

R23. Administrative Services, Facilities Construction and Management.**R23-23. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.****R23-23-1. Purpose.**

The purpose of this rule is to comply with the provisions of Section 63A-5-205.

R23-23-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management as well as Section 63A-5-205 which requires this rule related to health insurance provisions in certain design and/or construction contracts.

R23-23-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63A-5-205.

(2) In addition:

(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(b) "Director" means the Director of the Division, including, unless otherwise stated, the Director's duly authorized designee.

(c) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(d) "Employee(s)" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.

(e) "State" means the State of Utah.

R23-23-4. Applicability of Rule.

(1) Except as provided in Subsection R23-23-4(2) below, this Rule R23-23 applies to all design or construction contracts entered into by the Division or the Board on or after July 1, 2009, and

(a) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or greater; and

(b) applies to a subcontractor if the subcontract is in the amount of \$750,000 or greater.

(2) This Rule R23-23 does not apply if:

(a) the application of this Rule R23-23 jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(3) This Rule R23-23 does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R23-23-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection (1) is guilty of an infraction.

R23-23-5. Contractor to Comply with Section 63A-5-205.

All contractors and subcontractors that are subject to the requirements of Section 63A-5-205 shall comply with all the requirements, penalties and liabilities of Section 63A-5-205.

R23-23-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.

(1) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this rule or Section 63A-5-205:

(a) may not be the basis for a protest or other action from

a prospective bidder, offeror, or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

R23-23-7. Requirements and Procedures a Contractor Must Follow.

A contractor (including consultants and designers) must comply with the following requirements and procedures in order to demonstrate compliance with Section 63A-5-205.

(1) Demonstrating Compliance with Health Insurance Requirements. The following requirements must be met by a contractor (including consultants, designers and others under contract with the Division) that is subject to the requirements of this Rule no later than the time the contract is entered into or renewed:

(a) demonstrate compliance by a written certification to the Director that the contractor has and will maintain for the duration of the contract an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents; and

(b) The contractor shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors (including subconsultants) at any tier that is subject to the requirements of this Rule.

(2) Recertification. The Director shall have the right to request a recertification by the contractor by submitting a written request to the contractor, and the contractor shall so comply with the written request within ten (10) working days of receipt of the written request; however, in no case may the contractor be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsection 63A-5-205(1)(e) and defined in Section 26-40-115 is met by the contractor if the contractor provides the Director with a written statement of actuarial equivalency from either the Utah Insurance Department; an actuary selected by the contractor or the contractor's insurer; or an underwriter who is responsible for developing the employer group's premium rates.

For purposes of this Rule R23-23-7(3), actuarially equivalency is achieved by meeting or exceeding the requirements of Section 26-40-115 which are also delineated on the DFCM website at http://dfem.utah.gov/downloads/1const/Health_Insurance_Benchmark.pdf.

(4) The health insurance must be available upon the first day of the calendar month following sixty (60) days from the date of hire.

(5) Architect and Engineer Compliance Process. Architects and engineers that are subject to this Rule must demonstrate compliance with this Rule in any annual submittal under Section 63G-6-702. During the procurement process and no later than the execution of the contract with the architect or engineer, the architect or engineer shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(6) General (Prime) Contractors Compliance Process. Contractors that are subject to this Rule must demonstrate compliance with this Rule for their own firm and any applicable subcontractors, in any pre-qualification process that may be used for the procurement. At the time of execution of the contract, the contractor shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(7) Notwithstanding any prequalification process, any contract subject to this Rule shall contain a provision requiring compliance with this Rule from the time of execution and throughout the duration of the contract.

(8) Hearing and Penalties.

(a) Hearing. Any hearing under this Rule conducted by the Board or the Division shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by Board or Division. The penalties that may be imposed by the Board or the Division if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of this Rule R23-23, may include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c)(i) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of this rule shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection R23-23-7(8)(c)(i) as provided in Subsection 63A-5-205(3)(g)(ii).

R23-23-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.

Nothing in this Rule shall be construed as to create any contractual relationship whatsoever between the State of Utah, the Board, or the Division with any subcontractor or subconsultant at any tier.

