and insect bites)
(2) The information shall be in a National Trauma Data Standard standardized electronic format and include the following NTDS data elements:
(a) Demographic Data:
D_01 Patient's Home Zip Code
D_02 Patient's Home Country
D_03 Patient's Home State
D_04 Patient's Home County
D_05 Patient's Home City
D_06 Alternate Home Residence
D_07 Date of Birth
D_08 Age
D_09 Age Unit
D_10 Race
D_11 Ethnicity
D_12 Sex
(b) Injury Information:
I_01 Injury Incident Date
I_02 Injury Incident Time
I_03 Work-Related
I_04 Patient's Occupational Industry
I_05 Patient's Occupation
I_06 ICD-9 Primary External Cause Code
I_07 ICD-10 Primary External Cause Code
I_08 ICD-9 Place Of Occurrence External Cause Code
I_09 ICD-10 Place Of Occurrence External Cause Code
I_10 ICD-9 Additional External Cause Code
I_11 ICD-10 Additional External Cause Code
I_12 Incident Location Zip Code
I_13 Incident Country
I_14 Incident State
I_15 Incident County
I_16 Incident City
I_17 Protective Devices
I_18 Child Specific Restraint
I_19 Airbag Deployment
I_20 Report Of Physical Abuse
I_21 Investigation Of Physical Abuse
I_22 Caregiver At Discharge
(c) Pre-Hospital Information
P_01 EMS Dispatch Date
P_02 EMS Dispatch Time
P_03 EMS Unit Arrival Date At Scene Or Transferring Facility
P_04 EMS Unit Arrival Time At Scene Or Transferring Facility
P_05 EMS Unit Departure Date From Scene Or Transferring Facility
P_06 EMS Unit Departure Time From Scene Or Transferring Facility
P_07 Transport Mode
P_08 Other Transport Mode
P_09 Initial Field Systolic Blood Pressure
P_10 Initial Field Pulse Rate
P_11 Initial Field Respiratory Rate
P_12 Initial Field Oxygen Saturation
P_13 Initial Field GCS -Eye
P_14 Initial Field GCS -Verbal
P_15 Initial Field GCS -Motor
P_16 Initial Field GCS -Total
P_17 Inter-Facility Transfer
P_18 Trauma Center Criteria
P_19 Vehicular, Pedestrian, Other Risk Injury
(d) Emergency Department Information
ED_01 ED/Hospital Arrival Date
ED_02 ED/Hospital Arrival Time
ED_03 Initial ED/Hospital Systolic Blood Pressure
ED_04 Initial ED/Hospital Pulse Rate
ED_05 Initial ED/Hospital Temperature
ED_06 Initial ED/Hospital Respiratory Rate
ED_07 Initial ED/Hospital Respiratory Assistance
ED_08 Initial ED/Hospital Oxygen Saturation
ED_09 Initial ED/Hospital Supplemental Oxygen
ED_10 Initial ED/Hospital GCS -Eye
ED_11 Initial ED/Hospital GCS -Verbal
ED_12 Initial ED/Hospital GCS -Motor
ED_13 Initial ED/Hospital GCS -Total
ED_14 Initial ED/Hospital GCS Assessment Qualifiers
ED_15 Initial ED/Hospital Height
ED_16 Initial ED/Hospital Weight
ED_17 Alcohol Use Indicator
ED_18 Drug Use Indicator
ED_19 ED Discharge Disposition
ED_20 Signs Of Life
ED_21 ED Discharge Date
ED_22 ED Discharge Time
(e) Hospital Procedure Information
HP_01 ICD-9 Hospital Procedures
HP_02 ICD-10 Hospital Procedures
HP_03 Hospital Procedure Start Date
HP_04 Hospital Procedure Start Time
(f) Diagnosis Information
DG_01 Co-Morbid Conditions
DG_02 ICD-9 Injury Diagnoses
DG_03 ICD-10 Injury Diagnoses
(g) Injury Severity Information
IS_01 AIS Predot Code
IS_02 AIS Severity
IS_03 ISS Body Region
IS_04 AIS Version
IS_05 Locally Calculated ISS
(h) Outcome Information
O_01 Total ICU Length Of Stay
O_02 Total Ventilator Days
O_03 Hospital Discharge Date
O_04 Hospital Discharge Time
O_05 Hospital Discharge Disposition
(i) Financial Information
F_01 Primary Method Of Payment
(x) Quality Assurance Information
Q_01 Hospital Complications
(3) Additional data elements, not included in the NTDS, to be submitted include:
(a) Demographic Information
A.1 Tracking Number
A.2 Hospital Number
A.10 Medical Record Number
A.11 Social Security Number
(b) Injury Information
B.3 Injury Cause Code
B.4 Trauma Type
B.19 Injury Details
(c) Pre-hospital Information
D.3 EMS Agency
D.4 EMS Origin
D.8 EMS Respond Date
D.7 EMS Respond Time

D.14 EMS Destination Arrival Date
D.13 EMS Destination Arrival Time
D.15 EMS Destination
D.16 EMS Trip Form Received
D.24 Initial Field GCS Assessment Qualifiers
(d) Referring Hospital Information
C.1 Hospital Transfer
C.2 Transport Mode into Referring Hospital
C.3 Referring Hospital
C.4 Referring Hospital Arrival Date
C.5 Referring Hospital Arrival Time
C.6 Referring Hospital Discharge Date
C.7 Referring Hospital Discharge Time
C.8 Referring Hospital Admission Type
C.9 Referring Hospital Pulse
C.10 Referring Hospital Respiratory Rate
C.11 Referring Hospital Systolic Blood Pressure
C.12 Referring Hospital GCS -Eye
C.13 Referring Hospital GCS -Verbal
C.14 Referring Hospital GCS -Motor
C.15 Referring Hospital GCS Assessment Qualifiers
C.16 Referring Hospital GCS Total
C.17 Referring Hospital Procedures
(e) Emergency Department Information
E.1 ED Admit Type
E.2 ED Admit Service
E.6 ED Admission Date
E.5 ED Admission Time
E.14 ED Transferring EMS Agency
E.15 ED Discharge Destination Hospital
(f) Inpatient Information
E.10 Inpatient Admission Date
E.9 Inpatient Admission Time
E.12 Hospital Discharge Date
E.11 Hospital Discharge Time
E.16 Transfer Reason
E.18 Hospital Discharge Destination Hospital
E.19 DC Transferring EMS Agency
(vii) Outcome Information
E.20 Outcome

R426-9-800. Trauma Triage and Transfer Guidelines.

The Department adopts by reference the 2009 Resources and Guidelines for the Triage and Transfer of Trauma Patients published by the Utah Department of Health as model guidelines for triage, transfer, and transport of trauma patients. The guidelines do not mandate the transfer of any patient contrary to the judgment of the attending physician. They are a resource for pre-hospital and hospital providers to assist in the triage, transfer and transport of trauma patients to designated trauma centers or acute care hospitals which are appropriate to adequately receive trauma patients.

R426-9-900. Noncompliance to Trauma Standards.

(1) The Department may warn, reduce, deny, suspend, revoke, or place on probation a facility designation, if the Department finds evidence that the facility has not been or will not be operated in compliance to standards adopted under R426-9-300.

(2) A hospital, clinic, health care provider, or health care delivery system may not profess or advertise to be designated as a trauma center if the Department has not designated it as such pursuant to this rule.

R426-9-1000. Resource Hospital Minimum Designation Requirements.

A Resource Hospital shall meet the following minimum requirements for designation:

(1) Be licensed in Utah or another state as a general acute hospital or be a Veteran's Administration hospital operating in Utah;

(2) Have the ability to communicate with other EMS providers operating in the area;

(3) Provide on-line medical control for all pre-hospital EMS providers who request assistance for patient care, 24 hours-a-day, seven days a week;

(4) Create and abide by written pre-hospital emergency patient care protocols for use in providing on-line medical control for pre-hospital EMS providers;

(5) Train new staff on the protocols before the new staff is permitted to provide on-line medical control and annually review protocols with physician and nursing staff;

(6) Annually provide in-service training on the protocols to all physicians and nurses who provide on-line medical control;

(7) Make the protocols immediately available to staff for reference;

(8) Provide on-line medical control which shall include:

(a) direct voice communication with a physician; or

(b) a registered nurse or physician's assistant, who shall to be licensed in Utah, who is in voice contact with a physician;

(9) Implement a quality improvement process which shall include:

(a) representatives from local EMS providers that routinely transport patients to the resource hospital;

(b) quarterly meetings; and

(c) minutes of the quality improvement meetings which are available for Department review;

(10) Identify a coordinator for the pre-hospital quality improvement process;

(11) Cooperate with the pre-hospital EMS providers' off-line medical directors in the quality review process, including granting access to hospital medical records of patients served by the particular pre-hospital EMS provider;

(12) Participate in local and regional forums for performance improvement; and

(13) Assist the Department in evaluating EMS system effectiveness by submitting to the Department, in an electronic format quarterly data specified by the Department.

R426-9-1100. Stroke Treatment and Stroke Receiving Facility Minimum Designation Requirements.

(1) A Primary or Comprehensive Stroke Treatment Center or an Acute Stroke Ready Hospital shall be accredited by the Joint Commission or other nationally recognized accrediting body.

(2) A hospital designated as a Stroke Receiving Facility for receiving stroke patients via Emergency Medical Services shall meet the following requirements:

(a) Be licensed as an acute care hospital in Utah;

(b) Require physician response to the emergency department in less than thirty (30) minutes for treatment of stroke patients;

(c) Maintain the ability of physician and nursing staff to utilize a standardized assessment tool for ischemic stroke patients;

(d) Maintain and utilize approved thrombolytic medications for treatment of patients meeting criteria for administration of thrombolytic therapy;

(e) Establish a standardized acute stroke protocol and authorize appropriate emergency department staff to implement the protocol when appropriate;

(f) Have ancillary equipment and personnel available to diagnose and treat acute stroke patients in a timely manner;

(g) Establish patient transport protocols with designated stroke treatment centers;

(h) Have a performance improvement program for acute stroke care and report data as required by the Department; and

(i) Submit to a site visit by representatives of the

Department.

(3) Upon designation, the Department may, in consultation with off line EMS medical direction and protocol, recommend direct transport of stroke patients to a Stroke Receiving Center or a Stroke Treatment Center by an EMS agency.

R426-9-1200. Percutaneous Coronary Intervention Center Minimum Designation Requirements.

(1) A Percutaneous Coronary Intervention (PCI) Center, for the purpose of receiving acute ST-elevation myocardial infarction (STEMI) patients via EMS, shall meet the following minimum designation requirements:

(a) Be licensed as an acute care hospital in Utah;

(b) Maintain an emergency department staffed by at least one (1) Physician and one (1) Registered Nurse at all times;

(c) Have the ability to receive 12 lead EKG data from EMS agencies transporting patients to the hospital for treatment of ST Segment Elevation Myocardial Infarction (STEMI);

(d) Maintain the ability to provide cardiac catheterization and PCI of STEMI patients within ninety (90) minutes of patient arrival in the emergency department twenty four (24) hours a day and seven (7) days a week;

(e) Maintain a performance improvement program for STEMI care and report data to the Department as required by the Department; and

(f) Submit to a site visit by representatives of the Department.

(2) Upon designation, the Department may, in consultation with offline EMS medical direction and protocol, recommend direct transport of STEMI patients to a STEMI Treatment Center by an EMS agency.

(3) The PCI designation and re-designation period shall be for a period of three years.

R426-9-1300. Patient Receiving Facility Minimum Designation Requirements.

(1) A Patient Receiving Facility shall meet the following minimum designation requirements:

(a) Have the ability to communicate with pre-hospital EMS providers;

(b) Be staffed or have on-call physician, physician assistant, or nurse practitioner availability during designated hours with a response time of less than 20 minutes;

(c) Have and maintain ACLS and PALS certification;

(d) Attend meetings of the local EMS council, if one exists, to participate in the coordination and operations of local EMS providers;

(e) Abide by off-line protocols approved by the EMS provider's off-line medical director;

(f) Train staff on protocols used by the EMS providers who transport patients to the Patient Receiving Facility;

(g) Implement a quality improvement process of all patients received at the patient receiving facility with the local resource hospital or trauma center including access to medical records for patients transported by ambulance;

(h) Maintain equipment, services and medications on-site to provide Advanced Life Support (ALS) intervention and appropriate treatment. Equipment and services shall include:

(i) ECG;

(ii) ACLS medications;

(iii) laboratory services;

(iv) radiology services;

(v) oxygen delivery systems;

(vi) airway support equipment and supplies;

(vii) suction equipment and supplies; and,

(i) Submit to a yearly site visit by representatives of the Department; and

(j) Submit monthly data reports to the Department on all patients received by an ambulance, and in an electronic format provided by the Department.

(2) The Department may recommend the preferential transportation of STEMI patients by ambulance to a Patient Receiving Facility.

KEY: emergency medical services, trauma, reporting, trauma center designation
August 21, 2015 26-8a-252

R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-6. Background Screening.
R430-6-1. Authority and Purpose.

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes requirements for background screenings for child care programs.

R430-6-2. Definitions.

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

(1) "Applicant" means a person who has applied for a new child care license, residential, certificate, or license exemption from the Department, or a currently licensed, certified, or license exempt child care provider who is applying for a renewal of their child care license, certificate, or exemption.

(2) "Background finding" means a determination by the Department that an individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor;

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor; or

(c) is listed on the Utah or national sex offender registry.

(3) "Covered individual" means:

(a) owners;

(b) directors;

(c) members of the governing body;

(d) employees;

(e) providers of care, including children residing in a home where child care is provided;

(f) volunteers, excluding parents of children enrolled in the program;

(g) all individuals age 12 and older residing in a residence where child care is provided; and

(h) anyone who has unsupervised contact with a child in care.

(4) "Department" means the Utah Department of Health.

(5) "Exempt Child Care Provider" means a person who provides care as described in the Utah Code 26-39-403(2).

(6) "Involved with child care" means to do any of the following at or for a facility with a child care license, certificate, or exemption issued by the Department:

(a) provide child care;

(b) volunteer at a child care facility;

(c) own, operate, direct, or be employed at a child care facility;

(d) reside at a facility where care is provided;

(e) function as a member of the governing body of a child care facility; or

(e) be present at a facility while care is being provided, except for parents dropping off or picking up their child, or attending a scheduled event at the child care facility.

(7) "Supported finding" means an individual is listed on the Licensing Information System child abuse and neglect database maintained by the Utah Department of Human Services, or listed on the Utah or national sex offender registry.

(8) "Unsupervised Contact" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or employee who has passed a background screening.

(9) "Volunteer" means an individual who receives no form of direct or indirect compensation for providing care.

R430-6-3. Submission of Background Screening Information.

(1) Each applicant requesting a new or renewal child care license, residential certificate, or exemption must submit to the Department the name and other required identifying information on all covered individuals.

(a) Unless an exception is granted under Subsection (4) below, the applicant shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

(c) If fingerprints are submitted via life scan, the provider processing the fingerprints shall be in compliance with the Department's guidelines.

(2) The applicant shall state, based upon the applicant's information and belief, whether each covered individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor;

(c) has ever had a supported finding by the Department of Human Services, or a substantiated finding from a juvenile court, of abuse or neglect of a child.

(3) Within ten working days of a new covered individual beginning work at a licensed, certified, or exempt child care facility or moving into a licensed or certified home, or a child turning 12 who resides in the facility where care is provided, the licensee, certificate holder, or exempt child care provider must submit to the Department the name and other required identifying information for that individual.

(a) Unless an exception is granted under Subsection (4) below, the licensee or certificate holder shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

(4) Fingerprint cards are not required if:

(a) the covered individual has resided in Utah continuously for the past five years, or since the individual's 18th birthday; and

(b) the covered individual will only be involved with child care in a facility that was licensed or certified prior to 1 July 2013; or

(c) the covered individual has previously submitted to the Department a fingerprint card under this section for a national criminal history record check and has resided in Utah continuously since that time.

(5) Each year, before the last day of the expiration month on the covered individual's background screening card, the licensee, certificate holder, or exempt child care provider shall submit to the Department the required information and fees to renew each covered individual's background screening.

R430-6-4. Criminal Background Screening.

(1) Regardless of any exception under R430-6-4(4), if an in-state criminal background screening indicates that a covered individual age 18 or older has a background finding, the Department may require that individual to submit a fingerprint card and fee from which the Department may conduct a national criminal background screening on that individual.

(2) Except for the offenses listed under Subsection (3), if a covered individual has a background finding, that individual may not be involved with child care. If such a covered individual resides in a home where child care is provided, the Department shall revoke an existing license or certificate or refuse to issue a new license or certificate.

(3) A background finding for any of the following offenses does not prohibit a covered individual from being involved with child care:

(a) any Class A misdemeanor offense as allowed in

Subsection (4), and any Class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for an offense under section 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, that is punishable as a Class A misdemeanor under subsection 41-6a-503(1)(b);

(c) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for:

(i) 76-4-401, Enticing a Minor;

(g) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6, Offenses Against Property;

(h) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6a, Pyramid Scheme Act;

(i) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 8, Offenses Against the Administration of Government;

(k) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 9, Offenses Against Public Order and Decency, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor.

(4) A covered individual with a Class A misdemeanor background finding may be involved with child care if either of the following conditions is met:

(a) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3), and:

(i) ten or more years have passed since the Class A misdemeanor offense; and

(ii) there is no other background finding for the individual in the past ten years; or

(b) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3) and five or more years have passed, but ten years have not passed since the Class A misdemeanor offense, and there is no other background finding since the Class A misdemeanor offense, then the individual may be involved with child care as an employee of an existing licensed, certified, or exempt child care program for up to six months if:

(i) the individual provides documentation for an active petition for expungement of the disqualifying offense within 30 days of the notice of the disqualifying background finding; and

(ii) the licensee, certificate holder, or exempt child care provider ensures that another employee who has passed the background screening is always present in the same room as the individual, and ensures that the individual has no unsupervised contact with any child in care.

(5) If the court denies a petition for expungement from an individual who has petitioned for expungement and continues to be involved with child care as an employee under Subsection (4)(b), that individual may no longer be employed in an existing licensed, certified, or exempt child care program, even if six months have not passed since the notice of the disqualifying background finding.

(6) The Department may rely on the criminal background screening as conclusive evidence of the arrest warrant, arrest, charge, or conviction, and the Department may revoke or deny a license, certificate, or employment based on that evidence.

(7) If a covered individual is denied a license, certificate or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Department of Public Safety, the covered individual may challenge the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(8) If the Department takes an action adverse to any covered individual based upon the criminal background screening, the Department shall send a written decision to the licensee or certificate holder and the covered individual explaining the action and the right of appeal.

(9) All licensees, certificate holders, exempt child care providers, and covered individuals must report to the Department any felony or misdemeanor arrest, charge, or conviction of a covered individual within 48 hours of becoming aware of the arrest warrant, arrest, charge, or conviction. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

(10) The Executive Director of the Department of Health may consider and exempt individual cases under the following conditions:

(a) the background finding is not for a felony; and

(b) the Executive Director determines that the nature of the background finding, or mitigating circumstances related to the background finding, are such that the individual with the background finding does not pose a risk to children.

R430-6-5. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If a covered individual has an outstanding arrest warrant for, or has been arrested or charged with a felony or a misdemeanor that would not be excluded under R430-6-4(3), the Department may revoke or suspend any license or certificate of a provider, or deny employment, if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes a license or certificate or denies employment based upon the arrest warrant, arrest, or charge, the Department shall send a written decision to the licensee, certificate holder, exempt child care provider, and the covered individual notifying them that a hearing with the Department may be requested.

(3) The Department may hold the license, certificate, or employment denial in abeyance until the arrest warrant, arrest, or felony or misdemeanor charge is resolved.

R430-6-6. Child Abuse and Neglect Background Screening.

(1) If the Department finds that a covered individual has a supported finding on the Department of Human Services Licensing Information System, that individual may not be involved with child care.

(a) If such a covered individual resides in a home where child care is provided the Department shall revoke the license or certificate for the child care provided in that home.

(b) If such a covered individual resides in a home for which an application for a new license or certificate has been made, the Department shall refuse to issue a new license or certificate.

(2) If the Department denies or revokes a license, certificate, or employment based upon the Licensing Information System maintained by the Utah Department of Human Services, the Department shall send a written decision to the licensee, certificate holder, or exempt child care provider, and the covered individual.

(3) If the covered individual disagrees with the supported finding on the Licensing Information System, the individual cannot appeal the supported finding to the Department of Health but must direct the appeal to the Department of Human Services and follow the process established by the Department of Human Services.

(4) All licensees, certificate holders, exempt child care providers, and covered individuals must report to the Department any supported finding on the Department of Human Services Licensing Information System concerning a covered individual within 48 hours of becoming aware of the supported finding. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

R430-6-7. Emergency Providers.

(1) In an emergency, not anticipated in the licensee or certificate holder's emergency plan, a licensee or certificate holder may assign a person who has not had a criminal background screening to provide emergency care for and have unsupervised contact with children for no more than 24 hours per emergency incident.

(a) Before the licensee or certificate holder may leave the children in the care of the emergency provider, the licensee or certificate holder must first obtain a signed, written declaration from the emergency provider that the emergency provider has not been convicted of, pleaded no contest to, and is not currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, does not have a supported finding from the Department of Human Services, and is not listed on the Utah or national sex offender registry.

(b) During the term of the emergency, the emergency provider may be counted as a provider of care for purposes of maintaining the required care provider to child ratios.

(c) The licensee or certificate holder shall make reasonable efforts to minimize the time that the emergency provider has unsupervised contact with children.

R430-6-8. Restrictions on Volunteers.

A parent volunteer who has not passed a background screening may not have unsupervised contact with any child in care, except the parent's own child.

R430-6-9. Statutory Penalties.

(1) A violation of any rule is punishable by an administrative civil money penalty of up to $5,000 per day as provided in Utah Code Section 26-39-601.

(2) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license or certificate.

(3) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

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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. Requirements for a Branch Location.

(1) A "Branch Location" is a licensed Home Health, Personal Care or Hospice agency location which:

(a) is administered by a parent agency within the scope of the parent agency's current license;

(b) is located no further than 150 miles from the licensed parent agency or within a designated geographical service area as determined by the Department; and

(c) is approved by the Department as a branch location under the parent agency's license.

(2) An applicant for a branch location license shall submit a narrative of the program for Department review. The narrative shall include the following:

(a) street address of the parent and branch;

(b) license category of the parent agency;

(c) service(s) to be provided at the branch location, which must be a service authorized under the parent agency license; and

(d) ancillary administrative and support services to be provided at the branch location.

(3) Upon receipt of the branch location program narrative, 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) the service provided at the remote site falls within the scope of the parent agency license; and

(b) all necessary administrative and support services are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.

(4) If a location qualifies as a branch location the Department shall issue a separate license identifying the agency as a "Branch Location" of the licensed parent agency. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

R432-2-7. Applications for License Actions.

(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.

R432-2-8. 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.

R432-2-9. 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.

R432-2-10. 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.

R432-2-11. 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.

R432-2-12. 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.

R432-2-13. 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.

R432-2-14. 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.

R432-2-15. 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.

R432-2-16. Provisional License.

(1) A provisional license is an initial license issued to an applicant for a probationary period of six months.

(2) 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.

(3) A provisional license is nonrenewable. The Department may issue a provisional license for no longer than six months.

(4) If the licensee fails to meet terms and conditions of licensing before the expiration date of the provisional license, the license shall automatically expire.

R432-2-17. 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.

R432-2-18. 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.

R432-2-19. 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.

R432-2-20. 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

August 21, 2015	**26-21-9**
Notice of Continuation August 12, 2013	**26-21-11**
	26-21-12
	26-21-13

R495. Human Services, Administration.
R495-878. Americans with Disabilities Act and Civil Rights Grievance Procedures.
R495-878-1. Authority and Purpose.

(1) This rule is authorized by Section 62A-1-111.

(2) The purpose of this rule is to provide for the prompt and equitable resolution of complaints alleging any violation of the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975, by employees of the Department.

R495-878-2. Definitions.

(1) "ADA" means Title II of the Americans with Disabilities Act of 1990.

(2) "ADA/Civil Rights/LEP/Section 504 Coordinator" means the employee assigned by the executive director to facilitate the prompt and equitable resolution of complaints alleging discrimination by employees of the Department.

(3) "Complainant" means an individual who has applied to receive services, is currently receiving services, or who has received services from the Department, or that individual's authorized representative.

(4) "Department" means the Department of Human Services created by Section 62A-1-102, and includes the divisions and offices created by Section 62A-1-105.

(5) "Division Coordinator" means an individual assigned by the executive director to investigate allegations of discrimination by employees of the Department.

(6) "Director" means the head of the division or office of the Department affected by a complaint filed under this rule.

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

(8) "LEP" means Limited English Proficiency.

(9) "Section 504" means Section 504 of the Rehabilitation Act of 1973.

R495-878-3. Filing of Complaints.

(1) A complainant may file a complaint alleging the violation of the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975, by employees of the Department.

(2) A complainant shall file a complaint with the Department's ADA/Civil Rights/LEP/Section 504 Coordinator, unless the complaint includes allegations against the ADA/Civil Rights/LEP/Section 504 Coordinator, in which case the complaint shall be filed with the executive director.

(3) A complainant may file a written, oral, or electronic complaint to:

ADA/Civil Rights/LEP/Section 504 Coordinator
Department of Human Services
Executive Directors Office-4th floor
195 North 1950 West
Salt Lake City, Utah 84116; or
dhscivilrightscomplaint@utah.gov; or
(801) 538-4187 (TTY) or Utah Relay 711.

(4) To facilitate a thorough investigation, the complainant should file a written, oral, or electronic complaint with the Department ADA/Civil Rights/LEP/Section 504 Coordinator no later than thirty (30) days from the date of the alleged circumstances giving rise to the complaint. A complaint should include the following information (complaint form available online at http://hs.utah.gov/):

(a) A detailed description of the alleged circumstances which caused the complaint, including dates and locations;

(b) The names and contact information of any and all persons involved in those circumstances;

(c) A detailed description of any actions taken by the complainant to address the complaint; and

(d) The desired result or outcome that the complainant is seeking from the Department.

R495-878-4. Investigation of Complaints.

(1) Within ten (10) days after receipt of the complaint, the ADA/Civil Rights/LEP/Section 504 Coordinator will assign the investigation of the complaint to the applicable Division Coordinator.

(a) The ADA/Civil Rights/LEP/Section 504 Coordinator will retain a copy of the complaint in a central.

(b) Investigations shall be completed within sixty (60) days after receipt of the complaint by the applicable Division Coordinator.

(2) Within ten (10) days after receipt of the complaint from the ADA/Civil Rights/LEP/Section 504 Coordinator, the Division Coordinator will notify the complainant in writing or electronically that an investigation of the complaint has commenced and will provide the deadline upon which the complainant should receive correspondence regarding the outcome of the investigation.

(a) The ADA/Civil Rights/LEP/Section 504 Coordinator shall be provided a copy of this correspondence from the Division Coordinator.

(b) A copy of all correspondence will be included in the ADA/Civil Rights/LEP/Section 504 Coordinator's central file.

(3) The Division Coordinator, or designee under the direction of the Division Coordinator, will conduct the investigation into the complaint and draft a proposed response to the complaint.

(a) The Division Coordinator shall gather and document all available relevant information.

(b) If the Division Coordinator is unable to complete the investigation and make a recommendation within the deadline, the complainant and the ADA/Civil Rights/LEP/Section 504 Coordinator shall be notified of the reason and how much additional time is needed.

R495-878-5. Recommendation and Decision.

(1) Completion of the investigation will result in a decision that the alleged circumstances occurred, did not occur, or could not be substantiated.

(a) If the alleged circumstances did occur, then the recommendation will also include suggestions to address barriers in the future involving similar circumstances.

(b) If the alleged circumstances could not be substantiated, but the Division Coordinator is able to identify areas where DHS practices may be improved, then suggestions may be made to address barriers in the future involving similar alleged circumstances.

(c) The Division Coordinator will be responsible for drafting the initial correspondence to the complainant.

(2) The correspondence will be sent by the Division Coordinator to the Director for final approval and mailing to the complainant.

(a) A copy of the correspondence will be sent to the ADA/Civil Rights/LEP/Section 504 Coordinator, and included in a central file.

(3) Within ten (10) business days after the conclusion of the investigation, the Division Coordinator will notify the complainant in writing concerning the outcome of the investigation.

(a) The Division Coordinator will log in the date that the written response is sent to the complainant to indicate that the complaint is completed.

(4) The Director shall take all reasonable steps to implement the recommendation, including the suggestions to ameliorate barriers in the future involving similar circumstances.

(5) Any of the foregoing deadlines may be reasonably extended for extenuating circumstances. Any extensions of time will be confirmed in writing to the complainant.

R495-878-6. Appeals.

(1) The complainant may appeal the Director's decision to the Executive Director within ten working days after the complainant's receipt of the Director's decision.

(2) The appeal shall be in writing.

(3) The Executive Director may name a designee to assist on the appeal. The ADA/Civil Rights/LEP/Section 504 Coordinator, Division Coordinator, Director, and Director's designee may not be the Executive Director's designee for the appeal.

(4) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(5) The Executive Director or designee shall review the Division Coordinator's recommendation, the Director's decision, and the points raised on appeal prior to reaching a decision. The Executive Director or designee may direct additional investigation as necessary. The Executive Director shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Management and Budget, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation; or

(b) require facility modifications;

(6) The Executive Director or designee shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, and shall be delivered to the complainant.

(7) If the Executive Director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing why the final decision is being delayed and the additional time needed to reach a final decision.

R495-878-7. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 34A-5-107 and Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the civil rights of individuals, including but not limited to Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973

KEY: grievance procedures, disabled persons
August 25, 2015 **62A-1-111**
Notice of Continuation: January 23, 2012 **63G-3-201(3)**
28 CFR 35.107

R590. Insurance, Administration.
R590-162. Actuarial Opinion and Memorandum Rule.
R590-162-1. Purpose.

The purpose of this rule is to prescribe:

A. Requirements for statements of actuarial opinion which are to be submitted in accordance with Section 31A-17-503, and for memoranda in support thereof;

B. Guidance as to the meaning of "adequacy of reserves;" and

C. Rules applicable to the appointment of an appointed actuary.

R590-162-2. Authority.

This rule is issued pursuant to the authority vested in the Commissioner of Insurance of the State of Utah under Title 31A, Chapter 17, Part 5.

R590-162-3. Scope.

This rule shall apply to all companies and fraternal benefit societies that file the life, accident and health annual statement and to all companies and fraternal benefit societies that are authorized to reinsure life insurance, annuities or accident and health insurance business in this State.