KEY: health insurance, contractors, contracts, contract requirements

August 7, 2014

Notice of Continuation June 10, 2014

63A-5-103(1)(e)

63A-5-205

R25. Administrative Services, Finance.**R25-15. Change Date and Set Aside Provisions for Annual Leave II.****R25-15-1. Authority, Purpose, and Definitions.**

(1) This rule is authorized under Subsection 67-19-14.6(2) which requires the division to establish a change date, and Subsection 67-19-14.6(7)(b) which requires the division to make rules for the set aside provisions under Subsections 67-19-14.6(4) and 67-19-14.6(5).

(2) Terms used in this rule are defined in Subsection 67-19-14.6(1).

R25-15-2. Change Date.

For the purposes of Subsection 67-19-14.6(2):

(1) The change date established by the division is June 20, 2015.

(2) All annual leave accrued on or after the change date, to an employee who is eligible to receive paid leave, will be considered annual leave II.

(3) State agencies are required to offer annual leave II in lieu of annual leave to eligible employees on or after the change date.

R25-15-3. Determination of Set Aside.

(1) The division may contract with a qualified actuary to help the division determine the expected change in the annual leave liability for a fiscal year.

(2) As required by generally accepted accounting principles and with consideration of Subsection 67-19-14.6(4), the division will calculate the annual leave liability to include applicable employer paid taxes and other employer paid benefits that would be required if the employee were paid for the annual leave.

(3) For each fiscal year, if the division expects the annual leave liability to increase, the division, in consultation with the Governor's Office of Management and Budget, will determine a rate for set aside for each applicable subfund of the annual leave trust.

(4) The division will inform the legislative Fiscal Analyst of the proposed set-aside rates.

(5) The set-aside rates will be determined as a percentage of gross pay of an employee who is eligible to receive paid leave, which if put into effect, would be expected to generate the amount of the projected increase in the annual leave liability applicable to each subfund of the annual leave trust.

(6) In accordance with Subsection 67-19-14.6(4)(c) and Subsection 67-19f-201(3)(b), the proposed set-aside rates will also be adjusted or eliminated as applicable if the accrual of funding in a subfund of the annual leave trust is expected to reach 10% of the annual leave liability attributable to the subfund.

(7) At the beginning of each fiscal year, the division will put into effect the set aside rates authorized by the Legislature for the fiscal year.

R25-15-4. Collection and Deposit of Set Aside in Subfunds of the Annual Leave Trust.

(1) To implement the provision of Title 67 Chapter 19f, State Employees' Annual Leave Trust Fund Act, the division created the following subfunds within the trust:

- (a) Public Safety,
- (b) Transportation,
- (c) Public Education, and
- (d) General.

(2) The Public Safety subfund applies to all employees within the Department of Public Safety.

(3) The Transportation Subfund applies to all employees within the Department of Transportation.

(4) The Public Education subfund applies to all employees

within the State Office of Education and State Office of Vocational Rehabilitation.

(5) The General subfund applies to all other employees in the Executive, Legislative, and Judicial Branches of the State.

(6) The division shall deposit in each applicable subfund, the amount of funds generated by applying the authorized set-aside rates to each employee eligible to receive paid leave.

(7) In consultation with the Governor's Office of Management and Budget, in accordance with Subsection 67-19-14.6(4)(c) and Subsection 67-19f-201(3)(b), the division will reduce or stop charging a set-aside rate if the funding in a subfund of the annual leave trust reaches or is expected to reach 10% of the annual leave liability attributable to the subfund.

KEY: annual leave, trust fund, liability, state employees

January 13, 2016

67-19-14.6(2)

67-19-14.6(7)(b)

67-19-14.6(4)

67-19-14.6(5)

67-19-14.6(1)

R70. Agriculture and Food, Regulatory Services.**R70-410. Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes.****R70-410-1. Authority.**

(1) Promulgated under authority of Section 4-4-2.

(2) Large Egg Producers with more than 3,000 laying hens shall adhere to R70-410-2 and R70-410-3 rules and:

(a) Adopt by reference: The Utah Department of Agriculture and Food hereby adopts and incorporates by reference the applicable provisions of the regulations issued by the United States Department of Agriculture for grading and inspection of shell eggs and the Standards, 7 CFR Part 56, January 1, 2005 edition, 21 CFR, 1 through 200, April 1, 2003 edition; 9 CFR 590, January 1, 2005 edition; and 7 CFR 59, January 1, 2005 edition.