Companies that file the property and casualty annual statement or the health annual statement shall follow the actuarial opinion and supporting actuarial memoranda requirements pursuant to the instructions for these annual statements. Such companies are not subject to actuarial opinion and supporting actuarial memoranda requirements of this rule.

This rule shall be applied in a manner that allows the appointed actuary to utilize professional judgment in performing the asset adequacy analysis and developing the actuarial opinion and supporting memoranda, consistent with applicable actuarial standards of practice. However, the commissioner shall have the authority to specify the methods of actuarial analysis and actuarial assumptions when, in the commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

This rule shall be applicable to all annual statements filed with the office of the commissioner after the effective date of this rule. A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Section 6 of this rule, and a memorandum in support thereof in accordance with Section 7 of this rule, shall be required each year.

R590-162-4. Definitions.

A. "Actuarial Opinion" means the opinion of an Appointed Actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance with Section 6 of this rule and with applicable Actuarial Standards of Practice.

B. "Actuarial Standards Board" is the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

C. "Annual Statement" means that statement required by Section 31A-4-113 to be filed by the company with the office of the commissioner annually.

D. "Appointed Actuary" means any individual who is appointed or retained in accordance with the requirements set forth in Subsection 5C of this rule to provide the actuarial opinion and supporting memorandum as required by 31A-17-503.

E. "Asset Adequacy Analysis" means an analysis that meets the standards and other requirements referred to in Subsection 5D of this rule. It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory.

F. "Commissioner" means the Insurance Commissioner of this State.

G. "Company" means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this rule.

H. "Qualified Actuary" means any individual who meets the requirements set forth in Subsection 5B of this rule.

R590-162-5. General Requirements.

A. Submission of Statement of Actuarial Opinion

(1) There is to be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this rule becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Section 6 of this rule.

(2) In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the commissioner may accept the statement of actuarial opinion filed by such company with the insurance supervisory regulator of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

(3) Upon written request by the company, the commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

B. Qualified Actuary

A "qualified actuary" is an individual who:

(1) Is a member in good standing of the American Academy of Actuaries;

(2) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;

(3) Is familiar with the valuation requirements applicable to life and health insurance companies;

(4) Has not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:

(a) Violated any provision of, or any obligation imposed by, the Utah Code or other law in the course of his or her dealings as a qualified actuary;

(b) Been found guilty of fraudulent or dishonest practices;

(c) Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;

(d) Submitted to the commissioner during the past five years, pursuant to this rule, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this rule including standards set by the Actuarial Standards Board; or

(e) Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(5) Has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under Subsection (4) above.

C. Appointed Actuary

An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by this rule, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the commissioner timely written notice of the name, title, and, in the case of a consulting actuary, the name of the firm and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in Subsection 5B of this rule. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in Subsection 5B. If any person appointed or retained as an appointed actuary replaces a

previously appointed actuary, the notice shall so state and give the reasons for replacement.

D. Standards for Asset Adequacy Analysis

The asset adequacy analysis required by this rule:

(1) shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under this rule, which standards are to form the basis of the statement of actuarial opinion in accordance with this rule; and

(2) shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

E. Liabilities to be Covered

(1) Under authority of Section 31A-17-503, the statement of actuarial opinion shall apply to all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in Title 31A, Chapter 17, Part 5 the company shall establish such additional reserve.

(3) Additional reserves established under Subsection (2) above and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

R590-162-6. Statement of Actuarial Opinion Based On an Asset Adequacy Analysis.

A. General Description

(1) The statement of actuarial opinion submitted in accordance with this section shall consist of:

(a) a paragraph identifying the appointed actuary and his or her qualifications as specified in Subsection 6B(1) of this rule;

(b) a scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, as specified in Subsection 6B(2) of this rule, and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;

(c) a reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios, as specified in Subsection 6B(3) of this rule, supported by a statement of each such expert in the form prescribed by Subsection 6E of this rule; and

(d) an opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities, as specified in Subsection 6B(6) of this rule.

(2) One or more additional paragraphs will be needed in individual company cases as follows:

(a) if the appointed actuary considers it necessary to state a qualification of the opinion;

(b) if the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;

(c) if the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement of reserves for asset adequacy analysis;

(d) if the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;

(e) if the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release; or

(f) if the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.

B. Recommended Language

The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

(1) The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, (name), am (title) of (insurance company name) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

For a consulting actuary, the opening paragraph should contain a sentence such as:

"I, (name), a member of the American Academy of Actuaries, am associated with the firm of (name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(2) The scope paragraph should include a statement such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 20( ). Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis."

(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as the following:

"I have relied on (name), (title) for (e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios or certain critical aspects of the analysis performed in conjunction with forming my opinion), as certified in the attached statement I have reviewed the information relied upon for reasonableness."

Such a statement of reliance on other experts should be accompanied by a statement by each of such experts of the form prescribed by Subsection 6E of this rule.

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to (exhibits and schedules listed as applicable) of the company's current annual statement."

(5) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and

summaries of policies in force or asset records) prepared by the company or a third party, the reliance paragraph should include a statement such as:

"In forming my opinion on (specify types of reserves) I have relied upon data prepared by (name and title of company officer certifying in-force records or other data) as certified in the attached statement. I evaluated that data for reasonableness and consistency. I also reconciled that data to (exhibits and schedules to be listed as applicable) of the company's current annual statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

Such a statement of reliance must be accompanied by a statement by each person relied upon of the form prescribed by Subsection 6E of this rule.

(6) The opinion paragraph should include the following:

TABLE

(a) "In my opinion the reserves and related actuarial values concerning the statement items identified above:
(i) are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;
(ii) are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;
(iii) meet the requirements of the Insurance Law and rule of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;
(iv) are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);
(v) include provision for all actuarial reserves and related statement items which ought to be established;"
(b) "The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company;"
(c) "The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion;" and
(d) "This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion;"
or
"The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion:" (Describe the change or changes.)
"The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis."

.....
"Signature of Appointed Actuary

.....
Address of Appointed Actuary

.....
Telephone Number of Appointed Actuary

.....
Date"

C. Assumptions for New Issues

The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Section 6.

D. Adverse Opinions

If the appointed actuary is unable to form an opinion, then the actuary shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then the actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

E. Reliance on Data Furnished by Other Persons

If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to the reliance.

In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and telephone number of the person rendering the certification, as well as the date on which it is signed.

F. Alternate Option

(1) As an alternative to the requirements of Subsection B(6)(a)(iii) of this rule, the appointed actuary may state that the reserves and related actuarial values "meet the requirements of the Insurance Law and rule of the State of (state of domicile) and I have verified that the company's request to file an opinion based on the laws of the state of domicile has been approved by the commissioner and that any conditions required by the commissioner for approval of that request have been met."

(2) To use this alternative, the company shall file a request to do so, along with the justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

(3) Notwithstanding the above, the commissioner may reject an opinion based on the laws of the state of domicile and require an opinion based on the laws of this State. If a company is unable to provide the opinion within sixty days of the request or such other period of time determined by the commissioner after consultation with the company, the commissioner may contract an independent actuary at the company's expense to prepare and file the opinion.

R590-162-7. Description of Actuarial Memorandum Including an Asset Adequacy Analysis.

A. General

(1) In accordance with Section 31A-17-503, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of the opinion regarding the reserves. The memorandum shall be made available for examination by the commissioner upon request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the commissioner.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Subsection 5B of this rule, with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the commissioner requests a memorandum and no

such memorandum exists or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this rule, the commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commissioner.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the commissioner pursuant to the statute governing this rule. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for any one of the current year or the preceding three years.

(5)(a) In accordance with Section 31A-17-503, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the content of which are specified in Subsection C.

(b) Every company domiciled in this state shall submit the regulatory asset adequacy issues summary no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required.

(c) Every foreign company is required to make the regulatory asset adequacy issues summary available to the commissioner upon request.

(d) The regulatory asset adequacy issues summary shall be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

B. Details of the Memorandum Section Documenting Asset Adequacy Analysis.

When an actuarial opinion is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Subsection 5D of this rule and any additional standards under this rule. It shall specify:

(1) for reserves:

(a) product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

(b) source of liability in force;

(c) reserve method and basis;

(d) investment reserves;

(e) reinsurance arrangements;

(f) identification of any explicit or implied guarantees made the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis; and

(g) documentation of assumptions to test reserves for the following:

(i) lapse rates (both base and excess);

(ii) interest crediting strategy;

(iii) mortality;

(iv) policyholder dividend strategy;

(v) competitor or market interest rate;

(vi) annuitization rates;

(vii) commissions and expenses; and

(viii) morbidity;

(2) for assets:

(a) portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

(b) investment and disinvestment assumptions;

(c) source of asset data;

(d) asset valuation bases; and

(e) documentation of assumptions made for:

(i) default costs;

(ii) bond call function;

(iii) mortgage prepayment function;

(iv) determining market value for assets sold due to disinvestment strategy; and

(v) determining yield on assets acquired through the investment strategy;

(3) for the analysis basis:

(a) methodology;

(b) rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed;

(c) rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

(d) criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and

(e) effect of federal income taxes, reinsurance and other relevant factors;

(4) summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;

(5) summary of Results; and

(6) conclusions.

C. Details of the Regulatory Asset Adequacy Summary

(1) The regulatory asset adequacy issues summary shall include:

(a) descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force;

(b) the extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

(c) the amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

(d) comments on any interim results that may be of significant concern to the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserve during one or more interim periods;

(e) the methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each scenario tested; and

(f) whether the actuary has been satisfied that all options, whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(2) The regulatory asset adequacy issues summary shall

contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

D. Documentation

The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

R590-162-8. Exemptions.

A. Unless ordered by the commissioner, a company that is under supervision, rehabilitation, or liquidation is exempt from the requirements of this rule.

B.(1) At the discretion of the commissioner, a company domiciled in this State and doing business only in this State may submit an opinion without the statement required under R590-162-6(B)(6)(b).

(2) If the commissioner grants an exemption under Subsection B(1), the company shall be exempt from preparing and submitting the RAAIS document required under R590-162-7(A)(5).

C.(1) A company domiciled in this State, and otherwise subject to the requirements of this rule, may apply to the commissioner for an exemption from:

(a) the requirement to submit an actuarial opinion required under R590-162-5(A)(1);

(b) the requirement to include within its actuarial opinion the statement required under R590-162-6(B)(6)(b); or

(c) the requirement to prepare and submit the RAAIS document required under R590-162-7(A)(5).

(2) A company seeking an exemption under Subsection C(1) shall:

(a) submit a written request for an exemption no later than November 1 of the year for which the exemption is sought; and

(b) provide a written explanation and supporting documents, if any, explaining how complying with the requirement for which an exemption is sought would not enhance the department's understanding of the financial position of the company and, therefore, be an unnecessary burden on the company.

R590-162-9. Severability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: insurance
August 26, 2015 **31A-17-503**
Notice of Continuation September 27, 2013

R590. Insurance, Administration.
R590-198. Valuation of Life Insurance Policies Rule.
R590-198-1. Purpose.

A. The purpose of this rule is to provide:

(1) tables of select mortality factors and rules for their use;

(2) rules concerning a minimum standard for the valuation of plans with nonlevel premiums or benefits; and

(3) rules concerning a minimum standard for the valuation of plans with secondary guarantees.

B. The method for calculating basic reserves defined in this rule will constitute the Commissioners' Reserve Valuation Method for policies to which this rule is applicable.

R590-198-2. Authority.

This rule is issued under the authority of Sections 31A-17-402 and 31A-17-512.

R590-198-3. Applicability.

This rule shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after the original enactment date of this rule, subject to the following exceptions and conditions.

A. Exceptions

(1) This rule shall not apply to any individual life insurance policy issued on or after January 4, 2000 if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before January 4, 2000, that guarantees the premium rates of the new policy. This rule also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy.

(2) This rule shall not apply to any universal life policy that meets all the following requirements:

(a) Secondary guarantee period, if any, is five-years or less;

(b) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO (Commissioner's Standard Ordinary) valuation tables as defined in Section 4F of this rule and the applicable valuation interest rate; and

(c) The initial surrender charge is not less than 100% of the first year annualized specified premium for the secondary guarantee period.

(3) This rule shall not apply to any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(4) This rule shall not apply to any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(5) This rule shall not apply to a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one-year.

B. Conditions

(1) Calculation of the minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, other than universal life policies, or both, shall be in accordance with the provisions of Section 6.

(2) Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period shall be in accordance with the provisions of Section 7.

R590-198-4. Definitions.

For purposes of this rule:

A. "Basic reserves" means reserves calculated in accordance with Section 31A-17-504.

B. "Contract segmentation method" means the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment, from policy inception, for the first segment, to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in Subsection F of this section, or any other valuation mortality table adopted by the National Association of Insurance Commissioners, NAIC, after January 4, 2000 and promulgated by rule by the commissioner for this purpose, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in Section 5B of this rule.

The length of a particular contract segment shall be set equal to the minimum of the value t for which G_t is greater than R_t, if G_t never exceeds R_t the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy, where G_t and R_t are defined as follows: $G_t = GP_{x+k+t} / GP_{x+k+t-1}$ where: x =original issue age; k =the number of years from the date of issue to the beginning of the segment; t =1, 2, ...; t is reset to 1 at the beginning of each segment; $GP_{x+k+t-1}$ =Guaranteed gross premium per thousand of face amount for year t of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$R_t = q_{x+k+t} / q_{x+k+t-1}$, However, R_t may be increased or decreased by 1% in any policy year, at the company's option, but R_t shall not be less than one; where: x, k and t are as defined above, and $q_{x+k+t-1}$ =valuation mortality rate for deficiency reserves in policy year k+t but using the mortality of Section 5B(2) if Section 5B(3) is elected for deficiency reserves.

However, if GP_{x+k+t} is greater than 0 and $GP_{x+k+t-1}$ is equal to 0, G_t shall be deemed to be 1000. If GP_{x+k+t} and $GP_{x+k+t-1}$ are both equal to 0, G_t shall be deemed to be 0.

C. "Deficiency reserves" means the excess, if greater than zero, of:

(1) Minimum reserves calculated in accordance with Section 31A-17-507 over

(2) Basic reserves.

D. "Guaranteed gross premiums" means the premiums under a policy of life insurance that are guaranteed and determined at issue.

E. "Maximum valuation interest rates" means the interest rates defined in Section 31A-17-506, Computation of Minimum Standard by Calendar Year of Issue, that are to be used in determining the minimum standard for the valuation of life insurance policies.

F. "1980 CSO valuation tables" means the Commissioners' 1980 Standard Ordinary Mortality Table, 1980 CSO Table, without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

G. "Scheduled gross premium" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in Section 7A(3), if any, or else the minimum premium described in Section 7A(4).

H.(1) "Segmented reserves" means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:

(a) The present value of the death benefits within the

segment, plus

(b) The present value of any unusual guaranteed cash value, see Section 6D, occurring at the end of the segment, less

(c) Any unusual guaranteed cash value occurring at the start of the segment, plus

(d) For the first segment only, the excess of the Item (i) over Item (ii), as follows:

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one-year higher than the age at issue of the policy.

(ii) A net one-year term premium for the benefits provided for in the first policy year.

(2) The length of each segment is determined by the "contract segmentation method," as defined in this section.

(3) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy.

(4) For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

I. "Tabular cost of insurance" means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

J. "Ten-year select factors" means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.

K.(1) "Unitary reserves" means the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

(a) Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and

(b) Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of Item (i) over Item (ii), as follows:

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one-year higher than the age at issue of the policy.

(ii) A net one-year term premium for the benefits provided for in the first policy year.

(2) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

L. "Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits, other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts, and mortality or expense charges are made to the policy.

R590-198-5. General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves.

A. At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors, or any other valuation mortality table adopted by the NAIC after January 4, 2000 and promulgated by rule by the commissioner for this purpose. If select mortality factors are elected, they may be:

(1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law, see Rule R590-95;

(2) The select mortality factors adopted by the NAIC at the 1999 Spring National Meeting.

(3) Any other table of select mortality factors adopted by the NAIC after January 4, 2000 and promulgated by rule by the commissioner for the purpose of calculating basic reserves.

B. Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors or any other valuation mortality table adopted by the NAIC after January 4, 2000 and promulgated by rule by the commissioner. If select mortality factors are elected, they may be:

(1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;

(2) The select mortality factors adopted by the NAIC at the 1999 Spring National Meeting;

(3) For durations in the first segment, X percent of the select mortality factors adopted by the NAIC at the 1999 Spring National Meeting, subject to the following:

(a) X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;

(b) X is such that, when using the valuation interest rate used for basic reserves, Item (i) is greater than or equal to Item (ii);

(i) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X;

(ii) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;

(c) X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first 5-years after the valuation date;

(d) The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of Subsection B(3);

(e) The appointed actuary may decrease X at any valuation date as long as it continues to meet all the requirements of Subsection B(3); and

(f) The appointed actuary shall specifically take into account the adverse effect on expected mortality and the lapsing of any anticipated or actual increase in gross premiums.

(g) If X is less than 100% at any duration for any policy, the following requirements shall be met:

(i) The appointed actuary shall disclose, in the Regulatory Asset Adequacy Issues Summary required by R590-162-7, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; and

(ii) The appointed actuary shall annually opine for all policies subject to this rule as to whether the mortality rates

resulting from the application of X meet the requirements of Subsection B(3). This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience.

(4) Any other table of select mortality factors adopted by the NAIC after January 4, 2000 and promulgated by rule by the commissioner for the purpose of calculating deficiency reserves.

C. This subsection applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than ten-years, the appropriate ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue.

D. In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.

Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one-year after the date of the change shall be the greatest of the following:

(1) reserves calculated ignoring the guarantee;

(2) reserves assuming the guarantee was made at issue; and

(3) reserves assuming that the policy was issued on the date of the guarantee.

F. The commissioner may require that the company document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued prior to January 4, 2000. This documentation may include a demonstration of the extent to which aggregation with other non-specified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of Rule R590-162-5.

R590-198-6. Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Gross Premiums or Guaranteed Nonlevel Benefits Other than Universal Life Policies.

A. Basic Reserves

Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either of the adjustments described in Paragraph (1) or (2) below may be made:

(1) Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(2) Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment; and subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

B. Deficiency Reserves

(1) The deficiency reserve at any duration shall be calculated:

(a) On a unitary basis if the corresponding basic reserve determined by Subsection A is unitary;

(b) On a segmented basis if the corresponding basic reserve determined by Subsection A is segmented; or

(c) On the segmented basis if the corresponding basic reserve determined by Subsection A is equal to both the segmented reserve and the unitary reserve.

(2) This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality, specified in Section 5B, and rate of interest.

(3) Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in Section 5B.

(4) For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.

C. Minimum Value

Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. However, if select mortality factors are used, they shall be the ten-year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Law. In no case may total reserves, including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination, be less than the amount that the policyowner would receive, including the cash surrender value of the supplemental benefits, if any, referred to above, exclusive of any deduction for policy loans, upon termination of the policy.

D. Unusual Pattern of Guaranteed Cash Surrender Values

(1) For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n-year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.

(2) The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an n-year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where

(a) n is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:

(i) The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or

(ii) The mandatory expiration date of the policy; and

(b) The net premium for a given year during the n-year period is equal to the product of the net to gross ratio and the respective gross premium; and

(c) The net to gross ratio is equal to Item (i) divided by Item (ii) as follows:

(i) The present value, at the beginning of the n-year period, of death benefits payable during the n-year period plus the present value, at the beginning of the n-year period, of the next unusual

guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the n-year period.

(ii) The present value, at the beginning of the n-year period, of the scheduled gross premiums payable during the n-year period.

(3) For purposes of this subsection, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:

(a) 110% of the scheduled gross premium for that year;

(b) 110% of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and

(c) 5% of the first policy year surrender charge, if any.

E. Optional Exemption for Yearly Renewable Term Reinsurance. At the option of the company, the following approach for reserves on YRT reinsurance may be used:

(1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in Subsection C.

(3) Deficiency reserves.

(a) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

(b) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with Subparagraph (a) above.

(4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten-year select mortality factors, or any other table adopted after January 4, 2000 by the NAIC and promulgated by rule by the commissioner for this purpose.

(5) A reinsurance agreement shall be considered YRT reinsurance for purposes of this subsection if only the mortality risk is reinsured.

(6) If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies.

F. Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies. At the option of the company, the following approach for reserves for attained-age-based YRT life insurance policies may be used:

(1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in Subsection 6C.

(3) Deficiency reserves.

(a) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

(b) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with Subparagraph (a) above.

(4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after January 4, 2000 by the NAIC and promulgated by rule by the commissioner for this purpose.

(5) A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this subsection if:

(a) The premium rates, on both the initial current premium scale and the guaranteed maximum premium scale, are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and

(b) The premium rates, on both the initial current premium scale and the guaranteed maximum premium scale, are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age.

(6) For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this subsection may be used after the initial period if:

(a) The initial period is constant for all insureds of the same sex, risk class and plan of insurance; or

(b) The initial period runs to a common attained age for all insureds of the same sex, risk class and plan of insurance; and

(c) After the initial period of coverage, the policy meets the conditions of Paragraph (5) above.

(7) If this election is made, this approach shall be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after January 4, 2000.

G. Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Polices. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met:

(1) The policy consists of a series of n-year periods, including the first period and all renewal periods, where n is the same for each period, except that for the final renewal period, n may be truncated or extended to reach the expiry age, provided that this final renewal period is less than 10-years and less than twice the size of the earlier n-year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

(2) The guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the ten-year select mortality factors; and

(3) There are no cash surrender values in any policy year.

H. Exemption from Unitary Reserves for Certain Juvenile Policies

Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:

(1) At issue, the insured is age 24 or younger;

(2) Until the insured reaches the end of the juvenile period, which shall occur at or before age 25, the gross premiums and death benefits are level, and there are no cash surrender values; and

(3) After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy.

R590-198-7. Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policyowner to Keep a Policy in Force Over a Secondary Guarantee Period.

A. General

(1) Policies with a secondary guarantee include:

(a) A policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to the payment of specified premiums;

(b) A policy in which the minimum premium at any duration is less than the corresponding one-year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after January 4, 2000 by the NAIC and promulgated by rule by the commissioner for this purpose; or

(c) A policy with any combination of Subparagraph (a) and (b).

(2) A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one

secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue. Reserves described in Subsections B and C below shall be recalculated from issue to reflect these changes.

(3) Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.

(4) For purposes of this section, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy year, produces a zero account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors, including mortality charges, loads and expense charges, and the interest crediting rate, which are all guaranteed at issue.

(5) The one-year valuation premium means the net one-year premium based upon the original schedule of benefits for a given policy year. The one-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in Section 5B(2), (3), and (4) may not be used to calculate the one-year valuation premiums.

(6) The one-year valuation premium should reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund.

B. Basic Reserves for the Secondary Guarantees

Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in Section 4B.

C. Deficiency Reserves for the Secondary Guarantees

Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in Section 6B with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

D. Minimum Reserves

The minimum reserves during the secondary guarantee period are the greater of:

(1) The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or

(2) The minimum reserves required by other rules or rules governing universal life plans.

R590-198-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity will not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance companies
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R592. Insurance, Title and Escrow Commission.
R592-6. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.
R592-6-1. Authority.

This rule is promulgated pursuant to Section 31A-2-404(2), which authorizes the Title and Escrow Commission (Commission) to make rules for the administration of the Insurance Code related to title insurance, including rules related to standards of conduct for a title insurer, agency title insurance producer or individual title insurance producer.

R592-6-2. Purpose and Scope.

(1) The purpose of this rule is to identify certain practices, which the Commission finds creates unfair inducements for the placement of title insurance business and as such constitute unfair methods of competition. These practices include the payment of expenses that are considered normal, customary, reasonable and recurring in the operation of a client of a title producer.

(2) This rule applies to all title producers and all employees, representatives and any other party working for or on behalf of said entities whether as a full time or part time employee or as an independent contractor.

R592-6-3. Definitions.

For the purpose of this rule the Commission adopts the definitions as set forth in Section 31A-1-301 and 31A-2-402, and the following:

(1) "Bona fide real estate transaction" means:

(a) a preliminary title report is issued to a seller or listing agent in conjunction with the listing of a property; or

(b) a commitment for title insurance is ordered, issued, or distributed in a purchase and sale transaction showing the name of the proposed buyer and the sales price, or in a loan transaction showing the proposed lender and loan amount.

(2) "Business Activities" shall include sporting events, sporting activities, musical and art events. In no case shall such business activities rise to the level of ceremonies, for example, award banquets, recognition events or similar activities sponsored by or for clients, or include travel by air, or other commercial transportation.

(3) "Business meals" shall include breakfast, brunch, lunch, dinner, cocktails and tips. In no case shall such business meals raise to the level of ceremonies, for example, awards banquets, recognition events or similar activities sponsored by or for clients.

(4)(a) "Client" means any person, or group, who influences, or who may influence, the placement of title insurance business or who is engaged in a business, profession or occupation of:

(i) buying or selling interests in real property; and

(ii) making loans secured by interests in real property.

(b) "Client" includes real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, subdividers, attorneys, consumers, escrow companies and the employees, agents, representatives, solicitors and groups or associations of any of the foregoing.

(5) "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Section 31A-19a-203 or 31A-19a-209.

(6) "Official trade association publication" means:

(a) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or

(b) an annual, semiannual, quarterly or monthly publication containing information and topical material for the benefit of the members of the association.

(7) "Title insurance business" means the business of title insurance and the conducting of escrow.

(8) "Title producer" means a title insurer, agency title insurance producer, or individual title insurance producer.

(9) "Trade Association" means a recognized association of persons, a majority of whom are clients or persons whose primary activity involves real property.

R592-6-4. Unfair Methods of Competition, Acts and Practices.

In addition to the acts prohibited under Section 31A-23a-402, the Commission finds that providing or offering to provide any of the following benefits by parties identified in Section R592-6-2 to any client, either directly or indirectly, except as allowed in Section R592-6-5 below, is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition.

(1) The furnishing of a title insurance commitment when the title producer is aware that no policy is intended to be issued without one of the following:

(a) sufficient evidence in the file of the title producer that a bona fide real estate transaction or listing agreement exists; or

(b) request from a proposed insured to issue a title insurance commitment together with a payment of a minimum cancellation fee of $200.

(2) The paying of any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect which gives rise to a claim on an existing policy.

(3) Furnishing escrow services pursuant to Section 31A-23a-406:

(a) for a charge less than the charge filed pursuant to Section 31A-19a-209(5); or

(b) the furnishing of escrow services, for a charge, which are less than the actual cost of providing the services.

(4) Waiving all or any part of established fees or charges for services which are not the subject of rates or escrow charges filed with the commissioner.

(5) Deferring or waiving any payment for insurance or services otherwise due and payable, including a series of real estate transactions for the same parcel of property.

(6) Furnishing services not reasonably related to a bona fide title insurance, escrow, settlement, or closing transaction, including non-related delivery services, accounting assistance, or legal counseling.

(7) The paying for, furnishing, or waiving all or any part of the rental or lease charge for space which is occupied by any client.

(8) Renting or leasing space from any client, regardless of the purpose, at a rate which is excessive or inadequate when compared with rental or lease charges for comparable space in the same geographic area, or paying rental or lease charges based in whole or in part on the volume of business generated by any client.

(9) Furnishing any part of a title producer's facilities, for example, conference rooms or meeting rooms, to a client or its trade association, for anything other than the providing of escrow or title services, or meetings related to such, without receiving a fair rental or lease charge comparable to other rental or lease charges for facilities in the same geographic area.

(10) The co-habitation or sharing of office space with a client of a title producer.

(11) Furnishing all or any part of the time or productive effort of any employee of the title producer, for example, secretary, clerk, messenger or escrow officer, to any client.

(12) Paying for all or any part of the salary of a client or an employee of any client.

(13) Paying, or offering to pay, either directly or indirectly, salary, commissions or any other consideration to any employee who is at the same time licensed as a real estate agent or real estate broker or as a mortgage lender or mortgage company

subject to 31A-2-405 and R592-5.

(14) Paying for the fees or charges of a professional, for example, an appraiser, surveyor, engineer or attorney, or for the pre-payment of fees and charges of a client or party to the transaction, for example subordination, loan or HOA payoff request fees, whose services are required by any party or client to structure or complete a particular transaction. This subsection does not include the pre-payment of overnight delivery/mail fees that will be recovered through closing of a transaction.

(15) Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food or otherwise providing anything of value for an activity of a client, except as allowed under Subsection R592-6-5. Activities include open houses at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of all kinds, hunting trips or outings, golf or ski tournaments, artistic performances and outings in recreation areas or entertainment areas.

(16) Sponsoring, cosponsoring, subsidizing, supplying prizes or labor, except as allowed under Subsection R592-6-5 or otherwise providing things of value for promotional activities of a client. Title producers may attend activities of a client if there is no additional cost to the title producer, other than their own entry fees, registration fees, meals, and provided that these fees are no greater than those charged to clients or others attending the function.

(17) Providing gifts or anything of value to a client in connection with social events such as birthdays or job promotions. A letter or card in these instances will not be interpreted as providing a thing of value.

(18) Furnishing or providing access to the following, even for a cost:

(a) building plans;

(b) construction critical path timelines;

(c) "For Sale by Owner" lists;

(d) surveys;

(e) appraisals;

(f) credit reports;

(g) mortgage leads for loans;

(h) rental or apartment lists; or

(i) printed labels.

(19) Newsletters cannot be property specific or cannot highlight specific customers.

(20) A title producer cannot provide a client access to any real property information that the title producer pays to produce, develop, or maintain, except as otherwise permitted by R592-6-5.

(21)(a) A title producer cannot provide title or escrow services on real property where an existing or anticipated investment loan or financing has been or will be provided by said title producer, including its owners or employees.

(b) Subsection (21)(a) does not apply to such transactions involving seller financing.

(22) Paying for any advertising on behalf of a client.

(23) Advertising jointly with a client on subdivision or condominium project signs, or signs for the sale of a lot or lots in a subdivision or units in a condominium project. A title producer may advertise independently that it has provided title insurance for a particular subdivision or condominium project but may not indicate that all future title insurance will be written by that title producer.

(24) Advertisements may not be placed in a publication, including an internet web page and its links, that is hosted, published, produced for, distributed by or on behalf of a client.

(25) A donation may not be made to a charitable organization created, controlled or managed by a client.

(26) A direct or indirect benefit, provided to a client which is not specified in Section R592-6-5 below, will be investigated by the department for the purpose of determining whether it should be defined by the Commission as an unfair inducement under Section 31A-23a-402(8).