(3) Small Egg Producers with less than 3,000 laying hens shall adhere to R70-410 sections 2-4 rules.

R70-410-2. Handling and Disposition of Restricted Eggs.

(1) Restricted eggs shall be disposed of by one of the following methods at point and time of segregation:

(a) Checks and dirties must be shipped to an official egg breaking plant for further processing to egg products. Dirties may be shipped to a shell egg plant for cleaning. Checks and dirties may not be sold to restaurants, bakeries and food manufacturers, not to consumers, unless such sales are specifically exempted by Section 15 of the Federal Egg Products Inspection Act and not prohibited by State Law.

(b) Leakers, loss and inedible eggs must be destroyed for human food purposes at the grading station or point of segregation by one of the methods listed below:

(i) Discarded and intermingled with refuse such as shells, papers, trash, etc.

(ii) Processed into an industrial product or animal food at the grading station.

(iii) Denatured or de-characterized with an approved denaturant. (Such product shipped under government supervision and received under government supervision at a plant making industrial products or animal food need not be denatured or de-characterized prior to shipment.)

(iv) Leakers, loss and inedible eggs may be shipped in shell form provided they are properly labeled and denatured by adding FD and C color to the shell or by applying a substance that will penetrate the shell and de-characterize the egg meat.

(c) Incubator rejects (eggs which have been subjected to incubation) may not be moved in shell form and must be crushed and denatured or de-characterized at point and time of removal from incubation.

(d) Blood type loss which has not diffused into the albumen may be moved to an official egg products plant in shell form without adding FD and C color to the shell provided they are properly labeled and moved directly to the egg products plant.

(e) Containers used for eggs not intended for human consumption must be labeled with the word "inedible" on the outside of the container.

(f) Other methods of disposition may be used only when approved by the Commissioner.

R70-410-3. Packaging.

(1) It is unlawful for anyone to pack eggs into a master container which does not bear all required labeling, including responsible party, or to transport or sell eggs in such container.

(2) Any person who, without prior authorization, acquires possession of a master container which bears a brand belonging to someone else shall, at his own expense, return such container to the registered owner within 30 days.

R70-410-4. Small Egg Producer Rules.**(1) SCOPE**

(a) This Section is for Shell Egg Producers who intend to wholesale eggs and are USDA Exempt (flocks of 3,000 or fewer hens). The requirements are basic in design and cost in order enable the 3,000 or fewer hen egg producers to put shell eggs into commerce while maintaining Good Manufacturing Practices. It is understood that as the egg production increases, the complexity of the operation may increase and require additional facilities and/or equipment to maintain Good Manufacturing Practices.

(2) DEFINITIONS

(a) "Case" means when referring to containers, an egg case as used in commercial practice in the United States, holding thirty dozen shell eggs.

(b) "Plant" means any building, machinery, apparatus or fixture, used for the storing, grading or packing of shell eggs.

(c) "Potable water" means water that has been approved by the State Department of Health, or any agency or laboratory acceptable to the Commissioner of Agriculture as safe for drinking and food processing.

(d) "Premises" means a tract of land with building or part of building with its grounds or appurtenances.

(e) "Product" or "products" means shell eggs of domesticated chicken.

(f) "Shell eggs" means intact shell eggs of domesticated chickens.

(g) "Shell protected" means eggs which have had a protective covering such as oil applied to the shell surface.

(h) "Dirty" means an individual egg that has an unbroken shell with adhering dirt or foreign material, prominent stains, or moderate stains covering more than one-thirty-second of the shell surface if localized, or one-sixteenth of the shell surface if scattered.

(i) "Check" means an individual egg that has a broken shell or a crack in the shell, but its shell membranes are intact and its contents do not leak.

(j) "Leaker" means an individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.

(k) "Loss" means an egg that is inedible, cooked, frozen, contaminated, sour, musty, or an egg that contains a large blood spot, large meat spot, bloody white, green white, rot, stuck yolk, blood ring, embryo chick (at or beyond the blood ring state), free yolk in the white, or other foreign material.

(l) "Restricted" means eggs classified as checks, dirties, incubator rejects, inedibles, leakers and loss.