(27) Title producers who have ownership in, or control of, other business entities, including I.R.C. Section 1031 qualified intermediaries and escrow companies, may not use those other business entities to enter into any agreement, arrangement, or understanding or to pursue any course of conduct, designed to avoid the provisions of this rule.

R592-6-5. Permitted Advertising, Business Entertainment, and Methods of Competition.

Except as specifically prohibited in Section R592-6-4 above, the following are permitted:

(1) In addition to complying with the provisions of 31A-23a-402 and R590-130, Rules Governing Advertisements of Insurance, advertisement by title producers must comply with the following:

(a) the advertisement must be purely self-promotional; and

(b) advertisement in official trade association publications are permissible as long as any title producer has an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged.

(2) A title producer may use free or paid social media services to promote its own business as long as such social media services are open and available to the general public. Additionally, the following shall be permitted and are not in violation of R592-6-4(22) and (24):

(a) a title producer may write or post on social media services about an event that directly involves the title producer and a client, and it may reference or link to the client's social media page or the client company's social media page; and

(b) a title producer may share, like, respond to, or comment on a client's social media page, post, or event as long as such action is free of charge. Paying a fee to share, like, respond, or comment on any social media service that involves a client or to increase visibility, ranking, or distribution of any social media involving a client is not an allowed exception to R592-6-4(22) and (24).

(3) A title producer may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

(4) A title producer may have two self-promotional open houses per calendar year for each of its owned or occupied facilities, including branch offices. The title producer may not expend more than $15 per guest per open house. The expenditures per guest may not be in the form of a gift, gift certificate, or coupons. The open house may take place on or off the title producer's premises but may not take place on a client's premises.

(5) A donation to a charitable organization must:

(a) not be paid in cash;

(b) if paid by a negotiable instrument, be made payable only to the charitable organization;

(c) be distributed directly to the charitable organization; and

(d) not provide any benefit to a client.

(6) A title producer may distribute self-promotional items having a value of $10 or less, including taxes, setup fees, shipping, and the like, to clients, consumers and members of the general public. These self-promotional items shall be novelty items which are non-edible and may not be personalized or bear the name of the donee. Self-promotional items may only be distributed in the regular course of business. Self-promotional items may not be given to clients or trade associations for redistribution by these entities.

(7) A title producer may make expenditures for business meals or business activities on behalf of any person, whether a client or not, as a method of advertising, if the expenditure meets all the following criteria:

(a) the person representing the title producer must be

present during the business meal or business activity;

(b) there is a substantial title insurance business discussion directly before, during or after the business meal or business activity;

(c) the total cost of the business meal, the business activity, or both is not more than $50 per person, per day;

(d) no more than three individuals from an office of a client may be provided a business meal or business activity by a title producer in a single day; and

(e) the entire business meal or business activity may take place on or off the title producer's premises, but may not take place on a client's premises.

(8) A title producer may conduct continuing education programs that are approved by the appropriate regulatory agency, under the following conditions:

(a) the continuing education program shall address only title insurance, escrow or other topics related thereto;

(b) the continuing education program must be of at least one hour in duration;

(c) for each hour of continuing education, $15 or less per person may be expended, including the cost of meals and refreshments; and

(d) no more than one such continuing education program may be conducted at each individual, physical office location of a client per calendar quarter.

(9) A title producer may acknowledge a wedding, birth or adoption of a child, or funeral of a client or members of the client's immediate family with flowers or gifts not to exceed $75.

(10) A title producer may provide a property profile to a client through any means, including copies thereof. The property profile may include not more than the following:

(a) the last vesting deed of public record;

(b) a plat map reproduction and/or locator map;

(c) tax and property characteristics information from the Treasurer's and Assessor's offices; and

(d) Covenants, Conditions and Restrictions.

(11) A title producer may provide clients access to water, beverages, and edible treats at the title producer's premises.

(12) A title producer may provide a client the documents used to produce a title commitment. The title producer may provide access to the documents used to produce the title commitment through any means.

(13) A title producer may provide a client access to closing software as long as the access is related to a specific transaction identified in the title commitment.

R592-6-6. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.

R592-6-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such 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: title insurance
August 11, 2015 **31A-2-404**
Notice of Continuation June 13, 2014

R623. Lieutenant Governor, Elections.
R623-1. Lieutenant Governor's Procedure for Regulation of Lobbyist Activities.
R623-1-1. Purpose.

Pursuant to Utah Code Section 36-11-404 this rule provides procedures for the lieutenant governor's office to:

A. Issue lobbyist licenses;
B. Disapprove lobbyist applications;
C. Suspend and revoke lobbyist licenses;
D. Reinstate lobbyist licenses; and
E. Appoint administrative law judges.

R623-1-2. Authority.

This rule is required by Utah Code Section 36-11-404.

R623-1-3. Definitions.

In addition to the terms defined in Utah Code Section 36-11-102, the following definitions apply:

A. "Director" means the director of the state elections office.

B. "Register" means the process of obtaining a lobbying license as required by Sections 36-11-103 and 36-11-105.

C. "Report" means any report required under Sections 36-11-201.

R623-1-4. Registration/License Application Procedure.

A. In order to register and obtain a license, a lobbyist shall:

1. Pay the registration fee as required by 36-11-103 and successfully complete the training as required by 36-11-307.

(a) The training for the first year of a two-year license period must be completed before the registration can be approved.

(b) To maintain the license for the second year in a two-year license period, the training for that year must be completed within the first 60 days of the second year or before engaging in lobbying activity, whichever is first.

2. File a registration/license application statement in compliance with the provisions of Section 36-11-103. The lieutenant governor's office shall make available forms that comply with Section 36-11-103. The lobbyist may either:

(a) Submit the completed form to the lieutenant governor's office; or

(b) File the lobbyist registration/license application by completing the electronic form available on the Utah Lobbyist Online system; and submit the completed signature authorization form to the lieutenant governor's office.

B. Upon receipt of a completed lobbyist registration/license application form the lieutenant governor's office shall:

1. Review the registration form for accuracy, completeness and compliance with the law;

2. Approve or disapprove the registration/license application; and

3. Notify the lobbyist in writing within 30 days of approval or disapproval.

C. An applicant who has not been convicted of any of the offenses listed in Section 36-11- 103(4)(a)(i), and who has not had a civil penalty imposed as described in Section 36-11-103(4)(a)(ii), may commence lobbying activities upon filing of a completed registration/license application form with the lieutenant governor's office and payment of the registration fee.

D. By applying for a license, the lobbyist certifies that the lobbyist intends to engage in lobbying activities under the circumstances stated in the application or supplements filed with the lieutenant governor's office during the time the registration and license are valid.

1. If a lobbyist intends to cease all lobbying activities for the remainder of the period of licensure, the lobbyist shall notify the lieutenant governor's office in writing and surrender the license.

2. If the lobbyist has a change in circumstances that affects the lobbyist's activities, the lobbyist shall notify the lieutenant governor's office in writing.

3. If a lobbyist has surrendered the license and then decides to reengage in lobbying activities, a reissued license without a fee may be requested, if it is within the 2-year period of the original registration.

4. The lobbyist must submit a written request to the lieutenant governor's office in order to have the license reissued.

5. A reissued license expires on December 31 of each even numbered year in accordance with Section 36-11-103(3)(b).

E. A lobbyist may add and delete principals and provide other notices electronically as prescribed by the lieutenant governor's office.

R623-1-5. Disapproval of Application.

A. A lobbyist who is convicted of violation of any of the offenses listed in Utah Code Section 36-11-103, shall have his application for license disapproved by the lieutenant governor's office and a license will not be issued.

B. The lobbyist will receive written notice of the license disapproval from the lieutenant governor's office within 30 days.

R623-1-6. Suspensions, Revocations and Fines.

A. Registration and reporting violations.

1. In addition to any fines imposed under 36-11-401, a lobbyist license may be suspended for any of the following willful and knowing violations of Section 36-11-103, Sections 36-11-201:

a. Failure to register;

b. Failure to file a year end or supplemental report on or before the statutory due date;

c. Failure to file a year end or supplemental report;

d. Filing a report or other document that contains materially false information or the omission of material information; including, but not limited to, the failure to list all principals for which the lobbyist works or is hired as an independent contractor;

e. Failure to update a registration when a lobbyist accepts a new client for lobbying; or

f. Otherwise violating Sections 36-11-103, 36-11-201.

2. If a fine or other penalty is imposed more than once under the immediately preceding section, suspension or permanent revocation of the lobbyist license shall be imposed.

3. The determination of the penalty to be imposed will be made by following the procedures as provided by Section R623-1-7.

B. Illegal Activities of lobbyists.

1. If the lieutenant governor's office discovers or receives evidence of a possible violation of Sections 36-11-301 to 305, the evidence will be sent to the appropriate county attorney or district attorney's office for prosecution.

2. If a lobbyist is convicted of a violation of Sections 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305 or 36-11-403, the lieutenant governor shall revoke the lobbyist license for one year as required by Subsection 36-11-401(1) and give the lobbyist notice of the same, together with notice of the lobbyist's right to request a hearing under Section R623-1-9.

3. If the county or district attorney does not prosecute a possible violation under Sections 36-11-302 or 36-11-303, the lieutenant governor's office shall review the evidence to determine if a civil fine or suspension may be appropriate following the procedures for civil enforcement set forth in Section R623-1-7.

4. If a lobbyist is convicted of a violation of any of the Title 76 Criminal Code Sections referenced in Subsection 36-11-401(4), suspension of up to three years or permanent revocation of the lobbyist license shall be imposed, but no civil fine may be imposed. The determination of whether to revoke or suspend a lobbyist license and for what length of time shall be made following the procedures for civil enforcement as provided by

Section R623-1-7.

R623-1-7. Enforcement.

A. Any person with evidence of a possible violation of the Lobbyist Disclosure and Regulation Act may provide such evidence to the director in the lieutenant governor's office or may file a complaint with such officer. If the evidence is of a criminal violation, the person may report the information directly to the appropriate county attorney or district attorney.

B. If the director discovers or receives evidence of a criminal violation, such evidence shall be provided to the appropriate county or district attorney and any civil enforcement actions will proceed as set forth in Subsection R623-1-6(B).

C. If the director discovers or receives evidence of a violation of a civil provision, the director will investigate the alleged violation and make a determination regarding what fine and/or suspension or revocation should be imposed, if any.

D. The director shall give notice of the recommended penalty to the lobbyist, and if a complaint was filed, to the complainant.

E. If either the lobbyist or the complainant desire to contest the recommended penalty, they or either of them may do so by requesting a hearing within fifteen (15) days of receipt of the notice of the recommended penalty. If neither file a request for a hearing within the fifteen day period, the recommended penalty will be the penalty imposed for the violation. The notice of recommended penalty shall include a notice of hearing rights.

F. The administrative law judge for the hearing is not bound by the recommended penalty and may impose a penalty greater or less than the recommended penalty, as seems justified by the evidence.

G. If a lobbyist license is suspended or revoked, the lieutenant governor's office shall remove the lobbyist's name from the official list and notify the following of such:

1. The speaker of the house of representatives;
2. The president of the senate; and
3. The governor.

R623-1-8. Hearings, Appointment of Administrative Law Judges.

A. Hearings will be conducted as informal adjudicative proceedings under the Administrative Procedures Act.

B. The lieutenant governor's office shall appoint administrative law judges from state agencies to act as presiding officers over adjudicative proceedings.

R623-1-9. Reinstatement of a Lobbyist License.

A. A lobbyist whose license is suspended or revoked may apply for reinstatement.

B. The lieutenant governor's office shall not reinstate any lobbyist license until the lobbyist pays any fines that have been imposed.

KEY: lobbyists, lobbyist registration
August 24, 2015 36-11-404
Notice of Continuation March 26, 2014

R651. Natural Resources, Parks and Recreation.
R651-602. Aircraft and Powerless Flight.
R651-602-1. Landing or Taking Off.

The landing or taking off of aircraft within the park system other than at designated lakes, reservoirs or landing areas is prohibited.

R651-602-2. Air Delivery or Pickup.

Except in emergencies, the air delivery or pickup of any person or thing without advanced permission from the park manager is prohibited.

R651-602-3. Powerless Flight Launching and Landing.

The launching or landing of gliders, hot-air balloons, hang gliders, and other devices designed to carry persons or objects through the air in powerless flight is prohibited except by Special Use Permit (see R651-608).

R651-602-4. Lakes and Reservoirs Designated as Open.

The following lakes and reservoirs are designated as open to the landing of aircraft: (1) Deer Creek; (2) Jordanelle; (3) Rockport, (4) Starvation (5) Willard Bay.

R651-602-5. Aircraft Prohibited from Landing on Lakes or Reservoirs.

Except as outlined in R651-602-2, aircraft are prohibited from landing or taking off on "designated as open" lakes or reservoirs when any one of the following conditions exists. (1) On a Friday, Saturday, Sunday, or during a holiday period between May 1 to September 30; or (2) Anytime the aircraft cannot maintain a distance of at least 500 feet from any person, vessel, vehicle or structure during landing or takeoff.

R651-602-6. Aircraft on the Water Operation Requirements.

A person operating an aircraft on the water: (1) shall not approach within 500 feet of a marina, launch ramp, boat dock, vessel or a beach occupied by person(s), when using the aircraft's primary propulsion system(s); (2) shall comply with Federal Aviation Regulations, Section 91.115, Right-of-way rules: Water operations.

R651-602-7. Parks Designated Open to Gliders.

The following parks are designated as open to launching and landing powerless paragliders and hang gliders: Flight Park State Recreation Area.

KEY: parks
August 28, 2015 **79-4-501**
Notice of Continuation June 25, 2013

R657. Natural Resources, Wildlife Resources.
R657-9. Taking Waterfowl, Wilson's Snipe and Coot.
R657-9-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Wilson's snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory games birds to, on, or over any areas where hunters are attempting to take them.

(c) "CFR" means the Code of Federal Regulations.

(d) "Daily Bag Limit" means the maximum number of migratory game birds of a single species or combination (aggregate) of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

(e) "Dark geese" means the following species: cackling, Canada, white-fronted and brant.

(f) "Light geese" means the following species: snow, blue and Ross'.

(g) "Live decoys" means tame or captive ducks, geese or other live birds.

(h) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(i) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(j) "Possession limit" the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

(k) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(l) "Transport" means to ship, export, import or receive or deliver for shipment.

(m) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(n) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

R657-9-3. Stamp Requirements.

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird hunting and conservation stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird hunting and conservation stamp is not required for any person under the age of 16.

R657-9-4. Permit Applications for Swan.

(1) Swan permits will be issued pursuant to R657-62-22.

R657-9-5. Tagging Swans.

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

R657-9-6. Return of Swan Harvest and Hunt Information.

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must respond to the swan questionnaire through the division's Internet address, or by telephone, within 30 calendar days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

(4) late swan questionnaires may be accepted pursuant to Rule R657-42-9(3). Swan permit holders are still required to present the swan or its head for measurement to a division office.

R657-9-7. Authorized Weapons.

(1) Migratory game birds may be taken with a shotgun, crossbow or archery tackle, including a draw lock.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells, except as authorized by the Wildlife Board and specified in the guidebook of the Wildlife Board for taking Waterfowl, Wilson's snipe and Coot.

R657-9-8. Nontoxic Shot.

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs; or

(d) on the Scott M. Matheson wetland preserve.

R657-9-9. Use of Weapons on State Waterfowl Management Areas.

(1) A person may not possess a firearm, crossbow, or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart's Lake, Timpie Springs and Topaz.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession, except as provided in

Rule R657-12.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-9-10. Airborne, Terrestrial, and Aquatic Vehicles.

Migratory game birds may not be taken:

(1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furled and its progress has ceased: provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or

(2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

R657-9-11. Airboats.

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:

(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line dike, and outside Units 1, 3, 4 and 5 as posted.

(b) Daggett County: Brown's Park

(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units or as posted

(d) Emery County: Desert Lake

(e) Millard County: Clear Lake, Topaz Slough

(f) Tooele County: Timpie Springs

(g) Uintah County: Stewart's Lake

(h) Utah County: Powell Slough

(i) Wayne County: Bicknell Bottoms

(j) Weber County: Ogden Bay within diked units or as posted and the portion of Harold S. Crane Waterfowl Management Area that falls within the county line.

(2) "Personal watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

R657-9-12. Motorized Vehicle Access.

(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(2) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.

(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(4) Motorized boat use is restricted on waterfowl management areas as specified in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-13. Sinkbox.

A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

R657-9-14. Live Decoys.

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

R657-9-15. Amplified Bird Calls.

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds except as authorized by the Wildlife Board and specified in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-16. Baiting.

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, is legal on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-9-17. Possession During Closed Season.

No person shall possess any freshly killed migratory game birds during the closed season.

R657-9-18. Live Birds.

(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag limit.

(2) No person shall at any time, or by any means possess or transport live migratory game birds.

R657-9-19. Waste of Migratory Game Birds.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

R657-9-20. Termination of Possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

R657-9-21. Tagging Requirement.

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

R657-9-22. Donation or Gift.

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

R657-9-23. Custody of Birds of Another.

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-21.

R657-9-24. Species Identification Requirement.

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

R657-9-25. Marking Package or Container.

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

R657-9-26. Migratory Bird Preservation Facilities.

(1) Migratory bird preservation facility means:

(i) Any person who, at their residence or place of business and for hire or other consideration; or

(ii) Any taxidermist, cold-storage facility or locker plant which, for hire or other consideration; or

(iii) Any hunting club which, in the normal course of operations; receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage or shipment.

(2) No migratory bird preservation facility shall:

(a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show:

(i) the number of each species;

(ii) the location where taken;

(iii) the date such birds were received;

(iv) the name and address of the person from whom such birds were received;

(v) the date such birds were disposed of; and

(vi) the name and address of the person to whom such birds were delivered; or

(b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.

(3) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.

(4) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

R657-9-27. Importation.

A person may not:

(1) import migratory game birds belonging to another person; or

(2) import migratory game birds in excess of the following importation limits:

(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;

(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;

(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

R657-9-28. Use of Dogs.

(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in the Wildlife Code, administrative rules issued under Wildlife Code, or a guidebook of the Wildlife Board.

(2) Dogs may be used to locate and retrieve turkey during open turkey hunting seasons.

(3) Dogs are generally allowed on state wildlife management and waterfowl management areas, subject to the following conditions.

(a) Dogs are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the Division:

(i) Annabella;
(ii) Bear River Trenton Property Parcel;
(iii) Bicknell Bottoms;
(iv) Blue Lake;
(v) Browns Park;
(vi) Bud Phelps;
(vii) Clear Lake;
(viii) Desert Lake;
(ix) Farmington Bay;
(x) Harold S. Crane;
(xi) Hatt's Ranch
(xii) Howard Slough;
(xiii) Huntington;
(xiv) James Walter Fitzgerald;
(xv) Kevin Conway;
(xvi) Locomotive Springs;
(xvii) Manti Meadows;
(xviii) Mills Meadows;
(xix) Montes Creek;
(xx) Nephi;
(xxi) Ogden Bay;
(xxii) Pahvant;
(xxiv) Public Shooting Grounds;
(xxv) Redmond Marsh;
(xxvi) Richfield;
(xxvii) Roosevelt;

(xxviii) Salt Creek;
(xxix) Scott M. Matheson Wetland Preserve;
(xxx) Steward Lake;
(xxxi) Timpie Springs;
(xxxii) Topaz Slough;
(xxxiii) Vernal; and
(xxxiv) Willard Bay.

(b) The Division may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific Division properties and at Regional offices;

(c) Organized events or group gatherings of twenty-five (25) or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in R657-28; and

(d) Dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the Division without a special use permit.

R657-9-29. Season Dates and Bag and Possession Limits.

(1) Season dates and bag and possession limits are specified in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

(2) A youth duck hunting day may be allowed for any person 15 years of age or younger as provided in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-30. Rest Areas and No Shooting Areas.

(1) A person may only access and use state waterfowl management areas in accordance with state and federal law, state administrative code, and proclamations of the Wildlife Board.

(2)(a) The division may establish portions of state waterfowl management areas as "rest areas" for wildlife that are closed to the public and trespass of any kind is prohibited.

(b) In addition to any areas identified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot, the following areas are designated as rest areas:

(i) That portion of Clear Lake Waterfowl Management Area known as Spring Lake;

(ii) That portion of Desert Lake Waterfowl Management Area known as Desert Lake;

(iii) That portion of Public Shooting Grounds Waterfowl Management Area that lies above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake";

(iv) That portion of Salt Creek Waterfowl Management Area known as "Rest Lake"; and

(v) That portion of Farmington Bay Waterfowl Management Area that lies in the northwest quarter of unit one.

(d) Maps of all rest areas will be available at division offices, on the division's website, and to the extent necessary, marked with signage at each rest area.

(3)(a) The division may establish portions of state waterfowl management areas as "No Shooting Areas" where the discharge of weapons for the purposes of hunting is prohibited.

(b) No Shooting Areas remain open to the public for other lawful activities.

(c) In addition to any areas identified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot, the following areas are No Shooting Areas:

(i) Within 600 feet of the north and south side of the center line of Antelope Island causeway;

(ii) Within 600 feet of all structures found at Brown's Park Waterfowl Management Area;

(iii) The following portions of Farmington Bay Waterfowl Management Area:

(A) within 600 feet of the Headquarters and Learning Center area; and

(B) within 600 feet of dikes and roads accessible by motorized vehicles;

(iv) Within 600 feet of the headquarters area of Ogden Bay Waterfowl Management Area;

(v) Within the boundaries of all State Parks except those designated open by appropriate signage as provided in Rule R651-614-4;

(vi) Within 1/3 of a mile of the Great Salt Lake Marina;

(xi) Within 600 feet of Gunnison Bend Reservoir and its inflow upstream to the Southerland Bridge, Millard County;

(xii) All property within the boundary of the Salt Lake International Airport; and

(xii) All property within the boundaries of federal migratory bird refuges, unless hunting waterfowl specifically authorized by the federal government.

(4) The division reserves the right to manage division lands and regulate their use consistent with Utah Code Section 23-21-7 and Utah Administrative Code R657-28.

R657-9-31. Shooting Hours.

(1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.

(2) Legal shooting hours for taking or attempting to take waterfowl, Wilson's snipe, and coot are provided in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-32. Falconry.

(1) Falconers must obtain a valid hunting or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.

(2) Areas open and bag and possession limits for falconry are specified in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-33. Migratory Game Bird Harvest Information Program (HIP).

(1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person must call the telephone number published in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot, or register online at the address published in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;
(b) hunting license type;
(c) name;
(d) address;
(e) phone number;
(f) birth date; and
(g) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-9-34. Waterfowl Blinds on Waterfowl Management Areas.

(1) Waterfowl blinds on division waterfowl management

areas may be constructed or used as provided in Subsection (a) through Subsection (e).

(a) Waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located.

(b) Trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the division.

(c) Excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the division.

(d) Rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind.

(e) Waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit, and Doug Miller Unit.

(b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake.

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3.

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the division without notice.

(4) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

(5) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

KEY: wildlife, birds, migratory birds, waterfowl
August 7, 2015 23-14-18
Notice of Continuation August 16, 2011 23-14-19
50 CFR part 20

R657. Natural Resources, Wildlife Resources.
R657-24. Compensation for Mountain Lion, Bear, Wolf or Eagle Damage.
R657-24-1. Purpose and Authority.

Under authority of Section 23-24-1, this rule provides the procedures, standards, requirements and limits for obtaining compensation for damages to livestock by mountain lion, black bear, wolf or an eagle.

R657-24-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-24-1(1).

(2) In addition:

(a) "Black bear" means Ursus americanus.

(b) "Fair market value" means the average commercial livestock prices from July 1 through June 30, as determined by the Utah Livestock and Auction Reporting Service.

(c) "Injury" means an act by a mountain lion or bear that results in the death of livestock within 30 days of the act or a permanent injury to livestock.

(d) "Livestock" means cattle, sheep, goats, or turkeys.

(e) "Mountain lion" means Felis concolor.

(f) "Eagle" means Haliacctus leucocephalus (bald eagle) and Aquila chrysaetos (golden eagle).

(g) "Wolf" means Canis lupus

R657-24-3. Notification of Damage -- Payment of Damage Claims.

(1) When livestock are damaged by a mountain lion, bear, wolf or an eagle, the owner may receive compensation in accordance with Section 23-24-1(2).

(2)(a) Notification must be given to the Division within 4 days of the damage.

(b) Notification may be made orally to expedite field investigations, but it must be followed with a draft (unsigned) Livestock Damage Proof of Loss form within 14 days of the conclusion of the field investigation.

(c) Final signed copies of the Livestock Damage Proof of Loss form must be submitted to the mammals program coordinator by June 1 except for damage that occurs between May 15 and June 30 for which the final signed copy of the Livestock Damage Proof of Loss form must be received by June 30.

(3)(a) Claims for damage payments received from July 1 through June 30 are assessed and accepted or denied based on information reported on the Livestock Damage Proof of Loss form.

(b) Claims accepted for damage payments are held until all damage claims for the July 1 through June 30 period have been collected.

(c) If the total amount of the damage claims exceed the appropriated funds for this purpose, damage payments will be prorated for all eligible claims.

(d) Payments for eagle damage claims shall not be made until all accepted mountain lion, bear and wolf claims for a fiscal year have first been paid.

(e) Payments for wolf damage claims will only be made for damage that occurs in areas of the state where wolves are removed from the protection of the Endangered Species Act.

(4)(a) Damage payments will be paid only for confirmed losses and only to livestock producers who have paid the required head tax in accordance with Section 23-24-1(2).

(b) Verification of the payment of head tax will be acquired from the Utah Department of Agriculture.

(5)(a) The division or USDA-APHIS Wildlife Services specialists will document on approved Livestock Damage Proof of Loss forms the type and magnitude of livestock losses experienced by livestock producers.

(b) Where agreement with the type or magnitude of losses is not achieved by a USDA-APHIS Wildlife Services specialists, a division representative shall follow up with an additional field investigation to assess damage claims.

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R657. Natural Resources, Wildlife Resources.
R657-65. Urban Deer Control.
R657-65-1. Authority and Purpose.

(1) This rule is promulgated under authority of Sections 23-14-3, 23-14-18, and 23-14-19.

(2) The purpose of this rule is to enable a city to design and administer a control plan for the lethal or non-lethal removal of resident deer damaging private property or threatening public safety within the city.

R657-65-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Deer" means wild deer (Odocoileus hemionus or Odocoileus virginianus) living in nature and does not include privately owned, captive deer.

(b) "Division" means the Utah Division of Wildlife Resources.

(c) "City" means an incorporated municipality with greater than 1,000 residents.

(d) "Resident deer" means a deer that lives within city boundaries year-around.

(e) "Urban deer control plan" means a document designed, created, and administered by a city that establishes the protocols and methodologies it will pursue to control and mitigate private property damage or public safety threats caused by deer within its incorporated boundaries.

R657-65-3. Authorization to Create and Administer an Urban Deer Control Plan.

(1) A city with a resident deer population that is significantly damaging private property or threatening public safety within its boundaries may request the Division for a certificate of registration ("COR") to design, create, and administer an urban deer control plan.

(2) The Division may issue an urban deer control plan COR to a city, provided:

(a) the application is filed by a city;

(b) resident deer are collectively causing significant damage to private property or threatening public safety within the city's incorporated boundaries;

(c) it has enacted an ordinance prohibiting the feeding of deer, elk, and moose;

(d) it has general liability insurance in the amount of $1,000,000.00 or more that covers liability claims that may arise from designing, creating, and administering an urban deer control plan;

(e) it agrees, without waiving immunity or any other limitation or provision in the Utah Governmental Immunity Act, Utah Code Sections 63G-7-101 through 63G-7-904, to hold harmless and indemnify the Division against any claims or damages arising from its deer removal activities undertaken pursuant to the urban deer control plan COR, except for any allocated share of fault and damages attributable to the Division's actual involvement in deer removal activities on the ground: and

(f) it submits with its application the estimated population of resident deer in the city and the final target population number it seeks to achieve through deer removal.

R657-65-4. COR Authorities and Limitations.

(1) An urban deer control plan COR issued to a city will:

(a) specify for each year of the COR term:

(i) the seasonal time period when deer may be removed;

(ii) the total number of deer that may be removed; and

(iii) the number of deer by gender that may be removed: and

(b) authorize it to design, create, and administer an urban deer control plan consistent with the season and number limitations imposed in the COR and the following authorities and limitations.

(2) The COR authorizes the city to:

(a) prescribe and employ lethal methods of take to control deer, provided the methods are otherwise in compliance with state and federal law;

(b) utilize baiting to facilitate safe and effective deer removal activities;

(c) select and supervise individuals to perform specified deer removal activities, provided the city:

(i) issues to each individual authorized to remove deer a written authorization and tag that:

(A) is on a form prescribed by the Division;

(B) is signed by the city manager and recipient;

(C) identifies the recipient's name, address, date of birth, gender, height, weight, and eye color;

(D) describes the locations, time periods, methods of take, and related activities authorized by the city; and

(E) includes a detachable tag consistent with the requirements in Section 23-20-30;

(d) allow a single individual to take more than one deer;

(e) permit spotlighting to facilitate non-lethal deer removal or carcass recovery efforts; and

(f) remove deer consistent with the annual buck and doe take prescriptions and season limitations set forth in the COR.

(3) The city will:

(a) require individuals authorized to lethally remove deer to:

(i) tag the carcass consistent with Section 23-20-30; and

(ii) comply with all federal, state, and local laws pertaining to the possession, use, and discharge of a dangerous weapon; and

(b) take measures to ensure that:

(i) deer carcasses are salvaged consistent with Section 23-20-8 (Waste of Wildlife) and disposed of as provided by law;

(ii) viscera is removed from the kill site and disposed of as provided by law;

(iii) antlers of lethally removed deer are promptly surrendered to the Division and not retained by the city or the person that takes the animal: and

(iv) submit an annual report to the Division by March 1 on lethal removal activities, including the following information for each permit issued:

(A) name of shooter/permit holder;

(B) sex of the animal;

(C) date of harvest; and

(D) disposition of carcass, ie, retained by hunter, donated, etc.

(4) The city will not:

(a)(i) capture a deer for release outside municipal boundaries without a written capture and relocation plan prepared in coordination with and approved by the Division;

(ii) capture or relocate a deer in violation of the approved capture and relocation plan; or

(iii) allow an employee, officer, agent, licensee, or contractor who has not been certified and approved according to the written capture and relocation plan to capture or release a deer.