(3) LICENSE

(a) Small Egg Producers who intend to wholesale eggs shall obtain a small egg producer license in accordance with the fee schedule determined by the department and approved by the legislature pursuant to U.C.A 4-2-2(2).

(4) FACILITIES

(a) Establish a designated work area separate from domestic living areas.

(i) Acceptable designated work areas may be an area in the basement, garage, or outbuilding.

(ii) Unacceptable work areas are domestic living areas, kitchens, laundry rooms, and bathrooms.

(b) The work area requires a sanitary work surface that is smooth, durable, and easily cleanable. This work surface must be cleaned and sanitized before each use. Any sinks, drain boards, or other equipment used for the egg handling operation must be cleaned and sanitized before each use.

(c) The premises shall be kept clean and free of rodent harborage areas.

(d) Designated storage areas are required for new packaging materials, utensils, and equipment that may be used for the egg handling practices. These items must be protected from contamination (e.g. moisture, strong odors, dust, or

insects).

(e) Potable water is required for egg handling practices. Individual water wells require an annual bacteriological test (i.e. coliform bacteria). Commercial bottled water may be used.

(f) Hand washing stations must be conveniently located in the egg handling work area and provided with soap and paper towels.

(g) Toilet rooms must be accessible to employees.

(h) A designated refrigerator is required. The refrigerator is not required to be new or of a commercial type and may be placed in the garage, etc. The refrigerator must be equipped with a suitable thermometer to routinely verify that the 40 degrees F to 45 degrees F egg storage temperature is maintained.

(5) EGG QUALITY ASSURANCE

(a) Each producer will develop an egg quality assurance plan that, at a minimum, includes the following:

(i) Chicks/pullets will be purchased from hatcheries that are NPIP (National Poultry Improvement Plan) "US Salmonella Enteritidis Clean" status or equivalent state plan.

(ii) Testing the flock for Salmonella Enteritidis with environmental drag swab sampling once per year per flock.

(iii) A plan on how eggs will be handled if a Salmonella Enteritidis positive test is identified.

(iv) Basic bio-security protocols for the chicken houses.

(v) Records shall be kept and monitored on a regular basis in regards to newly received chicks.

(b) Producers must immediately report positive Salmonella and Avian Influenza tests to the office of the State Veterinarian.

(c) Producers may have their flocks participate in the NPIP program by contacting the Utah Department of Agriculture and Food, Division of Animal Industry.

(6) EGG HANDLING

(a) Hands must be thoroughly washed before starting egg handling and during egg handling to minimize cross-contamination of cleaned eggs.

(b) Maintain clean and dry nest boxes, change nest material as needed to reduce dirty eggs. Gather eggs at least once daily.

(c) Clean eggs as needed soon after collecting. (Cleaning eggs refrigerated below 55 degrees F may cause shells to crack or check.) Minimal cleaning protects the natural protective covering on the shell. Acceptable egg cleaning methods include:

(i) dry cleaning by lightly sanding the stains or minimal dirty areas with sand paper;

(ii) using potable water in a hand spray bottle and immediately wiping dry with a single service paper towel, and/or;

(iii) briefly rinsing with running water spray and immediately wiping dry with a single service paper towel. The wash water shall be a minimum of 90 degrees F, which is warm to the touch, and shall be at least twenty degrees warmer than the temperature of the eggs to be washed.

(d) Unacceptable cleaning methods include: submerging shell eggs in water or any other solution or using cleaners that are not food grade and approved for shell egg cleaning. The porous egg shell is not impervious to odors, chemicals, and off flavors.

(e) Refrigerate the cleaned eggs immediately to 45 degrees F or less. The cleaned eggs can be packaged later. Store packaged at eggs 45 degrees F or less.

(7) PACKAGING AND LABELING

(a) Use new packaging (pulp cartons, etc.). Packaging may be purchased online, group buying, small farm co-operatives, etc.

(b) Self-adhesive attractive labels may be easily produced on a computer. The labels must include:

(i) UDAF Permit License number.

(ii) Common name of the food.

(iii) Quantity, the number of eggs.

(iv) Name and Address of the egg producer;

(v) The statement "Keep Refrigerated";

(vi) The statement "SAFE HANDLING INSTRUCTIONS:

To prevent illness from bacteria: Keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly."

(vii) Domesticated chicken hen eggs are subject to Grading. Quality designations and sizing weight ranges are determined by candling and weighing. (USDA Egg Grading Manual)

(viii) If the eggs are ungraded and not weighed, the packages/cartons shall not be labeled with a grade or size.

(ix) A Pull Date or Best By date may be stated. It may be hand written on the end of the carton or in a conspicuous location that is clearly discernible. Shell eggs are a perishable food item. The Pull Date must first show the month then the day of the month (e.g. Jun 14 or 06 14). Recommended dates are 30 days after production, not to exceed 45 days.

(8) DISTRIBUTION

Transport refrigerated egg packages/cartons in an easily cleanable, portable cooler with frozen gel packs to maintain 45 degrees F or less temperature until eggs are distributed to retail outlet or sold to consumers.

(9) EXEMPTIONS

Producer packer with 3,000 or more birds who is registered with USDA under the Egg Products Inspection Act.

(10) INSPECTION

All Egg Handlers and Producer Packers are subject to Inspections by the Utah Department of Agriculture and Food.

KEY: food inspections, eggs, chickens

May 8, 2014

Notice of Continuation January 20, 2016

4-4-2

**R131. Capitol Preservation Board (State), Administration.
R131-4. Capitol Preservation Board General Procurement Rule.**

R131-4-101. Compliance With Utah Procurement Code, as Amended by Senate Bill 179 of the 2014 Utah Legislative Session.

(1) All provisions of this Rule R131-4-101 shall supersede any conflicting provisions or any provisions related to protests or appeals of this Rule R131-4, Capitol Preservation Board General Procurement Rule, as well as any conflicting provisions or any provisions related to protests or appeals of Rule R131-1, Procurement of Architectural and Engineering Services.

(2) The purpose of the Utah Procurement Code in Section 63G-6a-102 is incorporated as part of this Rule R131-4 and Rule R131-1.

(3) The definitions of the Utah Procurement Code in Sections 63G-6a-103 and 63G-6a-104 shall apply to Rules R131-4 and R131-1 and in the case of conflict, shall supersede any other definitions in Rules R131-4 and R131-1.

(4) Procurements performed by the Division of Facilities Construction and Management or the Division of Purchasing, on behalf of the Capitol Preservation Board, shall be performed in accordance with the applicable Utah Procurement Code, Title 63G, Chapter 6a, provisions as well as the applicable administrative rules of the agency that is managing the procurement for the Capitol Preservation Board.

(5) Any exemption allowed under Section 63G-6a-107 shall be allowed notwithstanding any other provision in Rules R131-4 or R131-1.

(6) Notwithstanding any other provision in Rules R131-4 or R131-1, there shall be compliance with the federal contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub. L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

(7) The prequalification process of Section 63G-6a-403 may be used and there is no cost amount threshold under Section 63G-6a-404 for use of any approved vendor list.

(8) Notwithstanding any other provision in Rules R131-4 or R131-1, public notice shall comply with Section 63G-6a-406.

(9) There shall be compliance with 63G-6a-408, Small Purchases, and Rule R131-4-409 sets the thresholds for purchases for the Capitol Preservation Board.

(10) A Request for Information under Part 5 of the Utah Procurement Code, Sections 63G-6a-5-1 through 63G-6a-505 may be used.

(11) Part 6 of the Utah Procurement Code, Bidding, Sections 63G-6a-601 through 63G-6a 612 shall apply to the Capital Preservation Board and supersede any conflicting provision in Rule R131-4.

(12) Part 7 of the Utah Procurement Code, Requests for Proposals, Sections 63G-6a-701 through 63G-6a-711 shall apply and supersede any conflicting provision in Rule 131-4.

(13) Section 63G-6a-802, regarding sole sources, shall apply to the Capitol Preservation Board and replace Rule R131-4-410. There shall be a publication of notice for a sole source procurement in accordance with Section 63G-6a-406, if the cost of the procurement exceeds \$50,000 except that no publication of notice is required if any of the following apply:

(a) the procurement of public utility services pursuant to a sole source contract; or

(b) any other procurement in which the specifications, in the reasonable discretion of the Executive Director, can only be met by one source.