(b) sell or barter a deer carcass or otherwise use it for pecuniary gain without prior written approval from the Division;

(c) collect a fee or compensation from a person or entity it authorizes to remove deer from its incorporated boundaries, unless the fee or compensation is:

(i) $50 or less;

(ii) used exclusively to recoup the actual costs incurred by the city in:

(A) selecting and qualifying the person; or

(B) butchering and processing lethally removed deer for donation; and

(iii) approved by the Division in writing;

(d) undertake or authorize deer removal activities outside:

(i) incorporated city boundaries or any unincorporated areas approved by the Division and the county; or

(ii) the the season time frame prescribed in the COR;

(e) remove more deer, collectively or by gender, than authorized in the COR; or

(f) authorize the discharge of firearms or archery equipment for deer removal:

(i) between one half hour after official sunset and one half hour before official sunrise; or

(ii) in violation of federal, state, or local laws.

R657-65-5. Urban Deer Control Plan.

(1) Upon receipt of an urban deer control plan COR, the city must prepare an urban deer control plan consistent with this Subsection and the COR prior to undertaking any deer removal activities.

(2) The urban deer control plan will address and prescribe, at a minimum, the:

(a) lethal methods of take that may be used to remove deer and the conditions under which each may be employed;

(b) conditions and restrictions under which baiting and spotlighting may be used to facilitate deer removal;

(c) persons eligible to perform deer removal activities and the requirements imposed on them;

(d) locations and time periods where specified types of deer removal activities may be employed or authorized;

(e) requirements for tagging deer carcasses;

(f) protocols for carcass removal and disposal;

(g) procedures for promptly returning to the Division all antlers of lethally removed deer;

(h) procedures for obtaining Division input and approval on live capture and relocation projects; and

(i) the estimated population of resident deer in the city and the final target population number the city seeks to achieve through deer removal.

(3) All aspects of the plan must be consistent with the authorizations and limitations imposed in this rule and the COR.

(4) If the city desires to capture and relocate resident deer, it must petition the Division to include a capture and relocation component in its urban deer control plan.

(a) The Division shall have sole discretion to authorize or prohibit capture and relocation as part of an urban deer control plan.

(5)(a) The city will solicit and consider input in the formulation and development of the urban deer control plan from:

(i) the Division;

(ii) the public;

(iii) interested businesses and organizations; and

(iv) local, state, and federal governments.

(b) The Division may provide technical assistance to the city in preparing the urban deer control plan.

(c) After formulating a draft plan, the city will hold a public meeting to take and consider input on the draft before finalizing or implementing it.

(6) The city will assume full responsibility for:

(a) all costs associated with designing, establishing, implementing, and operating the urban deer control plan and all its associated activities; and

(b) for the acts and omissions of its officers, employees, agents, contractors, and licensees in designing, preparing, and implementing its urban deer control plan and undertaking the activities authorized thereunder.

R657-65-6. COR Term, Termination, Renewal, and Amendment.

(1) An urban deer control plan COR issued under this rule will remain valid for three years from the date of issuance.

(2)(a) The Division and the city shall each have the right to unilaterally terminate an urban deer control plan COR with or without cause upon 7 days advance written notice to the other.

(b) Upon termination or expiration of the COR, the city and its officers, employees, agents, contractors, and licensees must cease all deer removal activities formally authorized by the COR.

(3) Upon application by a city, the Division may renew an urban deer control plan COR for an additional three year term, provided:

(a) the city complies with the conditions in R657-65-3(2); and

(b) the application for renewal is presented at a public meeting for comment and approved by the city council.

(4) A urban deer control plan may be amended upon mutual written agreement of the city and Division, provided the amendment is consistent with the authorizations and limitations in this rule.

R657-65-7. Violations.

Pursuant to Section 23-19-9, the Division may suspend, restrict, or deny an urban deer control plan COR for any intentional, knowing, or reckless violation of the Wildlife Code, this rule, or the terms of the COR.

KEY: wildlife, certificate of registration
August 7, 2015 **23-14-3**
23-14-18
23-14-19

R657. Natural Resources, Wildlife Resources.
R657-70. Taking Utah Prairie Dogs.
R657-70-1. Purpose and Authority.

(1) Under authority of Sections 23-14-1, 23-14-3, 23-14-18 and 23-14-19, this rule provides the standards and requirements for taking Utah prairie dogs.

(2) A person capturing any live Utah prairie dog for a personal, scientific, educational, or commercial use must comply with rule R657-3, Collection, Importation, Transportation and Possession of Animals.

R657-70-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) Additional terms used in this rule are defined as follows:

(a) "Agriculture land" means any mapped, non-federal property that is used or has been used in the previous five (5) years for production of a cultivated crop or irrigated pasture that is harvested or grazed.

(b) "Certificate of registration" means a document issued by the division authorizing a person or entity to take a Utah prairie dog.

(c) "Developed land" means any mapped, non-federal property that is:

(i) developed or improved for public use and where Utah prairie dogs threaten human health, safety or welfare, including parks, playgrounds, public facilities, sports fields, golf courses, school yards, churches, areas of cultural or religious significance, improved roads, transportation systems, etc.; or

(ii) within 50 feet of an occupied, residential or commercial structure, or greater distance where prairie dogs threaten human health, safety or welfare on developed curtilage, including lawns, landscaping, gardens, driveways, etc.

(d) "Developable land" means any mapped, non-federal property that does not have structures or improvements on the surface of the property, excluding utilities, on which construction of permanent structures or improvements is proposed.

(e) "Division" means the Utah Division of Wildlife Resources.

(f) "Federal land" means all lands in the State of Utah owned by the United States government, including Forest Service, Bureau of Land Management, Bureau of Reclamation, Department of Defense, National Park Service, Bureau of Indian Affairs, National Monument, and National Recreation Area lands.

(g) "Immediate family" means a landowner's or lessee's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild, and grandchild.

(h) "Landowner" means the person(s) or entity holding fee title to real property impacted by Utah prairie dogs.

(i) "Lessee" means the person(s) or entity leasing or renting under written contract real property impacted by Utah prairie dogs.

(j) "Mapped" means areas within the state identified and documented since 1972 by the division as currently or historically occupied by Utah prairie dogs, excluding mapped areas with a spring count of zero (0) animals in the current year and the preceding four (4) years.

(k) "Non-federal lands" means all lands in the State of Utah that are not owned by the United States government.

(l) "Productivity" means the segment of a population represented by young of the year; and is calculated by multiplying the spring count (animals observed) by 2 (animals underground), and multiplying that figure by 67% (percent females in the population), and multiplying that figure by 97% (percent females that breed), and multiplying that figure by 4 (average litter size).

(m) "Protected land" means federal and non-federal property that is set aside for the preservation of Utah prairie dogs and protected specifically or primarily for that purpose. Protective mechanisms can include conservation easements, fee title purchases, regulatory designations, etc.

(n) "Rangeland" means any mapped, non-federal property that is used or has been used in the previous five (5) years for grazing livestock, and is neither cultivated nor irrigated.

(o) "Recovery unit" means one of the three geographic areas established by the Utah Prairie Dog Recovery Team for the protection and management of Utah prairie dogs - West Desert Recovery Unit, Paunsaugunt Recovery Unit, and Awapa Plateau Recovery Unit. Maps and boundaries of these units may be obtained from the division.

(p) "Unmapped" means any area of the state on non-federal land that is not classified as mapped by the division.

(q) "Utah prairie dog" or "prairie dog" means the genus and species Cynomys parvidens.

R657-70-3. Legal Status of Utah Prairie Dog.

(1) On federal land, the Utah prairie dog is listed as threatened under the Endangered Species Act of 1973 and subject to the federal laws, authorities and jurisdictions applicable to listed species.

(a) A person may not take a prairie dog on federal land, except as authorized by the:

(i) United States Fish and Wildlife Service and the federal regulations applicable to the species; and

(ii) division pursuant to this rule.

(2) On non-federal land, the Utah prairie dog is not subject to the Endangered Species Act of 1973 and is managed by State of Utah through the division.

(a) A person may not take a prairie dog on non-federal land, except as authorized by the Wildlife Code and this rule.

R657-70-4. Take of Utah Prairie Dogs on Federal Land.

(1) A person may not take a Utah prairie dog on federal land:

(a) except as authorized by the U.S. Fish and Wildlife Service and federal regulation; and

(b) without obtaining a certificate of registration from the division.

(2) Notwithstanding Subsection (1)(b), a certificate of registration is not required when a person receives an incidental take permit from the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act.

R657-70-5. Take of Utah Prairie Dogs in Inhabited Structures on Non-federal Land.

(1)(a) Notwithstanding R657-70-13, any person, with the consent of the owner or lessee, may take a Utah prairie dog on non-federal land that is within the interior of a structure inhabited or occupied by people.

(b) For purposes of this section, an inhabited or occupied structure means a building where people live, work, or visit, such as a home, apartment, hotel, commercial or public office, public building, church, store, warehouse, business, work shop, restaurant, etc.

(2) A certificate of registration or prior notice to the division is not required to take a prairie dog under this section.

(3) A person that takes a prairie dog under this section is required to submit a monthly report to the division under R657-70-15.

R657-70-6. Take of Utah Prairie Dogs on Unmapped Land.

(1) A person may not take a Utah prairie dog on unmapped land, except as provided in this section and R657-70-8.

(2) A landowner or lessee of unmapped land may take a prairie dog on that land without a certificate of registration, provided:

(a) the division is notified prior to take and the property where take will occur is confirmed by the division to be

unmapped land;

(b) take is performed exclusively by the individuals and under the conditions set forth in R657-70-13;

(c) take is restricted to the unmapped land owned by the landowner, or leased by the lessee; and

(d) the methods utilized to take prairie dogs are consistent with the limitations in R657-70-14;

(3) Prairie dogs may be taken pursuant to this section year-round and without numerical limitation.

(4) A person that takes a prairie dog under this section shall submit a monthly report to the division, as provided in R657-70-15.

R657-70-7. Take of Utah Prairie Dogs on Developed Land.

(1) A person may not take a Utah prairie dog on developed land, excepted as provided in this section and R657-70-8.

(2) A landowner or lessee of developed land may take a prairie dog on that land without a certificate of registration, provided:

(a) The division is notified prior to take and the property where take will occur is confirmed by the division to be developed land;

(b) Take is performed exclusively by the individuals and under the conditions set forth in R657-70-13;

(c) Take is restricted to the developed land owned by the landowner, or leased by the lessee; and

(d) The methods utilized to take prairie dogs are consistent with the limitations in R657-70-14;

(3) Prairie dogs may be taken pursuant to this section year around and without numerical limitation.

(4) A person that takes a prairie dog under this section shall submit a monthly report to the division, as provided in R657-70-15.

R657-70-8. Local Law Enforcement Take of Utah Prairie Dogs on Non-federal Land.

(1)(a) Upon request of a county, the division may issue a certificate of registration to the sheriff and deputies of that county authorizing them to take Utah prairie dogs threatening public health, safety or welfare on non-federal land within the municipal boundaries of any city or town in the county.

(b) Upon request of a city or town, the division may issue a certificate of registration to the law enforcement authority of that city or town authorizing it to take Utah prairie dogs threatening public health, safety or welfare on non-federal land within the municipal boundaries of the city or town.

(2) A certificate of registration issued to a law enforcement authority under this section may permit lethal take or live trapping and relocation to a division approved release site.

(3) A county sheriff or the municipal law enforcement authority issued a certificate of registration under this section will report annually or upon request by the division, the number of prairie dogs lethally removed and the number captured and relocated, including the release site locations.

R657-70-9. Range-wide Take Limit for Developable Land, Agriculture Land, and Rangeland.

(1) Except as provided in Subsection (2), no more than 6,000 Utah prairie dogs will be authorized for range-wide take annually on developable land, agriculture land, and rangeland.

(2)(a) When the range-wide spring count of adult prairie dogs on non-federal/non-protected lands exceeds 6,000 individuals, the annual 6,000 range-wide take limit will be increased by 1/2 the number counted in excess of 6,000.

(b) When, and as long as, the three year average spring count of adult prairie dogs on protected land in a single recovery unit reaches 2,000 individuals, all certificate of registration requirements and numerical take limitations on non-federal/non-protected land in that recovery unit will be removed.

(i) All other restrictions on prairie dog take in the recovery unit will remain in place and enforceable.

(3) Prairie dog take on unmapped land, developed land, and inhabited structures does not count against the 6,000 animal annual limit.

R657-70-10. Take of Utah Prairie Dogs on Developable Land.

(1) A person may not take a Utah prairie dog on developable land without first obtaining a certificate of registration from the division.

(2)(a)(i) A person may obtain a certificate of registration to take prairie dogs on developable land when:

(A) a construction project is proposed for a parcel of developable land; and

(B) construction on the project is imminent.

(ii) The project proponent must notify the division prior to disturbing the surface of the ground or building a structure on developable land.

(b) Upon receiving notice of the proposed construction project, the division will survey the subject property for the presence of prairie dogs.

(i) If the property is not occupied by prairie dogs, the division will issue a written notification to the project proponent authorizing the project to proceed.

(ii) If prairie dogs are discovered on the property, the division will first attempt to trap and relocate the animals to the extent feasible and in coordination with the project proponent.

(A) Prairie dogs trapped and relocated from July 1 through October 1 are not counted against the range-wide prairie dog limit in R657-70-9.

(iii) If the project proponent declines to delay the project for trapping, or when trapping is determined complete, the division will issue a certificate of registration to the project proponent authorizing take of all prairie dogs present or remaining on the property.

(A) All take is counted against the range-wide prairie dog limit in R657-70-9.

(3) Notwithstanding the limitations in R657-70-13, take may be performed by any person authorized by the project proponent.

(4) Take is allowed only on the property proposed for the project and identified in the certificate of registration.

(5) Prairie dogs may be taken pursuant to this section year around.

R657-70-11. Take of Utah Prairie Dogs on Agriculture Land.

(1) A person may not take a Utah prairie dog on agriculture land without first obtaining a certificate of registration from the division, except as provided in R657-70-7.

(2) A landowner or lessee of agriculture land may apply to the division for a certificate of registration to take prairie dogs damaging their agriculture land.

(a) The application shall include the:

(i) applicant's full name, mailing address, and phone number;

(ii) applicant's status as an owner or lessee of the property;

(iii) landowner's signature, and consent when the applicant is a lessee;

(iv) name and identifying information for each individual designated by the applicant and eligible under R657-70-13 to take prairie dogs on the property; and

(v) township, range, section, 1/4 section, and parcel number of the agricultural land where the prairie dogs will be taken.

(b) An application for a certificate of registration must be submitted to the division's southern region office at 1470 North Airport Road, Suite 1, Cedar City, Utah 84721, or online when available.

(c) Upon receipt of an application, the division will determine the maximum number of Utah prairie dogs that may be

taken on the property under a certificate of registration.

(i) The division will calculate the yearly maximum take using the following criteria:

(A) 50% of prairie dog productivity on the property may be authorized for take when the three year average spring count on protected land in the recovery unit is 999 or less;

(B) 100% of prairie dog productivity on the property may be authorized for take when the three year average spring count on protected land in the recovery unit is between 1,000 and 1,249;

(C) 100% of prairie dog productivity and 33% of spring count on the property may be authorized for take when three year average spring count on protected land in the recovery unit is between 1,250 and 1,499;

(D) 100% of prairie dog productivity and 66% of spring count on the property may be authorized for take when three year average spring count on protected land in the recovery unit is between 1,500 and 1,999; and

(E) Unlimited take is authorized without a certificate of registration when the three year average spring count on protected land in the recovery unit is 2,000 or greater.

(3)(a) After review of the application and determining the maximum take limit for the property, a certificate of registration may be issued.

(b) The certificate of registration will identify:

(i) the name of the property owner, lessee, or other person authorized to take prairie dogs on the property;

(ii) the maximum number of prairie dogs that may be taken on the property; and

(iii) a general description of the location and boundaries of the subject property.

(c) A certificate of registration shall be issued on an individual basis and shall be valid only for the person to whom it is issued.

(d) A certificate of registration is not transferrable and must be signed by the holder prior to use.

(e) If the application and permitting process is accomplished by U.S. Mail, the certificate of registration shall only become valid after a copy of the signed certificate of registration is received by the division's southern regional office.

(4) Prairie dogs allowed by the landowner or lessee to be trapped on the property and relocated by the division between July 1 and October 1 - before lethal take - will not count against the range-wide prairie dog limit in R657-70-9 or the property's maximum take limit identified on the certificate of registration unless the landowner or leesee is enrolled in the damage compensation program.

(5)(a) A landowner or lessee that obtains a certificate of registration to take prairie dogs on agriculture land and thereafter agrees with the division to allow trapping and relocation efforts on the property before lethally taking prairie dogs, may receive compensation for the damage caused by prairie dogs during the trapping period.

(i) Participation in the damage compensation program is voluntary on the part of the landowner or lessee and discretionary on the part of the division.

(ii) Only properties with a spring count of 50 or more prairie dogs are eligible for participation in the program.

(iii) Compensation will be based on the number of prairie dogs on the property and the associated damage estimate between May 1 and September 30.

(b)(i) A landowner or lessee must apply to participate in the damage compensation program by submitting a written application to the division that includes:

(A) the applicant's full name, mailing address; and phone number;

(B) the township, range, section, 1/4 section and parcel number of the agricultural land where the prairie dogs will trapped;

(C) proof that the applicant is the fee title owner or lessee of the agricultural land where the prairie dogs will be trapped; and

(D) the landowner's signature, or the lessee's and landowner's signature when the applicant is the lessee.

(ii) An application to participate in the damage compensation program must be submitted:

(A) to the division's southern region office at 1470 North Airport Road, Suite 1, Cedar City, Utah 8472, or online when available; and

(B) by May 15 of the year for which compensation is requested.

(iii) Applications for damage compensation will be evaluated by the division and granted based on the:

(A) availability of compensation funding;

(B) number and density of prairie dogs that the division determines are present on the property;

(C) ease and efficiency by which prairie dogs can be trapped and relocated;

(D) availability of release sites;

(E) availability of division personnel and funding to trap and relocate; and

(F) degree of expected damage during the trapping period.

(iv) Nothing herein shall be construed as guaranteeing that an application to participate in the damage compensation program will be granted or that all persons desiring to participate in the program will have the opportunity to do so.

(c) Compensation for prairie dog damage will be based on the following criteria, regardless of the crop involved:

(i) the estimated number of prairie dogs on the property where trapping will occur;

(A) the division will estimate prairie dog numbers by counting visible prairie dogs on the property in the spring, doubling that number to account for adults below ground, and multiplying the result by 2.6 to account for juvenile production.

(ii) each adult prairie dog consuming 0.75 pounds of alfalfa a day and each juvenile 0.375 pounds a day;

(iii) adult prairie dogs causing damage five months per year and juveniles four months per year;

(iv) the market price of the alfalfa at the time the contract referenced in Subsection (d) is executed; and

(v) an additional 10% for damage to farming equipment and fences.

(d) The division will enter into a written contract with successful applicants possessing eligible property and a certificate of registration to take prairie dogs on their agriculture land that:

(i) suspends lethal removal efforts by the landowner or lessee until the division completes prairie dog trapping on the property; and

(ii) identifies the monetary compensation the landowner or lessee will receive from the division for seasonal prairie dog damage anticipated to occur.

(e) All prairie dogs trapped and relocated under a compensation agreement will count against the range-wide prairie dog limit in R657-70-9 and the property's maximum take limit identified on the certificate of registration.

(f) Once trapping is completed, the division will deduct the number of trapped prairie dogs from the certificate of registration's original take limit and notify the landowner or lessee:

(i) of the adjusted take limit; and

(ii) that removing prairie dogs from the property pursuant to the terms of the adjusted certificate of registration is permitted.

(6) The division may issue a certificate of registration authorizing a landowner or lessee to take prairie dogs dispersing from the property targeted for trapping under Subsections (4) or (5) to other areas of the property or adjacent properties that do not have a preexisting colony.

(7)(a) Only those people specifically identified in R657-70-

13 and on a certificate of registration to take prairie dogs on agriculture land may do so.

(b) Take is restricted to the agriculture land owned by the landowner, or leased by the lessee.

(c) Prairie dogs may be taken on agriculture land only with firearms, archery equipment, and kill traps.

(d) Prairie dogs may be taken under this section from June 1 to December 31, and in number not to exceed that identified on the certificate of registration.

(8) A person that takes a prairie dog under this section shall submit a monthly report to the division, as provided in R657-70-15.

R657-70-12. Take of Utah Prairie Dogs on Rangeland.

(1) A person may not take a Utah prairie dog on rangeland without first obtaining a certificate of registration from the division.

(2) A landowner or lessee of rangeland may apply for and obtain a certificate of registration from the division to take prairie dogs damaging rangeland under the same procedures and conditions provided in R657-70-11 for taking prairie dogs on agriculture land, except monetary compensation is not available for rangeland damage.

R657-70-13. Individuals Authorized to Take Utah Prairie Dogs on Federal and Non-federal Lands.

(1) Except as provided in R657-70-8 and R657-70-10(3), only the following individuals may take a Utah prairie dog when take is authorized under the provisions of this chapter:

(a) landowner;

(b) lessee, when authorized by the landowner to take prairie dogs on the property;

(c) immediate family member of the landowner or lessee, when authorized by the landowner to take prairie dogs on the property;

(d) employee of the landowner or lessee that is on a regular payroll and not hired specifically to take prairie dogs, when authorized by the landowner to take prairie dogs on the property; and

(e) designee of the landowner or lessee that possesses a certificate of registration from the division, as provided in Subsection (2).

(2)(a) A person other than a landowner, lessee, or their immediate family member, or an employee on a regular payroll not hired specifically to take prairie dogs, may apply for a certificate of registration to take prairie dogs as a designee of the landowner or lessee, provided the application includes:

(i) the applicant's:

(A) full name;

(B) complete mailing address;

(C) phone number;

(D) date of birth;

(E) weight and height;

(F) gender; and

(G) color of hair and eyes;

(ii) the township, range, section, 1/4 section and parcel number of the agricultural lands where the prairie dogs will be taken;

(iii) justification for utilization of the designee;

(iv) the landowner's signature or the lessee's and landowner's signature when the applicant is the lessee's designee; and

(v) verification that the designee will not pay or receive any form of compensation for taking prairie dogs on the landowner's or lessee's property.

(b) An application for a certificate of registration must be submitted to the division's southern region office at 1470 North Airport Road, Suite 1, Cedar City, Utah 84721 or online when available.

(c) A maximum of two designee certificates of registration may be issued per landowner and lessee each year.

(d) Each designee application shall be considered individually based upon the information, explanation and justification provided.

(e) An applicant must be at least 14 years of age at the time of application and must abide by the provisions for children being accompanied by adults while hunting with a weapon pursuant to Section 23-20-20.

(f)(i) After review of the application, a certificate of registration may be issued.

(ii) A certificate of registration shall be issued on an individual basis and shall be valid only for the person to whom it is issued.

(iii) A certificate of registration is not transferrable and must be signed by the holder prior to use.

(g) If the application and permitting process is accomplished by U.S. Mail, the certificate of registration shall only become valid after a copy of the signed certificate of registration is received by the division's southern regional office.

R657-70-14. Methods of Take.

(1)(a) A person authorized to take a Utah prairie dog under this chapter may lethally remove the animal using any means permitted by state, local, and federal law.

(b) Environmental Protection Agency regulations currently prohibit the use of toxicants and fumigants on Utah prairie dogs.

(2) Except as provided in R657-70-8 or as authorized by the division in a certificate of registration, a person may not:

(a) capture or attempt to capture a prairie dog alive;

(b) possess a live prairie dog; or

(c) release a prairie dog to the wild.

R657-70-15. Monthly Reports on Take of Utah Prairie Dogs.

(1) The following information must be reported every 30 days to the division's southern region office at 1470 North Airport Road, Suite 1, Cedar City, Utah 84720, or online when available:

(a) the name and signature of the landowner, lessee, or certificate of registration holder;

(b) the person's certificate of registration number (where applicable);

(c) the number of prairie dogs taken; and

(d) the location and method of disposal of each prairie dog taken during the 30-day period.

(2) Failure to report the information required in Subsection (1), within 30 days, may result in the denial of future opportunity to take prairie dogs.

R657-70-16. Take on Protected Land.

(1) Notwithstanding any other provision in this chapter authorizing take of prairie dogs, a person may not take a Utah prairie dog on protected land set aside by contractual agreement or law for the protection and conservation of Utah prairie dogs.

KEY: wildlife, game laws

August 7, 2015 **23-14-1**
23-14-3
23-14-18
23-14-19

R671. Pardons (Board of), Administration.
R671-205. Credit for Time Served.
R671-205-1. Definitions.

(1) "Custody", for purposes of this rule, means that a person is held in jail or prison, and includes a person who is:

(a) in the custody of a peace officer pursuant to a lawful arrest;

(b) a minor confined in a facility operated by the Division of Juvenile Justice Services, following conviction as an adult in district court, when the district court obtained jurisdiction over the minor pursuant to Utah Code sections 78A-6-701, 78A-6-702, or 78A-6-703; or

(c) committed to the Department of Corrections, but who is housed at the Utah State Hospital or other medical facility.

(2)(a) "Sentence", for purposes of this rule, means a judgment, sentence, or commitment issued by a district court pursuant to Utah Code Section 77-18-1 for a criminal conviction and over which the Board has prison release jurisdiction.

(b) When a person is sentenced to prison after being convicted in multiple counts in the same criminal case, or after being convicted in multiple cases, credit for time served will be calculated separately for each sentence.

R671-205-2. Credit for Time Served.

(1) Credit for time served shall be granted by the Board against an offender's prison sentence for time an offender actually served in custody if, prior to being sentenced to prison, the offender was held in custody in connection with the specific sentence:

(a) while awaiting trial, conviction, or imposition of the sentence;

(b) while on probation and awaiting a hearing or decision regarding probation violation allegations;

(c) as a condition of probation following the imposition of a suspended prison sentence, if the offender is later committed to prison on or after October 1, 2015;

(d) as a sanction for a violation of probation, following the revocation and re-start or re-imposition of probation, if the offender is later committed to prison on or after October 1, 2015;

(e) as a response to a violation of probation, pursuant to the AP and P Response and Incentive Matrix, if the offender is later committed to prison on or after October 1, 2015.

(f) that is reversed, vacated, or otherwise set aside, if a subsequent prison sentence is imposed for the same criminal conduct;

(g) at the Utah State Hospital following a "guilty and mentally ill" conviction; or

(h) outside the State of Utah based solely on a Utah warrant issued in connection with the sentence under Board jurisdiction.

(2) The Board may, in its discretion, grant credit for time served in other, extraordinary circumstances.

R671-205-3. Exclusions.

Credit for time served may not be granted for any period of custody served:

(1) for an arrest, pre-trial detention, probation, commitment, case, conviction, or sentence over which the Board has no jurisdiction;

(2) at the Utah State Hospital or comparable non-prison, psychiatric facility while an offender: (a) is undergoing pre-trial competency proceedings or investigations; or (b) has been committed to a facility for competency restoration following a judicial finding of incompetence;

(3) in a medical or other treatment facility while under court supervision;

(4) under home-confinement, house arrest, in a community correctional center, or in any other treatment facility while under court supervision; or

(5) for an arrest, pre-trial detention, probation, commitment, or sentence while under the jurisdiction of the federal government.

R671-205-4. Concurrent and Consecutive Sentencing.

(1) If an offender is committed to prison for more than one sentence, credit for time served shall be calculated for each sentence separately.

(2) If an offender is committed to prison to serve consecutive sentences, only the credit for time served attributable to the consecutive sentence shall be granted against that sentence, and the consecutive sentence shall begin only following the expiration of all prior sentences.

(3) If an offender is serving one or more prison sentences, and a subsequent prison sentence is imposed concurrently, credit for time served shall begin on the date the subsequent prison sentence is imposed.

(4) If an offender is serving one or more prison sentences, and a subsequent prison sentence is imposed consecutively, credit for time served may not be granted toward the consecutive sentence, and the consecutive sentence shall begin only following the expiration of all prior sentences.

R671-205-5. Verification of Time Served Required.

(1) The Board shall only grant credit for time served if the time in custody is documented in official records of the court and facility of custody.

(2) If an offender desires credit in addition to that granted by the Board, the offender bears the burden to petition for, and provide copies of records supporting, the additional credit.

KEY: credit for time served, prison release, parole

August 11, 2015	**Art. VII Sec. 12**
Notice of Continuation January 31, 2012	**77-18-1(11)(a)(iii)**
	77-18-1(12)(e)(iv)
	77-27-5
	77-27-7
	77-27-9

R746. Public Service Commission, Administration.
R746-510. Funding for Speech and Hearing Impaired Certified Interpreter Training.
R746-510-1. Authority and Purpose.

A. Authority -- This rule is authorized by 54-8b-10(5)(c) which requires the Public Service Commission to adopt rules in accordance with its responsibilities.

B. Purpose -- The purpose of this rule is to establish uniform administrative requirements for the distribution of funds from the telephone surcharge to be awarded by contract to institutions within the state system of higher education, or to the Division of Services to the Deaf and Hard of Hearing, for training persons to qualify as certified interpreters for deaf, hard of hearing or severely speech impaired persons, pursuant to 54-8b-10(5)(b)(vi).

R746-510-2. Definitions.

A. Definitions -- The meaning of terms used in these rules shall be consistent with the definitions provided in 54-8b-10(1), R746-343-2 or these rules. As used in these rules, the following definitions shall apply.

1. "Certified Interpreter" means a person who is certified as meeting the certification requirements of Title 53A, Chapter 26a, the Interpreter Services for the Hearing Impaired Act.

2. "Contract" means an award of a contractual agreement by the Commission to an eligible recipient.

3. "DaHH Division" means the Division of Services to the Deaf and Hard of Hearing, as created by 53A-24-402.

4. "Recipient" means the legal entity to which a contract is awarded and which is accountable for the use of the funds provided. The recipient is the entire legal entity even if a particular component of the entity is designated in the contract document. The term "recipient" shall also include all subcontractors.

5. "Subcontractor" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity, who has a contract with any recipient to perform any portion of the services or work required under a contract. A "subcontractor" does not include suppliers who provide property, including equipment, materials, and printing to a recipient or subcontractor.

R746-510-3. Eligibility Requirements.

A. Eligibility -- An organization is eligible if it is:

1. an institution within the state system of higher education listed in Section 53B-1-102 that offers a program approved by the Board of Regents for training persons to qualify as certified interpreters; or

2. the DaHH Division.

R746-510-4. Proposal and Funding.

A. Process -- The Commission will solicit proposals in conformity to the Utah Procurement Code, Title 63G, Chapter 6, and applicable rules.

1. Eligible organizations shall submit a proposal to request funding.

2. Funds will be disbursed pursuant to the terms of contracts that may be negotiated from the proposals submitted.

3. Contracts, allocations and distributions shall be at the discretion of the Commission.

R746-510-5. Subcontractors.

A. Identification of subcontractors -- A proposal may not include subcontract work covered by this rule unless:

1. the subcontractor is specifically identified in the proposal;

2. the subcontractor complies with all applicable Board requirements;

3. the proposal provides the same information for each subcontractor in the same manner as if the subcontract work was procured directly by the Commission;

4. the proposal includes a copy of all subcontractor contracts; and

5. all subcontractors look solely to recipient for payment.

R746-510-6. Accountability.

A. On-site visits -- In addition to any request for proposal or contact requirements, organizations that seek or have a contract will permit the Commission, it representatives or its designees to visit prior to and during a contract period to evaluate the organization's effectiveness and preparedness.

B. Recipient Report Filing -- A recipient receiving funding shall file an annual report with the Commission on or before July 1 for the preceding year.

C. Report contents -- The annual report shall contain the following information:

1. a budget expenditure report and income source report; and

2. description of its program, which includes, but is not limited to, the number of students and teachers served, the graduation rate and the number of students who become certified as a certified interpreter, employment information for graduating students and those who become certified interpreters;

3. a description of services provided by the recipient pursuant to the contract, and if requested, copies of any and all materials developed; and

4. other information which may be specified in the contract.

R746-510-7. General Administrative Responsibilities.

A. Administration -- A recipient shall comply with applicable statutes, regulations, and the contract, and shall use funds in accordance with those statutes, regulations, and the contract.

B. Supervision -- A recipient shall directly supervise the administration of the contract and funds received.

C. Accounting -- A recipient shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for funds received.

R746-510-8. Records.

A. Records -- In addition to any contract requirement,

1. A recipient shall keep records that record:

a. The amount of funds awarded and received under the contract;

b. How the recipient uses the funds;

c. The total cost of the proposal;

d. The share of the costs provided from other sources and identification of such sources;

e. The identity of students participating in a program supported by the contract; and

f. Other records to facilitate an effective audit.

2. A recipient shall keep records that demonstrate its compliance with contract and rule requirements.

3. A recipient is responsible for managing and monitoring each program supported by the contract.

B. Retention and Access Requirements for Records--

1. All financial records, supporting documents, statistical records, and all other records pertinent to a contract shall be retained for a period consistent with Government Records Access and Management Act, Title 63G, Chapter 2 and any term specified in a contract.

2. The Commission or any of its duly authorized representatives or designees, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the contracts, in order to make audits, examinations, excerpts, transcripts, and copies of documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and

discussion related to these documents and a contract program. The rights of access are not limited to the required retention period, but shall last as long as records are retained.

3. All procurement records shall be retained and disposed of in accordance with the Government Records Access and Management Act, Title 63G, Chapter 2.

R746-510-9. Termination of Awards.

A. Termination of Contracts -- Contracts may be terminated in whole or in part:

1. By the Commission if a recipient fails to comply with the terms and conditions of a contract; or

2. With the consent of the Commission; or

3. Pursuant to the terms of a contract.

4. No provision of this rule shall preclude or prevent the Commission from terminating or modifying a contract for any reason or means not listed in this rule.

R746-510-10. Enforcement.

A. Enforcement -- If a recipient fails to comply with the terms and conditions of a contract, in addition to any remedy provided by law or contract, the Commission may take one or more of the following actions, as the Commission may deem appropriate in the circumstances:

1. Withhold payments pending correction of the deficiency by the recipient or more severe enforcement action by the Commission.

2. Deny the use of contract funds for all or part of the cost of the activity or action not in compliance.

3. Wholly or partly suspend or terminate the current contract.

4. Or any other action which the Commission may determine appropriate.

KEY: speech impaired, hearing impaired, training, interpreters
August 25, 2005 54-8b-10(5)(b)(vi)
Notice of Continuation August 11, 2015

R765. Regents (Board of), Administration.
R765-649. Utah Higher Education Assistance Authority (UHEAA) Privacy Policy.
R765-649-1. Purpose.

The purpose of this rule is to provide the terms of UHEAA's privacy policy concerning the disclosure of customer nonpublic personal information, as defined in the Gramm-Leach-Bliley Act, referenced below.

R765-649-2. References.

2.1 Utah Code Title 53B, Utah System of Higher Education, Chapter 12.

2.2 U.S. Congress, Title IV of the Higher Education Act of 1965, as amended.

2.3 U.S. Federal Trade Commission. Code of Federal Regulations, 16 CFR Part 313.

2.4 Pub. L. No. 106-102, the Gramm-Leach-Bliley Act

R765-649-3. General.

3.1 UHEAA collects nonpublic personal information about customers from:

3.1.1 information received from customers on applications or other forms;

3.1.2 information from customer transactions with UHEAA, its affiliates or others; and

3.1.3 information received from a consumer reporting agency.

3.2 UHEAA does not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

3.3 UHEAA restricts access to nonpublic personal information about customers to those employees who need to know such information to provide products or services to customers. UHEAA maintains physical, electronic, and procedural safeguards that comply with federal regulations to guard customer nonpublic personal information.

KEY: higher education, student loans*
July 17, 2001 **53B-12-101(6)**
Notice of Continuation August 18, 2015

R850. School and Institutional Trust Lands, Administration.
R850-1. Definition of Terms.
R850-1-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVII and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorize the Director of the School and Institutional Trust Lands Administration to provide definitions which apply to all rules promulgated by the director and agency unless otherwise provided.

R850-1-200. Definitions.

1. Animal unit (AU): is equal to one cow and calf or their equivalent.

2. Beneficiaries:

(a) as to school and institutional trust lands: The public school system and other institutions granted properties by the United States under the Enabling Act to the state of Utah in trust.

3. Board: School and Institutional Trust Lands Board of Trustees.

4. Board policy: Actions taken by the School and Institutional Trust Lands Board of Trustees which comply with the definition of Policies found in Section 53C-1-103(5).

5. Carrying capacity: the acreage required to adequately provide forage for an animal unit (AU) for a specified period without inducing range deterioration.

6. Commercial gain: compensation, in money, in services, or other valuable consideration rendered for products provided.

7. Cultural Resources: prehistoric and historic materials, features, artifacts.

8. Cultural Resource Survey:

(a) Class I: literature and site files search.

(b) Class II: sample field surface survey or inspection.

(c) Class III: intensive field surface survey.

9. Director: the director of the School and Institutional Trust Lands Administration.

10. Agency: School and Institutional Trust Lands Administration.

11. Easements: a right to use or restrict use of land or a portion of a real property interest in the land for a particular purpose granted by the agency to a qualified applicant including but not limited to transmission lines, canals and ditches, pipelines, tunnels, fences, roads and trails.

12. General Management Plans: plans prepared for school and institutional trust lands which guide the implementation of the school and institutional trust land management objectives.

13. High Value Grazing Lands: Trust lands used for grazing which are not located within the boundaries of a federal allotment and which are not managed by a federal agency, or trust lands which are located such that they can be managed independent of the influence of a federal agency, or trust lands for which management agreements with a federal agency are in place, or any other trust lands which the director has designated as High Value Grazing Land.

14. In-kind use: occupancy or use by a beneficiary of its institutional trust land for authorized purposes as a direct economic benefit to the institution.

15. Management Plans: General Management Plans, Resource Plans and Site-Specific Plans.

16. Multiple-use: the management of various surface and sub-surface resources so that they are utilized in the combination that will best meet the present and future needs of the beneficiaries.

17. Paleontological Resources (fossils): the remains or traces of organisms, plant or animal, that have been preserved by various means in the earth's crust.

18. Paleontological Resource Survey: an evaluation of the scientific literature or previous paleontological survey reports to assess the potential for discovery or impact to fossils by a proposed development, followed by a pedestrian examination of the exposed geological formations suspected of containing fossils of significance.

19. Paleontological Site: an exposure of a geologic formation having fossil evidence of scientific value as determined by professional consensus.

20. Planning Unit: the geographical basis of a general management plan; a consolidated block of state land, or a group of isolated state land sections or parts thereof, or a combination of blocks and isolated sections which provide common management opportunities or which have common commercial gain, natural or cultural resource concerns.

21. Preliminary Development Plan: the submittal, both of maps and written material, which shall identify and determine the extent and scope on a proposed unit development of the entire acreage under application. It shall illustrate, in phases, the development of the entire acreage and include a time table of the estimated schedule of development. The preliminary development plan shall identify density, open space, environmental reserves, site features, services and utilities, land ownerships, local master planning, zoning compliance and basic engineering feasibility.

22. Preliminary Development Plat: a plat which shall outline and specify the number of dwelling units, the type of dwelling units, the anticipated location of the transportation systems and description of water and sewage systems for the developed area on a Unit Development Lease.

23. Private Exchange: An exchange of trust lands, for land or other assets of equal or greater value, with a political subdivision of the state or agency of the federal government. Lands involved in a private exchange are not required to be advertised as open for competing exchange, lease, and sale applications.

24. Range condition: the relation between current and potential condition of the range site.

25. Record of Decision: a written finding describing an agency action, relevant facts, and the basis upon which the decision for action was made.

26. Resource Plans: a plan prepared for a specific resource, such as mining, timber, grazing or real estate.

27. Rights-of-Entry: a right to a specific, non-depleting land use granted by the agency to a qualified applicant that is temporary in nature, generally not to exceed one year in duration, including but not limited to seismic and land surveys, research sites, access across trust lands, and other temporary types of land uses.

28. School and institutional trust lands: those properties granted by the United States in the Utah Enabling Act to the state of Utah in trust, or other properties transferred to the trust, to be managed for the benefit of the public school system and the various institutions of the state in whose behalf the lands were granted.

29. Significant site: any site which is designated by the Division of State History as scientifically worthy of specific management.

30. Site: archaeological and cultural sites are places of prehistoric and historic human activity including aboriginal mounds, forts, buildings, earth works, village locations, burial grounds, ruins, caves, petroglyphs, pictographs, or other locations which are the source of prehistoric cultural features and specimens.

31. Site Specific Plans: plans prepared for trust lands which provide direction for specific actions. Site-specific plans shall include, but not be limited to:

(a) Records of Decision in either narrative or summary form.

(b) Board action that designates specific parcels of land for specific uses(s) or disposition.

32. Specimen: includes all man-made relics, artifacts, remains of a prehistorical, archaeological, or anthropological

nature found on or below the surface of the earth, and any remains of prehistoric life.

33. Trust lands: school and institutional trust lands and all other lands administered under the authority of the School and Institutional Trust Lands Board of Trustees.

34. Survey Report: report of the various site files and field surveys or inspections.

35. Sustained-yield: the achievement and maintenance of maximum non-depleting level of annual or periodic production of the various renewable resources of land without impairment of the productivity of the land.

36. Trust land use(s): any use of school and institutional trust lands based on multiple-use, sustained-yield principles or practices designed to maximize support of the beneficiaries.

KEY: administrative procedure, definitions
August 11, 2015 53C-1-302(1)(a)(ii)
Notice of Continuation May 23, 2012

R850. School and Institutional Trust Lands, Administration.
R850-50. Range Management.
R850-50-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-5-102 which authorize the Director of the School and Institutional Trust Lands Administration to establish rules prescribing standards and conditions for the utilization of forage and related development of range resources on trust lands.

R850-50-150. Planning.

1. Pursuant to Section 53C-2-201(1)(a), the issuance of grazing permits within this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes.

2. Range improvement projects authorized pursuant to this section carry the following planning obligations beyond existing rule-based analysis and approval processes:

(a) To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC); and

(b) Evaluation of and response to comments received through the RDCC process.

3. Applications for modified grazing permits which do not involve surface disturbing activities are governed by paragraph 1, above. Applications for modified grazing permits which involve surface disturbing activities are subject to the planning obligations set forth in paragraph 2, above.

R850-50-200. Grazing Management.

Management of trust lands for grazing purposes is based upon grazing capacity which permits optimum forage utilization and seeks to maintain or improve range conditions. Grazing capacity shall be established after consideration of historical stocking rates, forage utilization, range condition, trend and climatic conditions.

R850-50-300. Applications.

Unless land has been withdrawn from grazing or has been determined to be unsuitable for grazing, applications shall be accepted for grazing rights upon all trust lands not otherwise subject to a grazing permit.

School and institutional trust lands may be declared unsuitable for grazing if it is determined that range conditions are incapable of supporting economic grazing practices or if grazing would substantially interfere with another trust land use that is better able to provide for the support of the beneficiaries.

R850-50-400. Permit Approval Process.

Applications shall be accepted on lands available for permitting under R850-50-300 or upon termination of an existing permit as follows:

1. On trust lands that are open and unpermitted and which are available for grazing, applications may be solicited through advertising or any other method the agency determines is appropriate, including notification of adjacent landowners and other permittees in an allotment.

2. On trust lands subject to an expiring grazing permit, competing applications shall be accepted from April 1 to April 30, or the next working day if either of these days is a weekend or holiday, of the year in which the permit terminates.

(a). All expiring grazing permits shall be posted on the agency's website by January 1 of the year in which the permit expires. The website notice shall include any reimbursable investment made by the existing permittee on a range improvement. Notice that expiring grazing permits may be found on the agency's website may also be published.

(b). Grazing permits issued on trust lands acquired through an exchange with the federal government (after the expiration of the federal permit) shall not be subject to the provisions of this rule for two successive 15-year terms unless the permit has been sold or otherwise terminated.

3. The person holding an expiring grazing permit shall have the right to renew the permit, provided that no competing applications are received, by submitting a completed application along with the first year's rent and other applicable fees.

4. Persons desiring to submit a competing application must do so on forms acceptable to the agency. Forms are available at the offices listed in R850-6-200(2)(b) or from the agency's website. Applications shall include a non-refundable application fee, a one-time bonus bid, and an amount determined by the agency pursuant to R850-50-1100(7), which will be required to reimburse the holder of an authorized range improvement project should the competing application be accepted. Bonus bids and range improvement reimbursements shall be refunded to unsuccessful applicants. Upon establishment of the yearly rental rate, the successful applicant shall be required to submit the first year's rental and other required fees.

5. Applications shall be evaluated by the agency and may be accepted only if the agency determines that the applicant's grazing activity will not create unmanageable problems of trespass, range and resource management, or access.

(a) For purposes of this evaluation, adjoining permittees and lessees, adjoining property owners, and adjoining federal permittees may be considered acceptable as competing applicants unless specific problems are clearly demonstrated.

(b) Applicants not meeting the requirements in (a) above, whose uses would not unreasonably conflict with the uses of other permittees in the area, may nevertheless be accepted if the size of the grazing area, the access to the grazing area, and other factors demonstrate that the applicant is able to utilize the area without adverse impact on the range resources, adjoining lands, or beneficiaries of affected trust lands.

(c) For purposes of evaluating an applicant's acceptability for a grazing permit, the agency may consider the applicant's ability to maintain any water rights appurtenant to the lands described in the application.

6. The holder of a permit which is expiring, on which a competing application has been received, shall have a preference right to permit the property provided he agrees to pay an amount equal to the highest bonus bid submitted by a competing applicant.

(a) In the event that the existing permittee fails to match the highest bonus bid, the permittee may be refunded the value of the amount the permittee contributed to the cost of any approved range improvement project at the expense of the successful bonus bid applicant.

(b) In the event that all, or a portion of, the property on which a bonus bid was submitted is sold, exchanged, or otherwise made unavailable, the permittee shall receive the refund of a prorated amount of the bonus bid based on the AUMs lost to the use of the permittee.

R850-50-500. AUM Assessments and Annual Adjustments.

1. An annual assessment shall be charged for each AUM used by livestock on trust lands. This assessment shall be established by the board and shall be reviewed annually and adjusted if appropriate.

2. Grazing fees for lands designated as '"High Value Grazing Lands" will be assessed at a higher rate than trust lands not so designated. High Value Grazing Lands are typically, but not necessarily, contained in a named land block. Blocked or scattered lands may be designated as High Value Grazing Land through a Director's Finding.

3. In the event that the agency acquires High Value Grazing

Lands through an exchange with the federal government, the application of the agency's grazing fees to the holders of grazing privileges on the acquired land shall be phased in over a five-year period in equal increments after the term of the federal permit has expired.

4. The application of the agency's grazing fees on lands acquired through an exchange with the federal government, and not designated as High Value Grazing Lands, shall be phased-in over a three-year period in equal increments after the term of the federal permit has expired.

R850-50-600. Grazing Permit Terms.

Grazing permits shall be issued for a maximum of 15 years. Every grazing permit issued under these rules shall include the following terms and conditions:

1. Terms, conditions, and provisions that shall protect the interests of the trust beneficiaries with reference to securing the payment to the agency of all amounts owed.

2. Terms, conditions, and provisions that shall protect the range resources from improper and unauthorized grazing uses.

3. Other terms, conditions, and provisions that may be deemed necessary by the agency or board in effecting the purpose of these rules and not inconsistent with any of its provisions.

4. The agency may cancel or suspend grazing permits, in whole or in part, after 30 days notice by certified mail to the permittee for a violation of the terms of the permit, or of these rules, or upon the issuance of a lease or permit, the purpose of which the agency has determined to be a higher and better use, or disposal of the trust land. Failure to pay the required rental within the time prescribed shall automatically work a forfeiture and cancellation of the permits and all rights thereunder.

5. Locked gates on trust land without written approval are prohibited. If such approval is granted, keys shall be supplied to the agency and other appropriate parties requiring access to the area as approved by the agency, including those with fire and regulatory responsibilities.

6. Supplemental livestock feeding on trust grazing lease lands may be permitted subject to written authorization by the agency with the designation of a specific area, length of time, number and class of livestock, and subject to a determination that this shall not inflict long term damage upon the land. The agency may assess an additional fee for authorized supplemental feeding. Emergency supplemental feeding shall be allowed for ten days prior to notification.

R850-50-700. Reinstatements.

Trust land on which a grazing permit has been cancelled and which is ineligible for reinstatement pursuant to R850-5-500(1)(c) may be advertised as available pursuant to R850-50-400(2). If the advertisement does not bring forth any competing applications, or if the agency does not advertise the property, the person previously holding the permit may apply for a new permit by submitting an application and all applicable fees including a fee equal to the reinstatement fee.

R850-50-800. Grazing Permits--Legal Effect.

Grazing permits transfer no right, title, or interest in any lands or resources held by the agency, nor any exclusive right of possession and grant only the authorized utilization of forage.

R850-50-900. Non-Use Provisions.

The granting of non-use for trust lands shall be at the discretion of the agency. The following criteria shall apply to all non-use requests:

1. The permittee shall submit an application for non-use in advance or, if the trust land is within a federal grazing allotment, as soon as notification of non-use is received from the applicable federal agency. The request shall be accompanied by the applicable application fee and by any appropriate documentation which is the basis for the request. In the event of approved grazing non-use, fees shall not be waived or refunded but shall be applied to the next year.

2. Non-use shall not be approved for periods of time exceeding one year.

3. Non-use may be approved in times of emergency conditions.

4. Non-use for personal convenience with no payment of fees shall not be approved.

R850-50-1000. Assignment and Subleasing of Grazing Permits.

1. Permittee shall not assign, partially assign, sublease, mortgage, pledge, or otherwise transfer, dispose, or encumber any interest in the permit without the written consent of the agency. To do so shall automatically, and without notice, work the forfeiture and cancellation of the permit.

2. An annual assessment equal to 50% of the difference between the base AUM assessment established under R850-50-500, and the AUM payment received by the permittee through the sublease, multiplied by the number of AUMs subleased, or a $1.00 per AUM minimum assessment, whichever is greater, shall be charged for the approval of any sublease. The approval of any sublease shall be subject to the following restrictions:

(a) Consent for subleasing shall only be given if the sublease is compatible with the best interests of the beneficiaries and long-term management of the land and will not unreasonably conflict with the interests of other permittees in the area.

(b) Subleases in-lieu of a collateral assignment shall not be approved.

(c) No sublease shall be effective for more than five years.

3. An additional fee based upon either the fair market value of the permit or a flat fee per AUM may be charged for the approval of any assignment or partial assignment.

4. Mortgage agreements or collateral assignments are for the convenience of the permittee. The term of a mortgage agreement or collateral assignment shall not exceed the remaining term of the permit. If the grazing permit is renewed, the permittee may also renew the mortgage agreement or collateral assignment of the permit pursuant to these rules.

R850-50-1100. Range Improvement Projects.

1. Range Improvement Projects shall be submitted for approval on appropriate application forms. Range Improvement Projects shall be approved or denied by the agency based on a written finding.

2. All range improvement activity must be approved by the agency in writing before construction begins. Line cabins and similar structures will not be authorized as range improvement projects. They may, however, be authorized by a special use lease pursuant to R850-30.

3. Agency authorization for range improvement projects shall be valid for periods of time not to exceed two years from the date the applicant is notified of the authorization. Extensions of time may be granted only in extraordinary circumstances.

4. Range improvements constructed or placed upon trust land without prior approval shall become the property of the agency.

5. Range improvements shall not be authorized if they would be:

(a) located on a parcel that the agency has determined has potential for sale, lease or exchange and the possibility exists that improvements may encumber these actions.

(b) located on a parcel designated for disposal.

(c) a project or structure that does not fill a critical need or enhance the value of the resource.

6. Range improvements which are necessary to rehabilitate lands whose forage production has been diminished by poor grazing practices or poor stewardship of the permittee shall not be

considered a reimbursable improvement but rather a requirement to keep the grazing permit in effect.

7. Authorized Range Improvement Projects shall be depreciated using schedules consistent with typical schedules published by the USDA Natural Resources Conservation Service or any other depreciation schedules approved by the board. In the event that the propertyon which an approved range improvement project is located is sold, exchanged, or withdrawn from use, the permittee shall receive no more than the amount the permittee contributed towards the original cost of the range improvement project, minus the indicated depreciation amount; or in the alternative, shall be allowed 90 days to remove improvements pursuant to section 53C-4-202(6).

8. If the range improvement project is designed to increase carrying capacity, the permittee shall agree to pay for the increase in AUMs annually starting no later than two years after project completion. The agency may allow any increase in fees to be phased-in at 20% per year.

9. The agency may participate in cost-sharing of designated range improvement projects, or maintenance of existing range improvement projects, by providing funding in amounts and at rates determined by the agency.

10. The agency's cost/share portion of the project may be in the form of project materials. In these instances, the permittee shall be required to provide all necessary equipment and manpower to complete the project to specifications required by the agency.

R850-50-1200. Additional Leases.

If the agency determines that there is unused forage available on a parcel of trust land resulting from temporary conditions, it may issue an additional permit or permits. These permit(s) shall be issued in accordance to R850-50-400. Existing permittees shall have a first right of refusal to unused forage.

R850-50-1300. Rights Reserved to the Agency.

In all grazing permits the agency shall expressly reserve the right to:

1. issue special use leases, timber sales, materials permits, easements, rights-of-entry and any other interest in the trust land.

2. issue permits for the harvesting of seed from plants on the trust land. If loss of use occurs from harvesting activities, a credit for the amount of loss shall be made to the following year's assessment.

3. enter upon and inspect the trust land or to allow scientific studies upon trust land at any reasonable time.

4. allow the public the right to use the trust land for purposes and periods of time permitted by policy and rules. However, nothing in these rules purports to authorize trespass on private land to reach trust land.

5. require that all water rights on trust land be filed in the name of the trust and to require express written approval prior to the conveyance of water off trust land.

6. require a permittee, when an agency-owned water right is associated with the grazing permit, to ensure that the water right, to the extent allowed under the permit, is maintained in compliance with state law.

7. close roads for the purpose of range or road protection, or other administrative purposes.

8. dispose of the property without compensation to the permittee, subject to R850-50-1100(7).

9. terminate a grazing permit in order to facilitate higher and better uses of trust lands.

R850-50-1400. Trespass.

1. Unauthorized activities which occur on trust land shall be considered trespass and damages shall be assessed pursuant to 53C-2-301. These activities include, but are not limited to:

(a) The use of forage at times and at places not authorized in the permit.

(b) The placement of numbers of livestock on the trust land which, if left on the trust land for the length of time allowed in the permit, would result in forage being used in excess of that authorized by the permit.

(c) Grazing or trailing livestock on or across trust land without a valid permit or right-of-entry.

(d) The dumping of garbage or any other material on the trust land.

2. The permittee shall cooperate with the agency in taking civil action against the owners of trespass livestock on trust lands to recover damages for lost forage or other values.

R850-50-1500. Trailing Livestock Across Trust Land.

1. The trailing of livestock across trust land by a person not holding a grazing permit may be authorized if no other reasonable means of access is available.

2. Written approval in the form of a right-of-entry shall be obtained in advance from the agency.

3. The authorization to trail livestock across trust land shall restrict and limit the route, the number and type of animals, and the time and duration, not to exceed two consecutive days of the trailing.

R850-50-1600. Modified Grazing Permit.

1. At the discretion of the director, the agency may issue modified grazing permits in instances where the proposed use is grazing related but is more intensive than livestock grazing alone and when improvements, if any, are primarily temporary in nature. Such uses may include, but are not limited to, uses authorized under R850-30-300(1)(d), camps, corrals, feed yards, irrigated livestock pastures, or other related uses.

2. Modified grazing permits may be approved pursuant to the following process:

(a) Applications for modified grazing permits shall be submitted pursuant to R850-3.

(b) Applications, if accepted, shall be accompanied with an application fee equal to the application fee for special use leases.

(c) Applications shall be evaluated pursuant to R850-3-400 and R850-50-400.

3. Modified grazing permits shall be subject to the following terms and conditions:

(a) The term of a modified grazing permit shall be no longer than 15 years and contain terms, conditions, and provisions the agency, in its discretion, deems necessary to protect the interest of the trust beneficiaries.

(b) A modified grazing permit is subject to cancellation pursuant to R850-50-600(4).

(c) Annual rental for a modified grazing permit shall be based on the fair market value of the permitted property. Fair market value of the permitted property and annual rental rates shall be determined by the agency pursuant to R850-30-400. Periodic rental reviews may be completed pursuant to R850-30-400(4).

(d) Upon cancellation of the modified grazing permit:

i) the permittee shall be allowed 90 days to remove approved temporary range improvements; and

ii) at the discretion of the director, the agency may reimburse the permittee for approved permanent range improvements pursuant to R850-50-1100; or

iii) the permittee shall be allowed 90 days to remove approved permanent range improvements.

(e) Prior to the issuance of a modified grazing permit, or for good cause shown at any time during the term of the modified grazing permit, the applicant or permittee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the permit. Any bond posted pursuant to this rule is subject to R850-30-800(2) through (4).

KEY: administrative procedures, range management
August 11, 2015 53C-1-302(1)(a)(ii)
Notice of Continuation June 27, 2012 53C-2-201(1)(a)
53C-5-102

R865. Tax Commission, Auditing.
R865-4D. Special Fuel Tax.
R865-4D-1. Utah Special Fuel Tax Regulation Pursuant to Utah Code Ann. Section 59-13-102.

A. Motor vehicle means and includes every self-propelled vehicle operated or suitable for operation on the highways of the state which is designed for carrying passengers or cargo; but does not include vehicles operating on stationary rails or tracks, or implements of husbandry not operating on the highways.

B. User means any person using special fuel for the propulsion of a motor vehicle on the highways of the state, including:

1. interstate operators of trucks and buses,
2. intrastate operators of trucks and buses, and
3. contractors using special fuel in self-propelled vehicles for carrying of passengers or cargo.

R865-4D-2. Refund Procedures for Special Fuel Used Off-Highway or to Operate a Power Take-Off Unit, and Sales Tax Liability Pursuant to Utah Code Ann. Section 59-13-301.

(1)(a) "Off-highway," for purposes of determining whether special fuel is used in a vehicle off-highway, means every way or place, of whatever nature, that is not generally open to the use of the public for the purpose of vehicular travel.

(b) "Off-highway" does not include:

(i) a parking lot that the public may use; or

(ii) the curbside of a highway.

(2) Fuel used in a vehicle off-highway is calculated by taking off-highway miles divided by the average number of miles per gallon. Any other method of calculating special fuel used off-highway must be supported by on-board computer information or other information that shows the number of gallons used off-highway with accuracy equal or comparable to on-board computers.

(3) Where a power take-off unit is driven by the main engine of the vehicle and used to operate auxiliary equipment, a quantity, as enumerated below, of the total special fuel delivered into the service tank of the vehicle shall be deemed to be used to operate the power take-off unit. The allowances for power take-off units are as follows:

(a) concrete mixer trucks - 20 percent;

(b) garbage trucks with trash compactor - 20 percent;

(c) vehicles with powered pumps, conveyors or other loading or unloading devices may be individually negotiated but shall not exceed:

(i) 3/4 gallon per 1000 gallons pumped; or

(ii) 3/4 gallon per 6000 pounds of commodities, such as coal, grain, and potatoes, loaded or unloaded.

(d) Any other method of calculating the amount of special fuel used to operate a power take-off unit must be supported by documentation and records, including on-board computer printouts or other logs showing daily power take-off activity, that establish the actual amount of power take-off activity and fuel consumption.

(4) Allowances provided for in Subsections (2) and (3) will be recognized only if adequate records are maintained to support the amount claimed.

(5) In the case of users filing form TC-922, Fuel Tax Return For International Fuel Tax Agreement (IFTA) And Special Fuel User Tax, or form TC-922C, Refund of Tax Paid on Exempt Fuel for Non-Utah Based Carriers, the allowance provided for in Subsection will be refunded to the extent total gallons allocated to Utah through IFTA exceed the actual taxable gallons used in Utah, except that in no case will refunds be allowed for power take-off use that does not occur in Utah.

(6) Special fuel used on-highway for the purpose of idling a vehicle does not qualify for a refund on special fuel tax paid since the fuel is used in the operation of a motor vehicle.

(7) The following documentation must accompany a refund request for special fuel tax paid on special fuel used in a vehicle off-highway:

(a) evidence that clearly indicates that the special fuel was used in a vehicle off-highway;

(b)(i) the specific address of the off-highway use with a description that is adequate to verify that the location is off-highway; or

(ii) if a specific address is not available, a description of the off-highway location that is adequate to verify that the location is off-highway;

(c) a description of how the vehicle was used off-highway;

(d)(i) the date of the off-highway use; and

(ii) if the claimed use is idling while off-highway, the amount of time the vehicle was idling at that location;

(e) the amount of fuel the vehicle used off-highway; and

(f) the make and model, weight, and miles per gallon of the vehicle used off-highway.