(14) Section 63G-6a-803, Emergency Procurement, shall apply to the Capitol Preservation Board, and to the extent allowed by law, Rule R131-4-411 shall also apply.

(15) Part 9 of the Utah Procurement Code, Cancellations, Rejections, and Debarment, Sections 63G-6a-901 through 63G-6a-905, shall apply to the Capitol Preservation Board and

supersede any conflicting provisions in Rules R131-4 or R131-1.

(16) Part 10 of the Utah Procurement Code, Preferences, Sections 63G-6a-1001 through 1004, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 or R131-1.

(17) Part 11 of the Utah Procurement Code, Bonds, Sections 63G-6a-1101 through 63G-6a-1105, shall apply to the Capitol Preservation Board and supersede and conflicting provisions in Rules R131-4 or R131-1.

(18) Part 12 of the Utah Procurement Code, Contracts and Change Orders, Sections 63G-6a-1201 through 63G-6a-1210, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 and R131-1.

(19) Part 13 of the Utah Procurement Code, General Construction Provisions, Sections 63G-6a-1301 through 63G-6a-1303, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 or R131-1.

(20) Part 15 of the Utah Procurement Code, Architect-Engineer Services, Sections 63G-6a-1501 through 63G-6a-1506, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 or Rule R131-1. An evaluation committee shall consist of at least three people who meet the same ethical requirements as an evaluation committee in a Request for Proposals process.

(21) The following statutes in the Utah Procurement Code shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4-801 through R131-4-1001 as well as Rule 131-1:

(a) Part 16 of the Utah Procurement Code, Controversies and Protests, Sections 63G-6a-1601 through 63G-6a-1604. Intervention shall be allowed under identical procedures as specified in administrative rules enacted by the Procurement Policy Board in Title R33, Utah Administrative Code, of the State of Utah;

(b) Part 17 of the Utah Procurement Code, Procurement Appeals Board, Sections 63G-6a-1701 through 63G-6a-1706;

(c) Part 18 of the Utah Procurement Code, Appeals to Court and Court Proceedings, Sections 63G-6a-1801 through 63G-6a-1802;

(d) Part 19 of the Utah Procurement Code, General Provisions Related to Protest or Appeal, Sections 63G-6a-1901 through 63G-6a-1911;

(e) Part 20 of the Utah Procurement Code, Records, Sections 63G-6a-2001 through 63G-6a-2004;

(f) Part 21 of the Utah Procurement Code, Interaction Between Procurement Units, Sections 63G-6a-2101 through 63G-6a-2105; and

(g) Part 24 of the Utah Procurement Code, Unlawful Conduct and Penalties, Sections 63G-6a-2401 through 63G-6a-2407.

R131-4-102. Application of this Rule.

(1) R131-4 applies only to contracts solicited or entered into after the effective date of this rule unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(2) Except as provided in R131-4-103, this rule shall apply to every expenditure of public funds irrespective of their source, including federal assistance, by the Capitol Preservation Board under any contract.

(3) Unless otherwise provided by statute, R131-4 does not apply to procurement of real property.

R131-4-103. Exemptions from this Rule.

(1) R131-4 is not applicable to funds administered under the Percent-for-Art Program of the Utah Percent-for-Art Act.

(2) R131-4 is not applicable to grants awarded by the state

or contracts between the state and local public procurement units except as provided in R131-4-901, Intergovernmental Relations.

(3) R131-4 shall not prevent the Capitol Preservation Board from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

(4) When a procurement involves the expenditure of federal assistance or contract funds, the chief procurement officer, executive director of the Capitol Preservation Board, shall comply with mandatory applicable federal law and regulations not reflected in R131-4.

(5) R131-4 may not supersede the requirements for retention or withholding of construction proceeds and release of construction proceeds as provided in Section 13-8-5.

R131-4-104. Records.

(1) All procurement records shall be retained and disposed of in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(2) Written determinations required by R131-4 shall also be retained in the appropriate official contract file of the Division of Purchasing and General Services or the Capitol Preservation Board.

R131-4-105. Definitions.

As used in R131-4:

(1) "Acceptable bid security" means a bid bond which meets the requirements of this rule.

(2) "Architect-engineer services" are those professional services within the scope of the practice of architecture as defined in Section 58-3a-102, or professional engineering as defined in Section 58-22-102.