(8) Special fuel that is purchased exempt from the special fuel tax or for which the special fuel tax has been refunded is subject to sales and use tax, unless specifically exempted under the sales and use tax statutes.

R865-4D-6. Invoices Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-313.

A. If requested, a retail dealer must issue to a purchaser of special fuel an invoice that indicates the fuel taxes that have been included in the price of purchased fuel. This invoice shall serve as evidence that the special fuel tax has been paid.

B. Invoices must be numbered consecutively, made in duplicate, and contain the following information:

1. name and address of seller;
2. place of sale;
3. date of sale;
4. name and address of purchaser;
5. fuel type;
6. number of gallons sold;
7. unit number or other vehicle identification if delivered into a motor vehicle;
8. type of container delivered into if not a motor vehicle;
9. invoice number; and
10. amount and type of state tax paid on the special fuel, if any.

C. A retail dealer must charge sales tax on diesel fuel that is exempt from special fuel tax unless the retail dealer has received and retains on file a properly completed sales and use tax exemption certificate indicating that the transaction is exempt from sales tax.

D. A retail dealer that sells propane exempt from special fuel tax, but subject to sales tax, must at the time of each sale and delivery keep a record of the exempt sale. This record shall be in the form of an invoice or a log, and shall serve as evidence that the sale is exempt from special fuel tax.

1. If the record is in the form of an invoice, it shall contain the information required under B.

2. If the record is in the form of a log, it shall contain the following information:

a) name and address of the retail dealer;
b) date of sale;
c) amount of propane sold; and
d) purchaser's name.

E. A retail dealer that sells propane or electricity exempt from sales tax shall retain the following information for each exempt sale:

1. the make, year, and license number of the vehicle;
2. the name and address of the purchaser; and
3. the quantity (e.g., number of gallons) sold.

F. A retail dealer is not required to obtain an exemption certificate from a purchaser of dyed diesel fuel indicating that the dyed diesel fuel will be used for purposes other than to operate a

motor vehicle upon the highways of the state if the retail dealer complies with the notice requirement under 26 C.F.R. Section 48.4082-2.

G. A retail dealer may not sell dyed diesel fuel exempt from special fuel tax if the retail dealer knows that the fuel will be used to operate a motor vehicle upon the highways of the state.

R865-4D-18. Maintenance of Records Pursuant to Utah Code Ann. Sections 59-13-305(1) and 59-13-312.

A. The records and documents maintained pursuant to Section 59-13-312 must substantiate the amount of fuel purchased and the amount of fuel used in the state and claimed on the special fuel report required by Section 59-13-305(1).

B. Every user must maintain detailed mileage records and summaries for fleets traveling in Utah, detailed fuel purchase records, and bulk disbursement records. From this information, an accurate average miles per gallon (mpg) figure can be determined for use in computing fuel tax due. No fuel entering the fuel supply tank of a motor vehicle may be excluded from the mpg computation. Refer to Tax Commission rule R865-4D-2.

C. Individual vehicle mileage records (IVMRs) separating Utah miles from non-Utah miles must be maintained. Utah miles must be separated further into taxable Utah miles and nontaxable Utah miles. An adequate IVMR will contain the following information:

1. starting and ending dates of trip;
2. trip origin and destination;
3. route of travel, beginning and ending odometer or hubometer reading, or both;
4. total trip miles;
5. Utah miles;
6. fuel purchased or drawn from bulk storage for the vehicle; and
7. other appropriate information that identifies the record, such as unit number, fleet number, record number, driver's name, and name of the user or operator of the vehicle.

D. If the user fails to maintain or provide adequate records from which the user's true liability can be determined, the Tax Commission shall, upon giving written notice, estimate the amount of liability due. Such estimate shall take into consideration any or all of the following:

1. any available records maintained and provided by the user;
2. historical filing information;
3. industry data;
4. a flat or standard average mpg figure.

a) The standard average mpg normally applied is four mpg for qualified motor vehicles and six miles per gallon for nonqualified motor vehicles.

E. Section 59-13-312(2) requires that the user be able to support credits claimed for tax-paid fuel with documents showing payment of the Utah special fuel tax. If documents and records showing payment of the Utah special fuel tax are not maintained or are not provided upon request, the credits will be disallowed.

R865-4D-19. Refund of Special Fuel Taxes Paid by Government Entities Pursuant to Utah Code Ann. Section 59-13-301.

(1) Governmental entities entitled to a refund for special fuel taxes paid shall submit a completed Utah Application for Fuel Tax Refund, form TC-116, to the commission.

(2) A governmental entity shall retain the following records for each purchase of special fuel for which a refund of taxes paid is claimed:

(a) name of the government entity making the purchase;
(b) license plate number of the government vehicle for which the special fuel is purchased;
(c) invoice date;
(d) invoice number;
(e) vendor;
(f) vendor location;
(g) product description;
(h) number of gallons purchased; and
(i) amount of state special fuel tax paid.

(3) Original records supporting the refund claim must be maintained by the government entity for three years following the year of refund.

R865-4D-20. Exemption or Refund for Exported Undyed Diesel Fuel Pursuant to Utah Code Ann. Section 59-13-301.

A. If untaxed undyed diesel fuel is sold by a supplier directly out-of-state or is sold by a supplier to a purchaser that will deliver the fuel directly out-of-state, the fuel may be sold by the supplier exempt from the special fuel tax.

B. If untaxed undyed diesel fuel is sold tax exempt under A., the supplier shall report the fuel sold tax exempt on the export schedule of its special fuel supplier return.

C. If special fuel tax has been paid on undyed diesel fuel that is exported, the exporter may apply to the Tax Commission, on a monthly basis and on the export refund request form provided by the Tax Commission, for a refund of special fuel taxes paid.

D. Original records supporting the exemption or refund claim must be maintained by the entity claiming the exemption or refund for three years following the year of exemption or refund.

R865-4D-21. Consistent Basis for Diesel Fuel Reporting Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-307.

(1) Definitions.

(a) "Gross gallon" means the United States volumetric gallon with a liquid capacity of 231 cubic inches.

(b) "Net gallon" means the gross metered gallon with temperature correction in volume to 60 degrees Fahrenheit.

(2) All Utah licensed special fuel suppliers shall elect to calculate the tax liability on a consistent and strict gross gallon or net gallon basis. The election must be declared in writing and must be sent to the Tax Commission. The declared basis must be the exclusive basis used for 12 consecutive months. Any supplier failing to make an election will default to the gross gallon basis and must then report and pay the excise tax on that basis. Request for changes in the reporting basis must be submitted in writing and approved by the Tax Commission prior to any change in the reporting basis. Changes in basis may occur only on January 1 and must remain in effect 12 consecutive months.

(3) All invoices, bills of lading, and special fuel tax returns must include both the gross and net gallon amounts. Conversion from gross to net must conform to the ASTM-API-IP Petroleum Measurement Tables.

(4) All transactions, such as purchases, sales, or deductions must be reported on a consistent and exclusive basis. The taxpayer shall not alternate the two methods on any return or during any 12-month period.

(5) This rule shall take effect July 1, 1997.

R865-4D-22. Reduction in Special Fuel Tax for Suppliers Subject to Navajo Nation Fuel Tax Pursuant to Utah Code Ann. Section 59-13-301.

A. The purpose of this rule is to provide procedures for administering the reduction of special fuel tax authorized under Section 59-13-301.

B. The reduction shall be in the form of a refund.

C. The refund shall be available only for special fuel:

1. delivered to a retailer or consumer on the Utah portion of the Navajo Nation; and
2. for which Utah special fuel tax has been paid.

D. The refund shall be available to a special fuel supplier that is licensed as a distributor with the Office of the Navajo Tax

Commission.

E. The refund application may be filed on a monthly basis.

F. A completed copy of the Navajo Tax Commission Monthly Fuel Distributor Tax Return, form 900, along with schedules and manifests, must be included with the Utah State Tax Commission Application for Navajo Nation Fuel Tax Refund, form TC-126.

G. Original records supporting the refund claim must be maintained by the supplier for three years following the year of refund. These records include:

1. proof of payment of Utah special fuel tax;
2. proof of payment of Navajo Nation fuel tax; and
3. documentation that the special fuel was delivered to a retailer or consumer on the Utah portion of the Navajo Nation.

R865-4D-23. State Participation in the International Fuel Tax Agreement Pursuant to Utah Code Ann. Section 59-13-501.

A. Pursuant to Section 59-13-501, the commission entered into the International Fuel Tax Agreement ("IFTA") effective January 1, 1990.

B. Participation in IFTA is intended to comply with 49 U.S.C. 31705.

C. This rule incorporates by reference the 2003 edition of the IFTA:

1. Articles of Agreement;
2. Procedures Manual; and
3. Audit Manual.

R865-4D-24. Special Fuel Tax License Pursuant to Utah Code Ann. Section 59-13-302.

(1) The holder of a license issued under Section 59-13-302 shall notify the commission:

(a) of any change of address of the business;

(b) of a change of character of the business; or

(c) if the license holder ceases to do business.

(2) The commission may determine that a person has ceased to do business or has changed that person's business address if:

(a) mail is returned as undeliverable as addressed and unable to forward;

(b) the person fails to file four consecutive special fuel tax returns;

(c) the person fails to renew its annual business license with the Department of Commerce; or

(d) the person fails to renew its local business license.

(3) If the requirements of Subsection (2) are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

(4) A person may request the commission to reopen a special fuel tax license that has been determined invalid under Subsection (3).

(5) The holder of a license issued under Section 59-13-302 shall be responsible for any special fuel tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

KEY: taxation, fuel, special fuel
August 27, 2015
Notice of Continuation January 3, 2012

59-13-102
59-13-301
59-13-302
59-13-303
59-13-304
59-13-305
59-13-307
59-13-312
59-13-313
59-13-501

R865. Tax Commission, Auditing.
R865-20T. Tobacco Tax.
R865-20T-1. Assessment of Cigarette and Tobacco Products Tax Pursuant to Utah Code Ann. Sections 59-14-204 and 59-14-302.

A. The cigarette tax is a tax on the first purchase, use, storage, or consumption of cigarettes by a manufacturer, jobber, wholesaler, distributor, retailer, user, or consumer within the state.

B. If cigarettes are purchased outside the state for use, storage, or consumption within the state, the tax must be paid by the user, storer, or consumer.

C. The tobacco products tax is a tax on the first purchase, use, storage, or consumption of tobacco products by a manufacturer, wholesaler, jobber, distributor, retailer, user, storer, or consumer within the state.

D. No tax is due from nonresidents or tourists who import cigarettes or tobacco products for their own use while in the state.

R865-20T-3. Licensing of Cigarette and Tobacco-Products Dealers Pursuant to Utah Code Ann. Sections 59-14-202 and 59-14-301.

A. Each cigarette vending machine shall be licensed as a separate place of business, provided that only one machine needs to be licensed at any place of business where the licensee has more than one machine in operation.

1. The license shall be posted in a conspicuous place on the vending machine.

2. If a licensee operates more than one place of business, the application shall contain the required information about each place of business.

3. The application must be accompanied by the required fee for each place of business.

B. If a licensee's place of business changes, the licensee shall forward the license to the Tax Commission with a request for notation of the change in location.

C. A license under which business has been transacted has no redeemable value when the licensee ceases to transact business.

R865-20T-5. Bonding Requirements For Cigarette and Tobacco Products Dealers Pursuant to Utah Code Ann. Sections 59-14-210 and 59-14-301.

(1) Dealers who only sell tobacco products upon which the taxes imposed by this act have been paid by a previous seller are not required to post a bond.

(2) Subject to Subsections (3) and (4), the commission shall calculate the amount of a bond required under Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing ("Chapter 14"), on the basis of:

(a) for an applicant:

(i) commission estimates of the applicant's tax liability under Chapter 14; and

(ii) the amount of a tax owed under Chapter 14 by any of the following:

(A) the applicant;

(B) a fiduciary of the applicant; and

(C) a person for which the applicant is required to collect, truthfully account for, and pay over a tax under Chapter 14; and

(b) for a licensee:

(i) commission estimates of the licensee's tax liability under Chapter 14; and

(ii) the amount of a tax owed under Chapter 14 by any of the following:

(A) the licensee;

(B) a fiduciary of the licensee; and

(C) a person for which the licensee is required to collect, truthfully account for, and pay over a tax under Chapter 14.

(3) If the commission determines it is necessary to ensure compliance with Chapter 14, the commission may require a licensee to increase the amount of a bond filed with the commission.

(4) A licensee that does not purchase cigarette stamps on credit may not make any single purchase of cigarette stamps that exceeds 90% of the amount of the bond the licensee has filed with the commission.

R865-20T-7. Export Sales of Cigarette and Tobacco Products Pursuant to Utah Code Ann. Sections 59-14-205 and 59-14-401.

A. Sales of cigarettes and tobacco products to jobbers dealers outside the state are not subject to the taxes imposed by this act provided that physical delivery of the goods is made outside the state.

B. All export sales for which an exemption or refund is claimed must be supported by invoices and delivery tickets or bills of lading showing all of the following:

1. date of sale;
2. name and address of customer;
3. address to which delivered;
4. quantity and type of product sold.

R865-20T-8. Records Pertaining To Cigarette and Tobacco-Product Sales Pursuant to Utah Code Ann. Section 59-14-404.

A. It is the duty of manufacturers, jobbers, distributors, wholesalers, retailers, users, or consumers of cigarettes or tobacco products to keep records necessary to determine the amount of tax due on the sale, purchase, or consumption of those products.

B. All pertinent records must be preserved for a period of three years.

C. The records shall be available for inspection by the Tax Commission or its authorized agents at all times during normal business hours or at other times determined by mutual agreement.

R865-20T-9. Cigarette-Manufacturer Inventory Requirements Pursuant to Utah Code Ann. Section 59-14-205.

A. Inventories of cigarettes held by manufacturers in warehouses located in Utah may be delivered to wholesalers or jobbers without being stamped. A record of those deliveries must be kept by the manufacturer at its place of business in this state or at the warehouse. The record shall contain all of the following:

1. date of delivery;
2. the person to whom the cigarettes were delivered;
3. place of delivery;
4. quantity delivered.

B. The record must be available for inspection by the Tax Commission or its agents at any reasonable time.

C. If the merchandise is sold to retailers, consumers or persons other than wholesalers or jobbers, the manufacturer must qualify as a licensed dealer.

R865-20T-11. Reporting of Imported Cigarettes Pursuant to Utah Code Ann. Section 59-14-212.

A. A manufacturer, distributor, wholesaler, or retail dealer required by Section 59-14-212 to provide the Tax Commission, on a quarterly basis, a copy of the importer's federal import permit and the customs form showing the tax information required by federal law:

1. is not required to enclose that information with the quarterly report;

2. shall retain that information in its records; and

3. at the request of the Tax Commission, provide copies of that information to the Tax Commission.

R865-20T-12. Definition of Counterfeit Tax Stamp Pursuant to Utah Code Ann. Section 59-14-102.

"Counterfeit tax stamp," for purposes of the definition of a counterfeit cigarette in Section 59-14-102, includes a cigarette

stamp that has previously been affixed to another pack of cigarettes.

R865-20T-13. Calculation of Tax on Moist Snuff Pursuant to Utah Code Ann. Section 59-14-302.

(1) Moisture content, for purposes of ascertaining whether a tobacco product meets the definition of moist snuff, shall be the moisture content annually reported by the manufacturer to the United States Department of Health and Human Services.

(2)(a) Tax on moist snuff shall be calculated by multiplying the net weight as listed by the manufacturer, in ounces, of the taxable moist snuff by the tax rate for moist snuff required under Section 59-14-302.

(b) If the net weight includes a fractional part of an ounce, that fractional part of an ounce shall be included in the calculation.

(3) The calculation described in Subsection (2) shall be carried to three decimal places and rounded up to the nearest cent whenever the third decimal place of the calculation in Subsection (2) is greater than 4.

R865-20T-14. Directory of Cigarettes Approved for Stamping Pursuant to Utah Code Ann. Sections 59-14-603 and 59-14-607.

(1) The commission shall update the directory of cigarettes approved for stamping required under Section 59-14-603 on the first business day of each month.

(2) Additions or modifications of brand families shall be by supplemental certification delivered to the commission by the manufacturer no later than 30 days before the next scheduled monthly update of the directory.

(3) Approved brand family additions or modifications shall be made to the directory on the next scheduled monthly update only if the manufacturer submitted a complete and accurate supplemental certification with requested additions or modifications 30 days prior to the scheduled monthly directory update.

(4) If the manufacturer does not submit a complete and accurate supplemental certification to the commission within 30 days of the next scheduled monthly update, approved brand family additions or modifications will not be made to the directory until the following monthly update.

(5) Directory updates between the regularly scheduled monthly updates are generally only permitted to correct errors or omissions in the directory made by the commission.

KEY: taxation, tobacco products
August 27, 2015
Notice of Continuation January 3, 2012

59-14-102
59-14-202
59-14-203.5
59-14-204
through
59-14-206
59-14-210
59-14-212
59-14-301
through
59-14-303
59-14-401
59-14-404
59-14-603
59-14-607

R865. Tax Commission, Auditing. **59-12-104**
R865-21U. Use Tax. **59-12-118**
R865-21U-1. Nature of Use Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or

2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

R865-21U-2. Rules Common to Both Sales and Use Taxes Pursuant to Utah Code Ann. Section 59-12-118.

A. The use tax is a complement to the sales tax and the rules promulgated are common to both taxes.

R865-21U-6. Liability of Purchasers for Payment of Tax Pursuant to Utah Code Ann. Section 59-12-107.

(1) For purposes of this section:

(a) "Income tax return" means a tax return filed under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

(ii) Title 59, Chapter 10, Individual Income Tax Act, except for Title 59, Chapter 10, Part 4.

(b) "Sales tax license" means a license issued under Title 59, Chapter 12, Sales and Use Tax Act.

(2) A purchaser of an item that is subject to sales and use tax must account for the tax liability by paying the tax:

(a) to the seller from whom the item was purchased if the seller has a sales tax license; or

(b) directly to the commission if the seller from whom the item was purchased does not collect the sales tax from the purchaser.

(3) A purchaser that is subject to Subsection (2)(b) shall:

(a) if the purchaser has a sales tax license pay the tax on the purchaser's sales and use tax return; or

(b) if the purchaser does not have a sales tax license, pay the tax on the purchaser's income tax return.

(4)(a) A purchaser paying the tax to the commission under Subsection (3)(b) shall compute the tax using the rates provided in the income tax instructions for the address of the purchaser as shown on the income tax return.

(b) If a purchaser is not required to file an income tax return, the purchaser shall:

(i) report and pay the tax on the income tax return the purchaser would otherwise be required to file; and

(ii) include with the return a statement stating that no income tax is due and that the return is submitted for payment of use tax only.

R865-21U-16. Property Sold or Used In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-107.

A. The fact that tangible personal property is purchased in interstate or foreign commerce does not exempt the property from the tax if the property is stored, used, or otherwise consumed within this state after the shipment in interstate or foreign commerce has ended.

B. The fact that tangible personal property is used in this state in interstate or foreign commerce following its storage in this state does not exempt the storage of the property from the tax. The fact that tangible personal property is used in this state in interstate or foreign commerce does not exempt the use of the property from the tax.

KEY: taxation, use tax
August 27, 2012 **59-12-103**
Notice of Continuation August 6, 2015 **59-12-107**

R867. Tax Commission, Collections.
R867-2B. Delinquent Tax Collection.
R867-2B-1. Collection of Penalty Pursuant to Utah Code Ann. Section 59-1-302.

(1) The commission may impose a lien upon the real and personal property of a person liable for a penalty under Section 59-1-302.

(2) The statute of limitations for imposing liens under Subsection (1) is three years from the date of the penalty assessment.

R867-2B-3. Sale of Seized Property Pursuant to Utah Code Ann. Section 59-1-703.

A. The Commission must approve all sales of seized property sold, pursuant to Section 59-1-703(8), prior to the Commission's final decision on the appeal.

B. The taxpayer will be notified in writing of the intent to sell the seized property at least ten days prior to the sale except when the seized property is perishable. Perishable property may be sold immediately.

C. Expenses of retaining the seized property will be determined by taking into account such things as the appraised value of the property, the storage costs for the projected appeal period, conservation, depreciation, and maintenance.

D. A taxpayer may stop a sale of seized property by posting a bond with the Tax Commission, equal to the appraised value of the property, within three days of the notice of sale.

KEY: taxation, controlled substances, seizure of property, drug stamps

July 26, 2012	**59-1-302**
Notice of Continuation August 6, 2015	**59-1-706**
	59-1-701
	59-1-702
	59-1-703
	59-1-707
	59-19-104
	59-19-105
	59-19-107

R895. Technology Services, Administration.
R895-14. Access to Information Technology for Users with Disabilities.
R895-14-1. Purpose and Authority.

Each state agency shall develop, procure, maintain, and use accessible electronic information and Information Technology (IT) acquired on or after June 1, 2015, that conforms to the applicable provisions set forth by s. 508 of the Rehabilitation Act of 1973, as amended, and 29 U.S.C. s. 794(d), including the regulations set forth under 36 C.F.R. part 1194, and the voluntary guidelines reflected W3C Web Content Accessibility Guidelines (WCAG) Version 2.0.

Information Technology accessibility ensures that people with and without disabilities can access the same information, perform the same tasks, and receive the same services using information technology. It is the digital equivalent to accessibility in the physical environment. While IT accessibility can provide usability benefits to everyone who uses IT, accessibility is vital to many people with disabilities. This rule is established under the authority of Sections 63F-1-102; 63F-1-205; and 63F-1-206 as amended, and 63F-1-210 as enacted.

(1) Undue Burden to Agencies.

If compliance with this rule causes an undue burden to agencies; agencies may propose an alternative method of access that allows users with disabilities to use information and data. The alternative method must be submitted to the CIO in writing, and the CIO must approve.

(2) Accessibility Testing Protocols.

The Department of Technology Services provides guidelines for accessibility testing and revises them on a regular schedule for use by State Agencies. Current testing protocols measure accessibility against United States Public Access Board Guidelines of 2015, including Section 508 of the Rehabilitation Act of 1973 as amended, and W3C Web Content Accessibility Guidelines (WCAG) Version 2.0.

R895-14-2. Scope of Application.

This rule is applicable to all State of Utah Executive Branch Agencies that are under the jurisdiction of the State CIO per Title 63F, The Utah Technology Governance Act.

(1) Exceptions.

Agencies excepted include only those agencies specifically excluded by statute in Title 63F, The Utah Technology Governance Act as amended.

(2) Conditions.

The intent of this rule is to provide a best effort approach to accessibility that ensures that people with and without disabilities can access the same information, perform the same tasks, and receive the same services using information technology.

(3) Limitations.

This rule does not apply to information technology deployed prior to June 1, 2015.

R895-14-3. Accessibility Criteria for Agency Websites.

Agency websites created after adoption of this rule will conform at minimum to W3C Web Content Accessibility Guidelines (WCAG) Version 2.0. Testing will reflect compliance based upon no errors at then current DTS accessibility guideline recommendations.

(1) Incorporations by Reference.

W3C Web Content Accessibility Guidelines (WCAG) Version 2.0 is incorporated by reference as published at http://www.w3.org/TR/WCAG20.

(2) Agency Discretion.

Agency websites for public and internal use shall comply with accessibility guidelines irrespective of then current audience accessibility needs.

(3) Vendor Accessibility Certification.

Vendors developing new websites or applications for agencies are required to meet accessibility guidelines subject to this rule. The contractor must correct new websites that do not meet accessibility guidelines without cost to the agency.

R895-14-4. Accessibility Criteria for Hardware and Software.

Hardware and software products acquired after June 1, 2015 shall comply with W3C Guidance on Applying WCAG 2.0 to Non-Web Information and Communications Technologies (WCAG2ICT), which is incorporated by reference. These guidelines are published at http://www.w3.org/TR/wcag2ict.

(1) Agency Discretion.

Agency hardware and software procurements shall comply with accessibility guidelines irrespective of then current known user accessibility needs, or the agency must provide individuals with disabilities with an alternative method of access that allows the individual to use the hardware and software.

(2) Vendor Accessibility Certification.

Vendors proposing IT products and services for use by the State of Utah shall provide Voluntary Product Accessibility Template (VPAT) documents. (A VPAT is a document provided by a vendor documenting compliance with Section 508.) Vendors will also meet accessibility requirements included in State of Utah Standard Terms and Conditions for IT contracts.

R895-14-5. Accessibility for Existing Legacy Information Systems used by Executive Branch Agencies.

Agencies shall ensure that plans are developed to address IT accessibility issues once identified in existing systems, subject to available funding. Corrective actions in project plans, procurement of more accessible IT, and providing alternate means of access to the IT product or service are examples of possible remediation. Such changes are voluntary and are not mandated by this rule.

(1) Agency Discretion.

Agencies will make reasonable efforts to comply with accessibility guidelines for legacy information systems and at minimum, must provide individuals with disabilities with an alternative method of access that allows the individual to use the hardware and software associated with the legacy information system.

R895-14-6. Grievance Reporting Procedures.

The Department of Technology Services shall provide accessible forms for reporting accessibility issues that can be accessed in the standard Utah.gov Website footer used by agency Websites. In addition, a contact number is provided on agency Websites to report accessibility issues.

(1) Responding to Accessibility Violations.

DTS shall respond to accessibility violation reports within 30 working days with suggestions for remediation and possible timelines as appropriate.

KEY: accessibility guidelines, information technology for users with disabilities, web accessibility
August 7, 2015 **63F-1-206**
63F-1-210

R909. Transportation, Motor Carrier.
R909-1. Safety Regulations for Motor Carriers.
R909-1-1. Authority and Purpose.

This Rule is enacted under the authority of Section 72-9-103 to enable the department to enforce the Federal Motor Carrier Safety Regulations as contained in Title 49, Code of Federal Regulations related to the operation of a motor carrier within the state, as required by Section 72-9-301.

R909-1-2. Adoption of Federal Regulations.

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 384, Parts 387 through 399, and Part 40,(October 1, 2014), as amended by the Federal Register through April 23, 2015 are incorporated by reference, except for Parts 391.11(b)(1) and 391.49 as it applies to intrastate drivers only. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers (including the driver) for compensation and Section 72-9-102(2) engaged in intrastate commerce.

(2) Intrastate trucking operations in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, Section 53-3-303.5 for intrastate drivers under R708-34.

(4) Drivers involved wholly in intrastate commerce shall be at least 18 years old. However, if they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, they must be 21 years old.

(5) Licensed child care providers operating a passenger vehicle with a seating capacity of not more than 30 passengers, and wholly in intrastate commerce, are exempt from 49 CFR Part 387 Subpart B but are subject to the minimum coverage requirements in Section 72-9-103.

R909-1-3. Insurance for Private Intrastate/Interstate Motor Carriers.

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) All intrastate private motor carriers shall have a minimum amount of $750,000 liability.

(3) All intrastate for-hire and private motor carriers transporting any quantities of oil listed in 49 CFR 172.101; hazardous waste, hazardous material and hazardous substances defined in 49 CFR 171.101, shall have $1,000,000 minimum level of financial responsibility and a MCS-90 endorsement maintained at the principal place of business.

R909-1-4. Implements of Husbandry.

"Implements of Husbandry" is defined in Section 41-1a-102(23) and must be in compliance with all provisions of Chapter 6, Title 41, Utah Code Annotated. Vehicles meeting this definition are exempt from 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

R909-1-5. Cease and Desist Order - Registration Sanctions.

As authorized by Section 72-9-303, the department may issue cease and desist orders to any motor carrier that fails or neglects to comply with State and Federal Motor Carrier Safety Regulations or any part of this rule.

R909-1-6. Penalties and Fines.

Any motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations or any part of this rule is subject to a civil penalty as authorized by Sections 72-9-701 and 72-9-703.

R909-1-7. Motor Carriers Delinquent in Paying Civil Penalties; Prohibition on Transportation.

Pursuant to Section 72-9-303, a motor carrier that has failed to pay civil penalties imposed by the department, or has failed to abide by a payment plan, may be prohibited from operating commercial motor vehicles in intrastate or interstate commerce.

KEY: trucks, transportation safety, implements of husbandry
August 24, 2015 **72-9-103**
Notice of Continuation: November 1, 2011 **72-9-104**
72-9-101
72-9-301
72-9-303
72-9-701
72-9-703

R920. Transportation, Operations, Traffic and Safety.
R920-1. Utah Manual on Uniform Traffic Control Devices.
R920-1-1. Purpose and Authority.

The purpose of this rule is to adopt standards and establish specifications for a uniform system of traffic-control devices used on all highways open to public travel, to establish criteria and specifications for the establishment, location, and operation of school crosswalks, school zones, and reduced speed school zones, and to establish specifications for uniform signage or markings to clearly identify school bus parking zones. This rule is authorized and required by Sections 41-6a-301, 41-6a-303 and 41-6a-1307.

R920-1-2. Incorporation.

Incorporated by reference is the Utah Manual on Uniform Traffic Control Devices, 2009 Edition with revisions through June 30, 2015 (Utah MUTCD). This manual was determined to be in substantial conformance with the 2009 MUTCD by the Federal Highway Administrator which, in accordance with Title 23, U.S. Code, Section 655, is the standard for all highways open to public travel in accordance with Title 23, U.S. Code, Sections 109(d) and 402(a). Included in Part 7 of the Utah MUTCD is the Utah Traffic Controls for School Zones establishing the criteria and specifications authorized and required by Sections 41-6a-303 and 41-6a-1307.

R920-1-3. Authority of Executive Director or Designee.

All authority shall rest with the Utah Department of Transportation Executive Director or his designee to develop or modify the Utah MUTCD, including the Utah Traffic Controls for School Zones, as the standard for all highways open to public travel in Utah.

KEY: traffic control, pedestrians, school zones, traffic signs
August 24, 2015 **41-6a-301**
Notice of Continuation August 1, 2012 **41-6a-303**
41-6a-1307

R920. Transportation, Operations, Traffic and Safety.
R920-2. Rural Conventional Road Definition.
R920-2-1. Purpose and Authority.

The purpose of this rule is to adopt standards and establish specifications for the definition of rural conventional roads as required in Section 72-7-504 (amended 2015).

R920-2-2. Definitions.

Rural conventional roads are roads that are in rural areas.

Rural areas are communities and unincorporated county not within the boundaries of urbanized areas and urban clusters as identified by the Department.

R920-2-3. Authority of Executive Director or Designee.

All authority shall rest with the Utah Department of Transportation Executive Director or his designee to develop or modify the definition in R920-2-2.

KEY: rural conventional roads, unincorporated county, tourist-oriented directional signs, urbanized areas
August 24, 2015 72-7-504

R920. Transportation, Operations, Traffic and Safety.
R920-8. Flashing Light Usage on Highway Construction or Maintenance Vehicles.
R920-8-1. Purpose.

This rule provides specifications governing the design and use of special flashing lights on vehicles engaged in highway construction and maintenance operations.

R920-8-2. Authority.

This rule is required and authorized by Section 41-6a-1617.

R920-8-3. Definitions.

In addition to the terms defined in Section 41-6a-102, the following terms are defined:

(1) "Engaged" means performing tasks for roadway surface and shoulder maintenance or construction purposes.

(2) "Flashing Amber Lighting System" means one or more amber flashing light(s).

(3) "Flashing lights" means bursts of light which are distinguishable and capture attention.

(4) "Headlight, taillight, or brake light flashers" (also known as "wigwags") means a device used to alter or modify the original vehicle manufacturer's electronically controlled lighting system.

(5) "Highway construction and maintenance vehicles" means both on-road and off-road vehicles or equipment.

(6) "360-degree visibility" means the ability to be seen from all angles.

R920-8-4. Requirements for All Vehicles Engaged in Highway Construction or Maintenance Operations on State Highways.

(1)(a) Except as provided under Subsection (1)(b), beginning July 1, 2015, vehicles engaged in highway construction or maintenance operations on state highways that are not protected by traffic control devices compliant to the current Utah Manual on Uniform Traffic Control Devices, must have a flashing amber lighting system with 360-degree visibility.

(b) When the flashing amber lighting system does not provide 360-degree visibility, vehicle hazard lights shall be used in addition to the flashing amber lighting system.

(2) Flashing amber lighting systems may be supplemented with flashing white lights on the front and flashing red lights on the rear that do not alter or modify the original manufacturer's electronically controlled lighting system.

R920-8-5. Requirements for All Vehicles Engaged in Highway Construction or Maintenance Operations on Non-State Highways.

(1) Local jurisdictions will determine the appropriate use of flashing lights on construction or maintenance vehicles engaged in construction or maintenance operations on non-state roadways.

R920-8-6. Visibility.

(1) Flashing amber lighting systems shall meet or exceed the Society of Automotive Engineers (SAE) Class I certification.

(2) Flashing lights shall be positioned on the vehicle so as to not interfere with the ability to see standard vehicle lighting.

(a) Operation of flashing lights must be used in conjunction with standard vehicle lighting.

R920-8-7. Specific Limitations.

For vehicles engaged in highway construction or maintenance operations, not including the Utah Department of Transportation's Incident Management Team units:

(1) no red light may be visible from the front of a vehicle;

(2) no flashing white light may be visible from the rear of a vehicle;

(3) blue lights are prohibited; and

(4) headlight, taillight, and brake light flashers (wigwags) are prohibited.

R920-8-8. Exceptions.

(1) When multiple vehicles are engaged in highway construction and maintenance operations, and are concentrated within a small area in a work zone, it is acceptable for those vehicles within the perimeter of vehicles to reduce the intensity or turn off the flashing amber lighting systems and/or supplemental flashing lighting systems to minimize the distractions to motorists and other workers in the work zone.

(2) Delivery vehicles are not required to have a flashing amber lighting system, but must use vehicle hazard lights when entering or exiting a work zone.

R920-8-9. Recommended Placement Practice.

Flashing amber lighting systems should be placed as high on the vehicle as reasonably capable of being placed.

KEY: flashing lights, highways, construction, maintenance
August 7, 2015 41-6a-1617

R930. Transportation, Preconstruction.
R930-8. Utility Relocations Required by Highway Projects.
R930-8-1. Purpose.

This Rule, sets forth the Department's requirements and authority as to a Utility Company's coordination and cooperation when removal, relocation, or alteration of a Utility Facility is made necessary by a highway project and sets forth the options the Department may pursue to proceed with a highway project in the event that a Utility Company fails to cooperate or coordinate with the Department as required by statute or rule.

R930-8-2. Authority.

This Rule is enacted pursuant to Utah Code Sections 54-3-29(5)(b), (6), and (7), and 72-6-116(2) and (6).

R930-8-3. Definitions.

As used in this Rule R930-8:

(1) "Department" means the Utah Department of Transportation.

(2) "Non-operating Property" and "Non-operating Real Property" refer to property owned by a Utility Company that is not directly part of the Utility Company's physical plant or facilities that provide the utility service.

(3) "Utility Company" and "Utility" shall have the same definition as in Utah Code Section 54-3-29(1)(f), and may be used interchangeably.

(4) "Utility Facility" shall have the same definition as in Utah Code Section 54-3-29(1)(g).

R930-8-4. Utility Company Coordination and Cooperation.

When the Department notifies a Utility that relocation of a Utility Facility may be necessary due to a highway project, both the Department and the Utility shall use their best efforts to identify conflicts, minimize utility relocation costs and operational impacts, highway project costs and delays, and to coordinate and cooperate with one another, as directed in Utah Code Sections 54-3-29(6)-(7) and 72-6-116(6). When the Department believes a conflict exists, it will offer an initial scoping meeting and provide authorization for the Utility to do preliminary design work. The Utility shall:

(1) Provide to the Department, the location of each Utility Facility likely to be affected following the process set forth in Rule R930-7-11(6).

(2) Identify to the Department conflicts between the Department's proposed highway work and the Utility's operation of its Utility Facilities.

(3) Submit to the Department all conveyances, vesting documents, or other evidence of title to real property related to the potential relocation of Utility Facilities as early as practicable.

(4) Submit to the Department the Utility's proposed design for relocation; detailed cost estimates; a reasonable relocation schedule to accommodate the highway project; reasonable limits on highway project work, including utility outage windows and construction loadings by the Department; and communication procedures between the parties. A reasonable relocation schedule for the project includes, but is not limited to, work sequencing, task durations, material ordering, notification requirements, mobilization, third-party coordination, communication between the parties, and any other activity necessary for the relocation of the Utility Facility to accommodate the highway project. If the relocation work is to be completed prior to the Department awarding the highway project to its contractor, the Utility shall include specific dates in the schedule.

(5) Execute a written relocation agreement with the Department. The agreement shall include terms and conditions, including but not limited to, the relocation scope of work, reimbursement provisions, federal requirements, description and location of the work to be undertaken, plans and drawings, and detailed cost estimates.

(6) After the Department has awarded the highway project to the contractor, coordinate with the contractor to develop a detailed work plan and schedule, and address all other matters of mutual concern during construction. Submit to the Department written acknowledgement of the approved schedule.

(7) Perform the work necessary for removal, relocation, or alteration of the Utility Facility in accordance with the detailed work plan and schedule developed in (4) and (6) above, and as described in the relocation agreement and supplemental agreements.

R930-8-5. Timeliness.

The work listed in Subsections R930-8-4(1) through (7) must be timely completed by the Utility as not to delay the highway project or otherwise increase costs to the project. The Department will provide reasonable deadlines for the Utility so the Utility can meet the deadlines and not unnecessarily delay the highway project. The Department will also provide the Utility with reasonable updates of highway project schedule changes.

R930-8-6. Relocation.

The basic concept when relocating Utility Facilities is to functionally restore the Utility's operation facilities that existed prior to the Department constructing a highway project.

(1) The Department incorporates by reference 23 CFR Section 645, subpart A (05/15/1985), for all Utility Facility relocations required by the Department's highway projects. For deviations in determining whether the Utility's real property needed for the highway project should be handled as a utility relocation or right-of-way acquisition, Rule R930-7-13(5) shall apply.

(2) If the Utility's regulatory and construction requirements can be met, the Department may require Utility Companies to jointly occupy trenches for the highway construction projects. To the extent Utilities have valid agreements concerning the joint use of above ground facilities, the Utilities shall cooperate with each other for the relocated joint use.

(3) If a Utility determines the existing Utility Facilities do not need to be replaced or are not needed to maintain its operational facilities, payment for the real property, which is needed to accommodate the construction of the highway project where the Utility Facilities are located, shall be handled as a right-of-way acquisition.

R930-8-7. Replacement of Property Rights.

(1) When the Department replaces a Utility's fee interest or easement, the Utility shall transfer title to the prior fee or easement to the Department without charge.

(2) If the Utility has facilities within a fee or easement and the facilities are relocated within the Department's right-of-way, the Utility shall transfer title to the fee or easement without charge to the Department and the Department shall reimburse the Utility 100% of the future utility relocation costs in compliance with 23 CFR Section 645, subpart A.

(3) When the Utility's Utility Facilities are located in a public utility easement as defined in Utah Code Section 54-3-27, the Department may purchase a replacement public utility easement and may require the Utility to relocate its facilities to the replacement public utility easement.

(4) The Utility shall pay UDOT for any betterment between the existing real property interest and the real property interest acquired for relocation.

(5) If the Department obtains a court ordered occupancy or right-of-entry from a property owner, the Utility shall relocate its facilities onto the replacement property rights while the Department obtains the final order or deeds from the property owner.

(6) Acquisition of Non-operating Real Property from a Utility shall be in accordance with the Uniform Relocation

Assistance and Real Property Acquisition Policies Act of 1970 and applicable right-of-way procedures in 23 CFR Section 710.203.

R930-8-8. Reimbursement of Relocation Costs.

(1) Reimbursement costs shall be determined in accordance with 23 CFR Section 645, subpart A, and the Program Guide, Utility Relocation and Accommodation on Federal-Aid Highway Projects, Sixth Edition, January 2003, as amended, Cost Development and Reimbursement, pages B-21 to B-23.

(2) If a Utility cannot provide a copy of a permit that shows the Department's acceptance of the deviation from the rule in effect at the time of installation of the Utility Facilities and the Utility Facilities do not meet the overhead clearance requirements, the Utility must relocate its facilities without any reimbursement from the Department. The Utility shall be responsible for 100% of its relocation costs for non-compliant utility facilities.

(3) When reimbursement is made on the basis of actual costs, the Utility's estimate and final billing shall be itemized to show the totals for labor, overhead construction costs, travel expenses, transportation, equipment, materials and supplies, handling costs, and other services.

(4) The Utility's final billing statement shall be provided in a format that facilitates making comparisons with the Department's approved estimates.

(5) A Utility must submit final billings to the Department within six months following the completion of the Utility Facility relocation work. The Department may make a final payment when the final bill is received from a Utility more than six months after the completion of the Utility Facility relocation work if the Department and the Utility have agreed in advance that a longer time period is needed.

(6) The costs incurred by the Department and a Utility for compliance with federal and state statutes, rules, and regulations will be included as part of the utility relocation costs.

(7) Temporary Utility Facility relocations required by the highway project will be included as part of the utility relocation costs.

(8) Telecommunication utility companies granted longitudinal interstate access are required to pay all relocation costs pursuant to Utah Code Section 72-7-108.

R930-8-9. Betterments.

No betterment credit is required for the replacement of utility devices or materials that are:

(1) Required by the highway project;

(2) Of equivalent standards although not identical;

(3) Of the next highest grade or size when the existing devices or materials are no longer regularly manufactured;

(4) Required by law pursuant to governmental and appropriate regulatory commission code; or

(5) Required by current design practices regularly followed by the Utility in its own work, and there is a resulting direct benefit to the highway project.

R930-8-10. Issuance of Administrative Order; Enforcement.

(1) In the event that a Utility fails to timely coordinate and cooperate with the Department at any point in the utility relocation process, the Department may issue an administrative order pursuant to Utah Code Section 72-6-116(2)(b) to the Utility to accommodate the highway project. The administrative order shall be issued by the Department's Statewide Utilities and Railroads Engineer and will include a reasonable timeframe for Utility Company actions to be complete the relocation of the Utility Facilities, including any design.

(2) If the Utility fails to comply with the Department's administrative order, and the failure to comply is not caused by a third party who the Utility has no control over, the Department may issue an administrative order to remedy non-compliance. The Department may order any or all of the following remedies:

(a) The Department may recover from the Utility increased costs caused by the Utility's unreasonable or unjustified delays. Such actual and indirect costs may include, but are not limited to, increased costs on the current highway project or related projects, added expenses from loss of a construction season, and loss of project funding.

(b) The Department may deny further permits for utility installation under R930-7 until the Utility's non-compliance is resolved.

(c) The Department may perform design work and construction work on behalf of the Utility for those Utility Facilities located within the highway right-of-way, except for fiber for telecommunications, electricity, and natural gas. The Department will only perform such work if the work can be performed without violating any state or federal statute, regulation, or safety requirement. The Utility shall reimburse the Department for the costs the Department incurs to relocate the Utility's facilities, in amounts allowed by Utah Code Section 72-6-116(3).

(3) In addition, the Department may pursue additional remedies or claims against a Utility in a district court in Utah.

(4) The Department shall not limit or waive any of its remedies or claims allowed in this rule or law.

(5) The Department may require a Utility to comply with a practicable shortened process or expedited schedule when an emergency exists that could affect public safety or the structural or functional integrity of the highway.

R930-8-11. Agency review.

A Utility aggrieved by an administrative order issued under Rule R930-8-10 and Utah Code Section 72-6-116(2)(b) may file a written request for agency review with the Department pursuant to the Administrative Procedures Act, Utah Code Title 63G, Chapter 4, and Rule R907-1. The presiding officer for the agency review will be the Department's Director of Operations, who will issue the Department's Final Order. The administrative proceedings shall be informal.

KEY: right-of-way, utility accommodation, utility facilities, utilities

August 24, 2015 **54-3-29(5)(b)**
54-3-29(6)
54-3-29(7)
72-6-116(2)
72-6-116(6)

R982. Workforce Services, Administration.
R982-402. Energy Assistance Programs Standards.
R982-402-1. Opening and Closing Dates for HEAT Program.

(1) Each November 1, or the first working day thereafter, the HEAT Program opens for the general population.

(2) The HEAT Program closes the following April 30, or the last business day of the month, or when federal LIHEAP funds are exhausted, whichever comes first. If federal LIHEAP funds are yet available, the program may be extended beyond April 30 and through to September 30 with the approval of the State HEAT Program Manager. Applications taken on or before the program closing date may be processed after the program closing date. If funds are exhausted before all applications are processed, notice of non-payment will be sent to the remaining unprocessed applications.

R982-402-2. U.S. Residence.

(1) To be eligible for HEAT assistance, a person must meet at least one of the criteria for US residence listed below:

(a) Be a US born or naturalized citizen as evidenced by any document verifying the individual was born in the US or naturalization papers.

(b) Be lawfully admitted into the US for permanent residence as evidenced by a valid U. S. Citizenship and Immigration Services (USCIS) Permanent Resident Card (form I-551).

(c) Be lawfully admitted into the US with a valid USCIS Employment Authorization Card (form I-766) with one of the following categories: A3, A4, A5, A10, C11, C25, RE1, RE2, RE3, RE4, RE5.

(d) Be lawfully admitted into the US with a valid USCIS Arrival/Departure Record (Form I-94) with a Customs and Border Protection endorsement stamp marked with one of the following: I-551, 203A7, 207, 208, 212D5, RE1, RE2, RE3, RE4, RE5.

(e) Be lawfully admitted into the US with a valid USCIS Approval Notice (Form I-797A) issued with one of the following classes: I-551, 203A7, 207, 208, or 212D5, RE1, RE2, RE3, RE4, RE5.

(2) Persons not eligible to participate in the HEAT program are:

(a) Persons who hold a USCIS 1-94 who are admitted as temporary entrants.

(b) Persons who have none of the documents listed in subsection 1 of this section or whose documents are expired.

R982-402-3. Utah Residence.

There is no length of residency requirement. Individuals must be living in Utah voluntarily and not for a temporary purpose.

R982-402-4. Local Residence.

(1) Native American Residents of Daggett, Duchesne, and Uintah Counties who are enrolled in any federally recognized Indian Tribe have a choice of applying for utility assistance through the state HEAT program or through the Ute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

(2) Native American Residents of Washington, Iron, Millard, and Sevier Counties have a choice of receiving utility assistance through the state HEAT program or through the Paiute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

(3) Residents living on the Navajo Indian Reservation in San Juan County may apply for utility assistance through the Navajo Tribe or through the State HEAT Program. They cannot receive assistance through both programs in the same program year.

R982-402-5. Vulnerability.

(1) Households that are responsible for paying home heating costs are considered vulnerable.

(2) The following households are considered responsible for home heating costs:

(a) Households who are presently paying heating costs directly to energy suppliers on currently active accounts.

(b) Households who are currently paying energy costs indirectly through rent.

(3) Residents in the following households are not considered responsible for home heating costs and are not eligible for HEAT assistance:

(a) Nursing homes;
(b) Hospitals;
(c) Prisons and jails;
(d) Institutions;
(e) Alcoholism and drug treatment centers;
(f) Group homes administered under a contract with a government agency or administered by a government agency;
(g) Households not connected to a heat source;
(h) Households whose utility bills are paid regularly by an outside party;
(i) Automobiles;
(j) Tents.

R982-402-7. Social Security Numbers.

(1) Verification of Social Security Numbers is required for all household members.

(2) There are four ways to provide a correct SSN. The client can submit one of these three documents.

(a) An official SSN card

(b) Official documents from Social Security Administration including award letters, benefit checks or a Medicare card

(c) An SSA receipt form 5028 or 2880.

(d) Official document from another government agency.

R982-402-8. Eligible HEAT Household.

(1) Household members need not be related.

(2) Multiple dwellings including duplexes and apartment buildings are considered separate households.

(3) If the HEAT benefit, combined with other available funds, will not prevent shut-off, or reconnect a utility that has already been disconnected, the household will be denied.

R982-402-9. Age and Emancipation.

Household members 18 years of age or older or emancipated are considered adults. A child can be emancipated by age, marriage or court order.

R982-402-10. Weatherization Referrals.

Participation in the weatherization program is not a condition of eligibility for HEAT.

R982-402-11. HEAT Crisis Assistance.

(1) A crisis exists when a household faces a sudden or unexpected event beyond its control resulting in the inability to pay household heating costs. A crisis may be caused by:

(a) unexpected increase in medical costs;
(b) sudden loss of job, public benefits, or other income;
(c) malfunction of heating equipment;
(d) other circumstances that may pose a potential health and/or safety threat

(2) Circumstances that do not necessarily qualify as a crisis include:

(a) chronic non-payment of utility/fuel costs
(b) unexplained or excessively high utility/fuel costs
(c) payments that will create a credit balance on a utility account, payments on utility accounts previously sent to a collection agency or capital improvements to rental property

(d) other situations which are not sudden, unexpected, or beyond the control of the household.

(3) To be eligible for HEAT crisis assistance, a household must be eligible for HEAT during the same HEAT program year.

(a) If the local office determines that a household is in a crisis situation, is eligible to receive HEAT crisis assistance and has written notice from the Division of Public Utilities that the residence has "life supporting equipment", HEAT crisis assistance will be provided within 18 hours. Regular HEAT crisis assistance will be provided within 48 hours of eligibility determination.

(b) The HEAT supervisor or designee must approve all expenditures.

(c) HEAT payments are issued to the vendor. If propane or wood is used as a heating source, or if the state does not have a contract with the vendor, the percentage of benefit attributable to that heating source can be paid directly to the client.

(d) HEAT crisis payments are limited to a maximum of $500 per household per utility (e.g. gas and electric) per HEAT program year unless prior approval for an amount larger than $500 per utility is obtained from the supervisor or state office.

R982-402-12. Supplemental Programs.

Households that qualify for HEAT assistance may also receive supplemental payments from other utility programs, such as "Reach", "Lend-A-Hand", and Catholic Community Services utility fund.

R982-402-13. Security Deposits.

(1) A PSC regulated utility is required to waive the security deposit requirement for all Heat and Moratorium clients during the period of the Moratorium. Monies received by a regulated utility from third-party sources, including monies provided by HEAT, REACH, CONCERN or similar programs, shall not be applied to the security deposit.

(2) If the company has signed a HEAT contract, the company has agreed not to charge a security deposit to a HEAT client from November 15th through March 15th. This does not apply to the service initiation fees that are routinely charged as a condition of service.

R982-402-14. Consumer Complaints.

(1) Consumer complaints against a PSC regulated utility should be referred to the Public Service Commission.

(2) Consumer complaints against a non regulated utility should be referred directly to the individual utility company.

R982-402-15. Credit Balances on Utility Accounts.

(1) If the household discontinues service with their utility supplier, and the household so elects, the disconnecting supplier will forward any HEAT credit balance remaining on the account to the household's new utility company. The new utility company must operate in Utah. The household must furnish, to the disconnecting utility supplier, the name and address of the new utility company within 30 days after termination of service.

(2) Utility companies may refund credit balances to clients who still reside in Utah if a new Utah address is provided within 30 days after termination of service. Otherwise, the credit balance shall be refunded to the HEAT Program.

(3) In no case shall HEAT credit balances be forwarded to utility companies not operating in Utah or to clients no longer residing in Utah.

(4) If the client fails to give the disconnecting utility company the information necessary to transfer or refund the credit balance, the utility company can hold the credit balance for an additional 30 days. If reconnection with the same utility has not occurred, any remaining credit balance must be refunded to the HEAT program.

(5) Once credit balances are refunded to the HEAT program they become part of the general HEAT budget and are redistributed in the form of benefits to additional eligible households.

KEY: energy assistance, residency requirements, opening and closing dates, HEAT
August 11, 2015 35A-8-1403

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least $500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

(a) receipt of disability benefits from SSA;

(b) 100% disabled by VA; or

(c) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a doctor of osteopathy;

(iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(iv) a licensed Advanced Practice Registered Nurse; or

(v) a licensed Physician's Assistant.

(d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning $500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

R986-200-203. Citizenship and Alienage Requirements.

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

(a) who is paroled into the United States under section 212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony, or who are violating parole or probation for a felony or a misdemeanor, are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting, sign a FEP Agreement, and negotiate and sign an employment plan within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

(5) If a parent in the financial assistance household received TANF funded financial assistance benefits from another state or from a tribe, the entire household is ineligible to receive TANF funded financial assistance in Utah the same month. This is true even if household composition has changed. If a child in the

household has received TANF funded financial assistance in another household, in this or any other state, the child will be excluded from the household determination in the same month according to the provisions of R986-200-205(2)(d). TANF funded financial assistance in Utah is FEP, FEP-TP, Emergency Assistance and AA.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents, parents listed on the birth certificate and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(d) a child who was counted as a dependent in a household that received TANF funded financial assistance or in a specified relative household in the same month. A child cannot be counted as a dependent in two households that receive TANF funded financial assistance or specific relative assistance in the same month.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are not required to participate in an employment plan under R986-200-210 and who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included. If the household member is required to participate in an employment plan, the household member must be included.

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(f) if the only adult in the household is temporarily absent, the dependent child or children must be left under the care of an adult or benefits will be denied;

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-206. Participation Requirements.

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:

(i) establish the paternity of all minor children; and

(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms

of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

R986-200-207. Participation in Child Support Enforcement.

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18;

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;

(c) is emancipated by marriage or court order;

(d) is a member of the armed forces of the United States; or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits;

(c) the client is participating in FEPTP; or

(d) the client is an undocumented alien parent.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, undocumented alien parent, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records; or

(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental

health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the

employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the minimum number of hours of participation under this this subsection is 20 hours per week and all of those 20 hours must be in priority activities.

(5) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) When an employment counselor discovers that a client is not complying with his or her employment plan, the employment counselor will attempt to discuss compliance with the client and explore solutions. The employment counselor will also send written notice of the failure to comply to the client. The notice will specify a date certain by which the client must comply and the consequences of not complying by that date.

(2) If compliance is not resolved by the date specified in the notice sent under subsection (1) of this section, the employment counselor will send a second written notice and initiate termination of the household financial assistance. This second notice will advise the client that the financial assistance will terminate at the end of that month unless the client resolves the problem, as provided in paragraph (2)(a) of this section. This second notice will also provide a date certain by which the compliance problems must be resolved for benefits to continue.

(a) If the client establishes reasonable cause for not complying with the employment plan or provides required documentation by the date specified in the first or second notice, financial assistance will continue or be restored.

(b) If the compliance problem is not resolved as provided in subparagraph (a) of this subsection, the household will be ineligible for financial assistance for one full month. The client must then reapply for financial benefits and successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to comply with the employment plan during the two week trial period.

(4) The two week trial period may be waived only if the client has cured all previous compliance issues prior to re-application.

(5) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(6) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(7) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(8) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(9) If a client is also receiving food stamps and the client is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great- great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated;

(m) former stepparents

(n) a Native American adult who has a Native American child placed in, or living in that adult's home, and both the child and the adult are members of, or eligible for membership in, a federally recognized tribe; and

(o) an adult of the same ethnicity, culture, country of origin, religion, language and/or nationality as the refugee/asylee child in his or her care.

(2) The specified relative must provide proof of relationship to the child. If the specified relative is unable to provide proof, but DCFS has determined that one of the relationships in subparagraph (1) of this section exists, the Department will accept the DCFS determination. DCFS will not be liable for any potential overpayment resulting from a determination made regarding relationship.

(3) The Department shall require compliance with Section 30-1-4.5

(4) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, FEP rules apply.

(5) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated, or have a blood relationship to a dependent child who is in the home and who is included in the household for assistance purposes. This does not apply to specified relatives who are eligible under subsection (1)(n) and (o) of this section;

(6) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(7) The child must be currently living with, and not just visiting, the specified relative;

(8) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(9) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(10) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(11) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(12) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the

dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(13) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(14) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household. Eligible refugee households with two able-bodied parents and at least one dependent child, must first exhaust RRP benefits before considering eligibility for FEPTP.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. Refugee families may participate in any combination of eligible and priority activities for a combined total of 60 hours per week, as provided in the employment plan.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8),

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determinated by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

(a) the applicant's employment history;

(b) the likelihood that the applicant will obtain immediate full-time employment;

(c) the applicant's housing stability; and

(d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment will equal three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating diversion.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made, the client is ineligible for FEP for the three months covered by the diversion payment and must reapply at the end of the three month period.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

(10) A household can only receive one diversion assistance payment in a 12 month period.

R986-200-217. Time Limits.

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded

when they receive SSI benefits;

(e) diversion assistance does not count toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least $500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least $500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an exception under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An exception under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted or

(i) the client is currently participating in the Intergenerational Welfare Dependency Poverty Pilot Program, "Next Generation Kids" and needs additional time to obtain job training and preparation to decrease the risk of his/her children being part of intergenerational welfare dependency. This exception will not be available if the Pilot Program is to end.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment; or

(f) neglect or deprivation of medical care.

(3) Employment extension. An extension to the time limit can be granted for a maximum of an additional 24 months if during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage.

(a) If, at the end of the 24-month extension, the parent client qualifies for an exception under subsections (1) or (2) of this section, an exception can be granted under the provisions of those sections.

(b) A family cannot receive financial assistance for more than a total of 60 months unless an exception can be granted under subsections (1) and (2) of this section.

(4) All clients receiving an extension or an exception must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions or extension listed above. Both parents need not meet the same exception or extension.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons for an exception in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education

and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions and extensions are subject to a review at least once every six months.

R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of $450 for rent on April 1 and requests an additional EA payment of $300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed $450 per family for one month's rent payment or $700 per family for one month's mortgage payment, and $300 for one month's utilities payment.

R986-200-220. Mentors.

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

(a) develop life skills;

(b) implement an employment plan; or

(c) obtain services and support from:

(i) the volunteer mentor;

(ii) the Department; or

(iii) civic organizations.

R986-200-221. Drug Testing Requirements.

(1) A parent client or specified relative who is counted in the household assistance unit under R986-200-205 must complete a substance abuse questionnaire. A substance abuse questionnaire is defined as a written screening questionnaire designed to accurately determine the reasonable likelihood of the client having a substance use disorder involving the misuse of a controlled substance. Individuals in the household who have been disqualified from the receipt of assistance because of an IPV are also required to complete a substance abuse questionnaire and otherwise comply with this section.

(2) If the results of the substance abuse questionnaire indicate a reasonable likelihood of a substance use disorder involving the misuse of a controlled substance, a drug test is required within a period of time as specified by the Department. The test will be performed in accordance with the requirements of Utah Code Ann. Section 34-38-6. Before taking the drug test, the client may advise the person administering the test of any prescription or any over the counter medication the client is taking.

(3) If the client tests positive for the unlawful use of a controlled substance on the drug test required under subsection (2), benefits may continue but only if the client agrees to receive treatment from a Department approved provider. The treatment will be for a minimum of 60 days and the client must also submit to drug tests during, and at the conclusion of, treatment. Each test must be negative. The length of treatment, if over 60 days, will be determined by the treatment provider and the Department. The client cannot change treatment providers unless the treatment provider and the Department agree to the change.

(4) The entire household unit will be denied financial assistance for a period of three months for the first occurrence and 12 months for any subsequence occurrence within a 12 month period if a client identified in subsection (1):

(a) refuses to take a drug test as required in subsection (2) or (3) of this section,

(b) fails to enter and successfully complete treatment as required in subsection (3) of this section, or

(c) tests positive for the unlawful use of a controlled substance, on any subsequent drug test required by the Department, while in treatment or at the completion of treatment.

(5) A client can be excused from complying with the requirements of this section if the necessary resources are not available through no fault of the client.

(6) A client can be excused from complying with the requirements of this section in a timely manner if the client can show reasonable cause. Reasonable cause under this section means the client was prevented from complying in a timely manner through no fault of his or her own or failed to comply in a timely manner for reasons that are reasonable and compelling.

(7) If a client disagrees with the results of a drug test performed under subsections (2) or (3) of this section, the client can provide the Department with the results of a second drug test. This second drug test will be performed:

(i) at the client's expense,

(ii) at a testing facility approved by the Department,

(iii) in accordance with requirements of Utah Code Ann. Section 34-38-6, and

(iv) within seven days of the Department sending notice of the results of the original drug test.

(c) If the results of the second drug test are negative, the Department will reimburse the client the actual and reasonable verified costs incurred in obtaining the second test.

R986-200-230. Assets Counted in Determining Eligibility.

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value.

Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed $2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over $1,000, then only that item is counted toward the $2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe. Any asset purchased with profit distributions or income to tribal members derived from tribal owned casinos and privately owned land is countable;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of $1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the $1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at $1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of $1,500. Any amount over $1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

R986-200-232. Considerations in Evaluating Real Property.

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

R986-200-233. Considerations in Evaluating Household Assets.

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

R986-200-234. Income Counted in Determining Eligibility.

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance, except, starting March 1, 2009 and continuing as long as it is authorized by Congress and not counted for food stamps, the $25 supplemental weekly Unemployment Compensation payment authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) will not be countable unearned income;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed $30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Profit distributions or income to tribal members derived from tribal owned casinos and privately owned land are countable income;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of $30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

R986-200-237. Lump Sum Payments.

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

R986-200-238. How to Calculate Income.

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

R986-200-239. How to Determine the Amount of the Financial Assistance Payment.

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of $100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the Department. The current amount is in the table that follows:

TABLE

Household Size	Payment Amount

1	$288
2	$399
3	$498
4	$583
5	$663
6	$731
7	$765
8	$801

Amounts for household sizes larger than 8 are available at all Department offices.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive $60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of $15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of $300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program or who are eligible for TANF non-FEP training under R986-200-245 and who participate in the HS/GED Pilot Program. The payment of these funds is completely discretionary by the Department and may differ from region to region. The payments may continue until the client completes the HS/GED Pilot Program even if the client is no longer receiving FEP.

R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

R986-200-243. Counting the Income of Sponsors of Eligible Aliens.

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year

period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of $175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

R986-200-244. TANF Needy Family (TNF).

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 300% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

R986-200-245. TANF Non-FEP Training (TNT).

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

R986-200-246. Transitional Cash Assistance.

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or earned and unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA,

(b) be employed and

(i) have income greater than the FEP or FEP TP income guideline

(ii) the FEP or FEP TP assistance was terminated because of that income, and

(iii) the earned income exceeds the unearned income at the time the FEP or FEP TP was terminated, and

(c) continue to cooperate with the Office of Recovery Services, Child Support Enforcement.

(3) TCA is only available if the customer verifies income at the minimum required in subparagraph (2)(b) of this section.

(4) The TCA benefit is available for a maximum of three months in a 12 month period. The three months do not need to be consecutive.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) To receive the second and third month of the TCA benefit, the client must remain employed or have had an open FEP case that closed during the prior month due to income described in (2)(b) of this section.

(6) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

R986-200-248. Wasatch Front North Service Area Pilot: FEP Subsidized Employment (FEP SE).

(1) FEP SE is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible FEP recipient. FEP SE is a pilot program for Wasatch

Front North Service Area but may be expanded to other service areas if funding permits. To be eligible, a FEP recipient must:

(a) be currently receiving FEP benefits and have received at least one FEP payment;

(b) have a current employment plan. If the client is working less than 30 hours per week, the employment plan must provide additional activities,

(c) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;

(d) have not worked for the employer where the client is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the FEP SE program; and

(e) have not previously participated in the FEP SE program.

(2) An employer eligible for a subsidy under this section is an employer that:

(a) is registered with the Department's UI division as an active employer in "good standing". For the purposes of this section, "good standing" means the employer has no delinquent UI contributions or reports;

(b) is a "qualified employer" which is defined as any employer other than the United States, any State, or any political subdivision or instrumentality thereof. A public institution of higher education is considered a "qualified employer" for purposes of this section. The employer cannot be a Temporary Help Company as defined in R994-202-102 or a Professional Employer Organization as defined in R994-202-106;

(c) pays a wage of at least $8 per hour. Commission only jobs may qualify if the employer guarantees $8 per hour or more;

(d) has not displaced or partially displaced existing workers by participating in this program;

(e) has at least one other employee;

(f) will provide the client with at least 20 hours work per week; and

(g) does not hire the client for temporary or seasonal work.

(3) Once it has been verified that a FEP recipient has been hired, a qualified employer will be paid a $500 subsidy and an additional $1,500 subsidy at the conclusion of the third month of employment provided the required DWS invoices have been provided.

(4) FEP SE will continue for as long as funding is available.

R986-200-249. Access to Assistance.

Financial assistance for FEP and FEPTP is provided through an electronic benefit transfer (EBT) card. The card, instructions on its use, and applicable fees will be provided to all clients. A method for obtaining assistance without a fee will be made available. In other circumstances, minimal fees or/or surcharges will apply. Information about obtaining assistance without a fee or surcharge, when fees or surcharges apply, and the amount of the fee or surcharge is available on the Department's website: jobs.utah.gov.

KEY: family employment program
September 1, 2015 35A-3-301 et seq.
Notice of Continuation September 8, 2010

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment and job search activities.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where the client is working for an approved child care center, regularly watches children other than her own, and does not have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Care About Child Care agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) If an overpayment is established and it is determined that the client was at fault in the creation of the overpayment, the client must repay the overpayment to the Department. In some situations, the client and provider may be jointly liable. In the case of joint liability, both parties can be held liable for the entire overpayment.

(8) The Department is authorized to release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) the date the child care subsidy was issued;

(c) the subsidy amount for that provider;
(d) the copayment amount;
(e) information available in the Department Provider Portal. The Provider Portal provides a provider with computer access to limited, secure information;
(f) the month the client is scheduled for review;
(g) the date the client's application was received; and
(h) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.

(9) Unused child care funds issued on the client's electronic benefit transfer (EBT) card will be removed from ("aged off") the EBT card 90 days after those funds were deposited onto the EBT card. Aged off funds will no longer be available to the client.

(10) If a client uses a child care provider at least eight hours during the first week of the calendar month, and that provider has been paid for that month, the Department will not pay another provider for child care for the rest of that month even if the client changed providers. However, if it is the provider that decided not to provide care and the client is required to change providers, the Department may pay that second provider for a portion of that same month.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:
(a) providers regulated through Department of Health Child Care Licensing (CCL):
(i) licensed homes;
(ii) licensed child care centers; and
(iii) homes with a residential certificate.
(b) license exempt providers who are not required by law to be licensed and are either;
(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status from CCL and have at least one person who is trained in first aid and infant/child CPR who must be with the children at all times including when the children are being transported in a vehicle. Current verification of first aid and CPR training must be provided to CCL prior to Department approval. License exempt centers will be required to have background checks on all staff pursuant to CCL rules; or
(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.

(2) The following providers are not eligible for receipt of a CC payment:
(a) a provider living in the same home as the parent client unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;
(b) a sibling of the child living in the home can never be approved, even for a special needs child;
(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;
(d) undocumented aliens;
(e) persons under age 18;
(f) a provider providing care for the child in another state;
(g) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run, any resulting overpayment has been satisfied, and the provider is otherwise eligible;
(h) any provider disqualified under R986-700-718;
(i) a provider who does not provide necessary information or cooperate with a Department investigation or audit or is not an approved provider; or
(j) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment.

(3) FFN providers will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:
(a) complete, sign and submit an application to CCL;
(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy as explained in the orientation;
(c) pass a home inspection as provided in Department policy;
(d) complete an infant/child CPR training;
(e) complete first aid training; and,
(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.

(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC provider must complete and submit a renewal application, together with any information, verifications or releases required or requested by the Department or CCL, 30 calendar days before the expiration date of the current approval.

(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

(7) A FFN provider or applicant has a right to file an appeal when an adverse action has been taken against him or her in regards to FFN approval status or health and safety compliance. Prior to filing an appeal, the provider or applicant must request a review with the CCL manager. If unresolved after that review, the provider may file an appeal by requesting a fair hearing with DWS in accordance with R986-1-123 et seq.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect copayments and any other fees for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, and time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year.

(4) Providers must provide initial verification information to determine eligibility. Providers must also cooperate with an investigation or audit to determine ongoing eligibility or if eligibility was correctly determined. Cooperation includes providing information and verification and returning telephone calls or responding to emails from Department employees or other persons authorized by the Department to obtain information such as an employee of ORS in a timely manner. "A timely manner" is usually considered to be ten business days for written documentation and two business days to return a phone call or email request. Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the eligibility. Failure to disclose a material fact that might affect the eligibility determination can also lead to criminal prosecution. If a provider fails to cooperate

with an investigation or audit, provide any and all information or verification requested, or fails to keep records for one year without good cause, the provider will no longer be an approved provider. Good cause is limited to circumstances where the provider can show that the reasons for the delay in filing were due to circumstances beyond the provider's control or were compelling and reasonable. The period the provider will not be an approved provider will be from the date the information or verification was due until when it is received by the Department.

(5) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider is responsible for repayment of the resulting overpayment and there may be a disqualification period and/or criminal prosecution.

(6) CCL will keep a list of all providers that have been disqualified as a provider or against whom a referral or complaint is received.

(7) All providers, except FFN providers as defined in R986-700-705(1)(b)(ii), are required to report their child care rates to the local Care About Child Care agency.

(8) Providers are required to access the Provider Portal at jobs.utah.gov/childcare and:

(a) submit and manage bank account information;

(b) read and agree to the terms and conditions contained in the Provider Guide and in the Portal;

(c) view child care payment information;

(d) manage Provider Portal user access to ensure only those users with authority to make changes can do so. The provider is liable for all changes made and information provided through the Provider Portal;

(e) report the following changes within 10 days, or by the 25th of the month, whichever is sooner:

(i) a child is no longer in child care;

(ii) a child was not in child care during that month;

(iii) that the provider decided not to charge the full subsidy amount for one month. The provider should notify the Department and the difference will be deducted from the next payment;

(iv) that a child attended for less than eight hours in the first week of the month, payment for the month was received and the child is not expected to return; or

(v) a change in financial institution account information for direct deposit.

(9) Providers must submit a W-9 Form if required by the Department and a 1099 will be issued annually.

(10) A provider who provides services for any part of a month and then terminates services with the client/child during the month, must reimburse the Department for the days when care was not provided. However, if it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

R986-700-707. Copayment and Transitional Child Care.

(1) "Copayment" means a dollar amount which is deducted by the Department from the standard CC subsidy for Employment Support CC. The copayment is determined on a sliding scale and the amount of the copayment is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the copayment directly to the child care provider.

(3) If the copayment exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The Department will deduct the full monthly copayment from the subsidy even if the client receives CC for only part of the month.

(5) There is no copayment during transitional child care. Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The copayment will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not.

(6) A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-708. FEP CC.

FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the copayment.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100% disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm

identity.

R986-700-710. Income Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted. Recipients of SSI benefits are included in the household assistance unit.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted;

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted; and

(iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the copayment amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

R986-700-713. Amount of CC Payment.

CC will be paid at the lower of the following levels:

(1) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(2) the rate established by the provider for services and, if required, reported to the local Care About Child Care agency; or

(3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-714. CC Payment Method.

(1) The provider must provide a valid financial account and routing number to allow for payment by direct deposit. For open, ongoing cases, payment will be issued on the first day of the month for services to be provided during that month. The provider is not an employee of the Department, the Office of Child Care, or the state of Utah even if the provider is only providing care for one client.

(2) Under unusual or extraordinary circumstances, the Department can issue payment by check. If a provider cannot obtain a financial account for direct deposit, the provider must contact the Department and explain why direct deposit is not

possible.

(3) In the event that a check is reported as lost or stolen, the provider is required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form. If the original check has been redeemed, the Department will conduct an investigation and the provider, or the parent and provider in the case of a two party check, may be required to provide a sworn, notarized statement that the signature on the endorsed check is a forgery. If the Department determines the redeemed check was a forgery, the Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice if:

(a) the Department has determined that the client or the provider was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the provider: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible including when a provider accepts payment but does not provide care. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) Even if CC funds are authorized by the Department, a CC provider cannot receive and retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds received and retained by a provider but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and may be disqualified from receipt of further CC subsidy funds as provided in R986-700-718. A provider is considered to have retained subsidy funds if the provider knew or should have known the child would not receive services that month and fails to notify the Department within ten days or the provider does not notify the Department within ten days of the end of the month when the child was not in care at least eight hours that month.

(3) All CC overpayments must be repaid to the Department.

(a) Client overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(b) Provider overpayments. If a provider does not repay any outstanding overpayment within 30 days of notice of the overpayment, the Department will commence collection procedures which may include recouping the overpayment by deducting a portion of the overpayment from ongoing child care subsidies from the Department. This is true even if the child or client no longer receives child care from the provider. The decision whether to recoup the overpayment from ongoing child care payments or to commence collection procedures lies with the Department and not the provider or client/s.

(i) If the Department elects to recoup the overpayment from ongoing child care payments, and the overpayment is less than $1,000, the Department will recoup the full amount within 90 days. If the overpayment is more than $1,000 the Department will recoup the amount within six months. If the recoupment presents a hardship because it is more than 50% of the provider's ongoing monthly subsidy amount, the provider can contact the Department to discuss alternative arrangements for repayment.

(ii) If a provider stops providing care and has a balance due on an overpayment, and seeks approval to become a provider at a later date, approval cannot be granted until the overpayment is paid in full even if any disqualification period has expired.

(4) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(5) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

(6) A CC provider may appeal an overpayment as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment.

(7) If a provider receives and retains three overpayments in a rolling 12 month period, the provider will be taken off the approved provider list until all outstanding overpayments are paid in full, even if the time frames outlined in subsection (3)(b)(i) of this section have not expired.

(8) If a provider fails to enter into a payment plan to repay the overpayment or abide by the terms of the payment plan for 12 consecutive months, the provider will be taken off the approved provider list until all overpayments are paid in full or the arrearage on the payment plan is brought current. This is true even if there is only one overpayment.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. A maximum of seven hours per day will be approved for sleep time.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need

that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies documenting the child's disability or special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education, or

(e) Baby Watch, Early Intervention Program.

(3) Verification to support that the child is disabled or has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification.

(1) If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment, if there is one, and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider or as a parent:

(a) for a period of one year for the first IPV;

(b) for a period of two years for the second IPV; and

(c) for life for the third IPV.

(2) If the overpayment resulted from parent or provider fault not amounting to fraud or an agency error, the client and or provider will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment or disqualification. A provider who has been disqualified may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default.

(5) A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

(6) A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

(7) All disqualification periods run concurrently.

(8) A disqualification issued to a provider, including a child care center, under this subsection will follow both the provider, the principal provider, and any successor center or provider.

(a) A "successor" provider, including a child care center, that acquires the business or acquires substantially all of the assets of the provider or child care center. This includes a provider who changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Assets may also include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

R986-700-719. Job Search Child Care (JS CC).

(1) JS CC is available to a client who is otherwise eligible for child care but is separated from his or her job and meets the eligibility criteria.

(2) JS CC is available for a maximum of two additional months provided the client:

(a) was employed at least 32 hours per week and was separated from his or her job;

(b) was receiving ES CC or Transitional Child Care (TR CC) in the month of the job separation and;

(c) reports the job loss within 10 days and requests continued child care payments while searching for a job. In that case, the client will be eligible for one additional month of child care. The month of the job loss does not count.

(3) If the client verifies the job loss in a timely manner, as directed by the Department, a second month of CC will be paid while the client looks for a job.

(4) The JS CC extension is only available once in a rolling 12 month period even if the client received only one month of JS CC assistance.

(5) A client is not eligible for JS CC if the client has two or more jobs and is separated from one or more of them but still has one job.

(6) Two parent households are not eligible for JS CC.

(7) The JS CC copayment will be at the lowest copayment amount required by the Department disregarding all earned income.

(8) A client who is receiving TR CC when the job separation occurs, and meets the requirements of this section, can be eligible for a maximum of two months of JS CC but those two

months will count against the six month maximum under TR CC as provided in R986-700-707. If the job separation occurs in the last month of TR CC, the client can be eligible for JS CC which would be in addition to the TR CC.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1).

(2) The provider and each person age 12 years old or older living in the household where the child care is provided must submit to a background check.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and the provider or any person age 12 years old or older living in the household where the child care is provided has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Screening.

(1) The Department will contract with the CCL to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(2) Each client requesting approval of a covered child care provider must submit to CCL a form, which will include a waiver and certification, completed and signed by the child care provider as part of the DWS FFN approved provider process. Additional household members must give permission to run the background check. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under subsection (4) of this section.

(3) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(4) Fingerprint cards are not required if the Department or CCL is reasonably satisfied that the covered individual has resided in Utah for the last five years or is a refugee who settled directly to Utah. A fingerprint card may be required, even if the individual has resided in Utah for the last five years or is a refugee who settled directly to Utah, if requested by the Department or CCL.

(5) If CCL takes an action adverse to any covered individual based upon the background screening, CCL will send a denial letter to the provider and the covered individual.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor and

(m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.

(3) The Executive Director or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within ten calendar days of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

If CCL determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) CCL will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records. The juvenile court records need only be accessed as provided in 35A-3-310.5(2)(c).

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department or CCL may revoke any existing approval and refuse to permit child care in the home until the Department or CCL is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department or CCL denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify CCL. Failure to notify CCL may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

R986-700-775. High Quality School Readiness Grant Program.

(1) The Office of Child Care (OCC) administers this program pursuant to the authority granted in Utah Code Section 53A-1b-106.

(2) The OCC will solicit proposals from eligible private providers and eligible home-based educational technology providers and make recommendations to the School Readiness Board (SRB) as provided in 53A-1b-106(3).

(3) Eligible private providers and eligible home-based educational technology providers must submit an application, together with a proposal to the OCC by the date provided in the application.

(4) The proposal must contain the components outlined in 53A-1b-105(1) or (2) and details as required in 53A-1b-106(7).

(5) A grant recipient must report annually to the OCC the information required in 53A-1b-106(12) in addition to other information as required by the OCC.

(6) The OCC will monitor each grant recipient to ensure compliance with the High Quality School Readiness Grant Program and share information received from grant recipients annually with the SRB.

(7) Grant recipients must cooperate with the OCC to satisfy the monitoring and reporting requirements of the grant. Cooperation will include allowing onsite visits, providing information, including documentary evidence and written statements, when requested by the OCC, returning telephone calls from an OCC representative when requested to do so, and reporting, at a designated time and place, for an in-person interview with an OCC representative if so requested.

KEY: child care
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Notice of Continuation September 8, 2010 53A-1b-110

R994. Workforce Services, Unemployment Insurance.
R994-207. Unemployment.
R994-207-101. General Definition.

(1) The objective of Sections 35A-4-401 and 35A-4-207 of the Utah Employment Security Act is to provide the means by which it may be determined when or if a claimant, who is not totally unemployed, may be allowed unemployment insurance benefits. It is not the intent of the fund to subsidize a claimant who is devoting substantially all his time and efforts to starting up a new business or expanding an existing business even though he receives no income. This is also true for a claimant who is working as a commission salesperson or licensed mortgage broker/loan officer, real estate, or securities salespersons, who may not have received commissions in excess of his or her weekly benefit amount but who has devoted substantially all of his or her efforts to the endeavor.

(2) There are generally four types of potentially employed claimants who need to have their claims examined under Section 35A-4-207. They are:

(a) corporate officers,
(b) self-employed individuals,
(c) commission salesmen, and
(d) volunteer workers.

R994-207-102. General Requirements for Eligibility.

(1) A claimant is unemployed and eligible for benefits if all of the following conditions are shown to exist:

(a) Less Than Full-Time Work.

The claimant worked all the hours that were reasonable for him to work and the total number of hours was less than full-time. He must not regulate the type or amount of duties or number of hours spent in a remunerative enterprise for the purpose of qualifying for benefits. Full-time work will generally be considered to be 40 hours a week, but may be the number of hours established by schedule, custom, or otherwise as constituting a week of full-time work for the kind of service the claimant performs.

(b) Income Less Than WBA.

The claimant earned less than the weekly benefit amount (WBA) established for his claim.

(c) Available for and Seeking Other Full-time Work.

The claimant in addition to the subject work, must be available for and actively seeking full-time suitable work for another employer as defined by the suitable work test, Subsection 35A-4-405(3) and Section R994-405-306. A failure to make an active search for work will evidence a contentment with his current status and a conclusion that he is "not unemployed" shall be made. The efforts of a claimant to seek work should be distinguished from those directed towards obtaining work for himself as an individual and those directed toward obtaining work or customers for his corporation or business. Efforts to obtain work for the business or corporation are evidence of continuing responsibilities but are not evidence of an individual's active search for other employment as required for eligibility. A claimant who has marketable skills including: bricklaying, plumbing, and office manager, must be willing to seek and accept such work. He may not restrict himself to availability for the type of work he is currently performing on a less than full-time basis. The claimant's past work history is evidence of the effect of such employment on his attachment to the labor force. If he is unable or unwilling to accept any, but short term or casual labor because of continuing or pending responsibilities, he is "not unemployed".

R994-207-103. Corporate Officer.

The performance of some service is presumed where the corporate officer is receiving wages or other compensation including a car, house or other benefits of a determinable value. However, the payment of dividends, bonuses, and stock payments based on the percent of ownership of the claimant are not compensation for service and therefore are not considered wages.

R994-207-104. Self-Employment.

(1) Self-employment includes services which are performed for the direct or indirect purpose of obtaining a livelihood or a part of such livelihood. Self-employment is generally established as a sole proprietorship or partnership. An individual is not self-employed when a farm is operated only to supplement the family food supply or as a place on which to raise the family, but is not operated for the purpose of selling produce. Individuals in self-employment must report time spent engaged in self-employment activities such as time spent about the place of business either working or awaiting calls for goods or services and time spent seeking customers or business for the self-employment venture.

(a) Income from Self-Employment.

Some claimants are engaged in part-time, self-employment which produces an immediate, readily determined weekly income. Claimants must report the amounts received for goods bought, supplies purchased, services, rent, etc. These are reasonable business expenses which can be deducted from gross income for goods and services. Payment of loans for buildings or equipment used in the business are not a deductible expense. Claimants engaged in this type of self-employment must maintain detailed records describing each item of income and expense. The Department may audit those records without prior notice.

(b) Income Not Readily Determinable.

(i) When an individual is engaged in an enterprise that on a year-round basis is less than full-time and the income cannot be clearly determined for each week, the weekly earnings will be determined on the basis of all available information concerning past income and expenses of the enterprise, from which a weekly amount will be computed to represent the potential net income. The amount determined must be reported on the weekly claim. Evidence of changes in the enterprise that would affect the potential income for the present must be reported to the Department and the reportable income will be re-evaluated. Furnishing evidence of past income and expenses is the claimant's responsibility and may be obtained from personal or business records, income tax returns, etc. for the past three years. It will then be averaged to determine a potential weekly amount to be reported each week by the claimant. A claimant may earn up to 30% of his weekly benefit amount in total self-employment plus work for wages before a reduction is made in the unemployment insurance payment for that week. When the estimated income amount equals or exceeds the weekly benefit amount, the claimant is "not unemployed" and benefits will not be allowed.

(ii) When a claimant has just entered into a new business or is expanding and has no actual income experience which may be used as evidence of potential income for the current period, he must make a reasonable estimate. This may be based on any available evidence such as a general knowledge of current prices of products bought and marketed, estimated yields, estimated expense, etc. Any estimated amounts should be so identified.

(c) Over Estimates of Income.

If the Department or claimant has over estimated the amount reportable in self-employment, the claimant may make a claim for the amount owed. The claim must be made within 30 days of when the correct earnings were determinable.

R994-207-105. Bartered or Exchanged Goods and Services.

(1) A claimant must report when he has entered into an agreement to barter or exchange goods or services. The amount of time working to pay for the goods is reportable. In determining the value derived from bartering or exchanging goods or services, the claimant will consider only the portion of the goods or services that he provides. The payment for these goods or services that is received in kind must be valued at current market values.

R994-207-106. Commission Selling.

(1) Time.

If the time spent on commission selling is part-time because of limits imposed by the limited geographical area, limited clientele, or limited products, the claimant could, upon meeting all other provisions of the Act, be allowed benefits.

(2) Income.

It is necessary to distribute the income from commission sales over the period of time it took to earn the commission. The income should be reported during the week in which the sale is made and not when the payment is received. If it is not possible to determine the exact amount of the commission, an estimate should be made and if the estimate is later determined to be wrong, the claimant should immediately report to the Department to receive assistance in making adjustments. Failure to report under estimates may result in claimant fault overpayments and a disqualification under the fraud provisions of the Act.

R994-207-107. Volunteer Work.

(1) Time.

Donated work does not render a claimant ineligible for benefits, even though the number of hours involved may be full-time. Claimants donating 40 hours or more to churches, charities, civic or other non-profit organizations have serious availability restrictions. The claimant may provide evidence of availability by demonstrating a willingness to seek and accept other permanent, full-time work. A diligent work search during any specific week in question, in addition to a positive mental attitude towards seeking and accepting work would provide adequate proof of attachment to the labor force. A failure to make an active search for work would evidence a contentment with the unpaid status of a volunteer worker, and would require a denial of benefits. To be eligible for benefits at a later date, a substantial change in circumstances should be shown.

(2) Remuneration.

If a claimant who receives assistance from a church or civic organization is asked to spend time working for that organization, but the value of the assistance is not determined by the amount of time spent working, the assistance is not reportable income. Normally, money is not involved with donated work. If money is involved, it need not be reported unless it is subject to withholding taxes, which indicates an employer/employee relationship. If the organization provides money for out-of-pocket expenses, such as gas, equipment, clothes, etc., it would not be wages and would not be reportable on the weekly claim.

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35A-4-207

R994. Workforce Services, Unemployment Insurance.
R994-312. Employing Units Records.
R994-312-101. Recordkeeping Requirements.

(1) Each employing unit shall, for a period of at least three calendar years, preserve and make available for inspection all records with respect to employment performed in its service.

(2) The following information is required for each pay period and for each worker;

(a) Name and social security number,

(b) Place of employment. This includes the city and town, or where appropriate the county, in which the work was performed. If work is performed in several locations, assignment of place of employment is made in the following order;

(i) the worker's base of operations,

(ii) the place from which the worker's services are directed or controlled, and

(iii) the worker's place of residence,

(c) The date hired,

(d) The date and reason for separation from work,

(e) The ending date of each pay period,

(f) The total amount of wages paid for each pay period showing separately:

(i) money wages; and

(ii) wages as otherwise defined in Section 35A-4-208 and Section R994-208-102, and

(g) Daily time cards or time records, kept in the regular course of business.

R994-312-102. Examination of Employing Unit Records: Scope and Authority.

(1) The Department is authorized to examine any and all records necessary for the administration of the Act. These records include payroll records, disbursement records, accounting records, tax returns, magnetic and electronic media, personnel records, minutes of meetings, loan documentation, articles of organization, operating agreements, and any other records which might be necessary to determine claimant eligibility and employer liability.

(2) The Department may initiate legal action to compel an employing unit to provide access to records if the employing unit fails to provide full access to records.

(3) If an employing unit maintains its records outside of this state, the employing unit may be required to submit copies of records for review within this state. The employing unit is responsible for any costs associated with providing such copies of records.

R994-312-103. Confidentiality of Records.

(1) Employers and individuals have a legitimate expectation of privacy in the information they provide to the Department. Therefore, consistent with federal and state requirements of confidentiality, it is the intent of this rule to limit access to Department records for use in:

(a) administration of the programs of the Department and the other divisions of the Department of Workforce Services;

(b) the detection and avoidance of duplicate or fraudulent claims against public assistance funds, or to avoid significant risk to public safety; and

(c) as specifically mandated by federal or state law. Department records shall not be published or open to public inspection in any manner revealing the employer's or the individual's identity except upon written request which shall set forth one or more of the following reasons for disclosure:

(i) Records used in making an initial determination or any decision by the Department may be provided to all interested parties prior to the rendering of any decision to the extent necessary for the proper presentation of the case.

(ii) Any information requested by employers concerning claims for benefits with respect to former or current employees may be provided where the employer's reason for seeking the information is directly related to the unemployment insurance program. Information in the records may be made available to the party who submitted the information to the Department; and an individual's wage data submitted by an employer may be made available to that individual.

(iii) Information in the record may be made available to the public for any purpose following a written waiver by all parties of their rights to non-disclosure.

(iv) Employment and claim information may be disclosed by the Department to other divisions of the Department of Workforce Services for the purpose of carrying out the programs administered by the Department for the protection of workers in the work place; to the Governor's office and other governmental agencies administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation; and to any other governmental agency which is specifically authorized by federal or state law to receive such information, subject to the requirements of Subsection R994-312-304(2).

(v) Employment and claim information may be disclosed by the Department to any other public employees in the performance of their public duties only upon a determination by the Department that such disclosure will not discourage the willingness of employers to report wage and employment information or individuals to file claims for unemployment benefits, and such disclosure:

(A) is directly related to the detection or avoidance of duplicate, inconsistent or fraudulent claims against public assistance funds, or the recovery of overpayments of such funds; or

(B) is necessary to avoid a significant risk to public safety; and Disclosure pursuant to R994-312-304(1)(vi)(B) shall be subject to the requirements of Subsection R994-312-304(2).

(vi) No disclosure of employment or claim information may be made by the Department other than as set forth above. All requests for information must comply with the requirements and procedures contained in this rule. The Department will request a judicial or administrative body to withdraw any subpoena issued by that body if the subpoena does not conform to the Act and this rule.

(vii) The Department will provide aggregate information to the Wage and Hour Division of the U. S. Department of Labor on certain employers found to have misclassified workers. Once the Department finds that ten or more workers have been misclassified, the employer will be given 90 days from the date of the final audit report to cure the misclassification by resolving any outstanding amounts due, including contributions, interest and penalties. If an employer appeals the audit report, the 90 days runs from the date the final Department decision is issued. An employer can resolve the outstanding amount due by paying it in full, making payment arrangements or making other reasonable efforts to satisfy the outstanding contributions. If an employer does not cure the misclassification within 90 days, the information will be provided to the Wage and Hour Division of the U. S. Department of Labor.

(2) Employment and claim information may be disclosed to the divisions of the Department of Workforce Services, other governmental agencies, and other public employees only upon completion of a written agreement containing all of the following terms and conditions:

(a) The requesting division or agency must specify a bona fide need for the information, and must agree to use the information only to the extent necessary to assist in its valid administrative needs.

(b) The requesting division or agency must identify all agency officials, by position, authorized to request and receive information.

(c) The methods and timing of requests for information must be agreed upon by the Department and the requesting

division or agency, and there must be provision for the appropriate reimbursement of the Department for the costs associated with furnishing the requested information.

(d) The requesting division or agency must agree to implement, at a minimum, the following requirements for safeguarding disclosed information:

(i) the disclosed information may not be used by the requesting division or agency for any purposes not specifically authorized; and

(ii) the information must be stored by the requesting division or agency in a secure place, and electronically stored information must be secured so that unauthorized persons cannot access the information; and

(iii) the requesting division or agency must instruct all persons authorized to request and receive information as to the confidential nature of the information and of the legal sanctions for unauthorized disclosure; and

(iv) the requesting division or agency must permit the Department to make on-site inspections to insure that there is a genuine need for the information, that the information is being used only for that purpose, and that state and federal confidentiality requirements are being met; and

(v) the head of the requesting division or agency must sign a written acknowledgment attesting to the confidentiality requirements of this rule.

KEY: unemployment compensation, confidentiality of information
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