(3) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(4) "Board" means the state of Utah Capitol Preservation Board created under Title 63C, Chapter 9.

(5) "Change order" means a written order signed by the executive director or duly appointed designee, directing the contractor to suspend work or make changes, which the appropriate clauses of the contract authorize the executive director to order without the consent of the contractor or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. The executive director or duly appointed designee may also issue a construction change directive changing the scope and/or time of the contract which shall become a change order once either agreed to by the contractor or not objected to by the contractor by submission to the executive director of such objection in writing within 21 days of the delivery of the construction change directive to the contractor.

(6)(a) "Construction" means the process of building, renovation, alteration, improvement, or repair of any public building or public work.

(b) "Construction" does not mean the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(7)(a) "Construction manager/general contractor" means any contractor who enters into a contract for the management of a construction project when that contract allows the contractor to subcontract for additional labor and materials that were not included in the contractor's cost proposal submitted at the time of the procurement of the construction manager/general contractor's services.

(b) "Construction manager/general contractor" does not mean a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the

procurement of construction is to meet subcontracted portions of change orders approved within the scope of the project.

(8) "Contract" means any state agreement for the procurement or disposal of supplies, services, or construction.

(9) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement unit.

(10) "Cost data" means factual information concerning details; including expected monetary values for labor, material, overhead, and other pricing components which the contractor has included, or will include as part of performing the contract.

(11) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this rule, and a fee, if any.

(12)(a) "Design-build" means the procurement of architect-engineer services and construction by the use of a single contract with the design-build provider.

(b) This method of design and construction can include the design-build provider supplying the site as part of the contract.

(13) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(14) "Executive director" means the executive director of the board.

(15) "External procurement unit" means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit. An agency of the United States is an external procurement unit.

(16) "Grant" means the furnishing by the state or by any other public or private source assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction. A contract resulting from the award is not a grant but a procurement contract.

(17) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(18) "Local public procurement unit" means any political subdivision or institution of higher education of the state or public agency of any subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, but not counties or municipalities under the Interlocal Cooperation Act, the Utah Housing Corporation, or the Legislature and its staff offices. It includes two or more local public procurement units acting under legislation which authorizes intergovernmental cooperation.

(19) "Person" means any business, individual, union, committee, club, other organization, or group of individuals, not including a state agency or a local public procurement unit.

(20) "Policy board" means the Budget Development and Board Operations Subcommittee of the board to act as the procurement policy board as referred to in the Utah Procurement Code, Title 63G, Chapter 6.

(21) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this rule.

(22) "Price data" means factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices and includes data relevant to both prime and subcontract prices.

(23) "Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation, and award of a contract, and all phases of contract administration.

(24) "Procurement officer" means the executive director duly authorized to enter into and administer contracts and make written determinations with respect thereto. It also includes an authorized representative acting within the limits of authority as provided by the board or designated by the executive director.

(25) "Procuring agencies" means, individually or collectively, the state, the board, the owner and a using agency, if any.

(26) "Products" means and includes materials, systems and equipment that are components of a construction project.

(27) "Proprietary specification" means a specification which uses a brand name to describe the standard of quality, performance, and other characteristics needed to meet the procuring agencies' requirements.

(28) "Public procurement unit" means either a local public procurement unit or a state public procurement unit.

(29) "Purchase description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to or made a part of the solicitation.

(30) "Purchasing agency" means any state agency other than the board that is authorized by R131-4, or by delegation from the executive director, to enter into contracts.

(31) "Record" shall have the meaning defined in Section 63G-2-103 of the Governmental Records Access and Management Act (GRAMA).

(32) "Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(33) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance.

(34) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

(35) "Sealed" does not preclude acceptance of electronically sealed and submitted bids or proposals in addition to bids or proposals manually sealed and submitted.

(36) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. It does not include employment agreements or collective bargaining agreements.

(37) "Specification" means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(38) "State" means the state of Utah.

(39) "State agency" or "the state" means any department, division, commission, council, board, bureau, committee, institution, government corporation, or other establishment, official or employee of this state.

(40) "State public procurement unit" means the board, Division of Purchasing and General Services and any other purchasing agency of this state.

(41) "Subcontractor" means any person who has a contract with any person other than the procuring agency (board or executive director) to perform any portion of the work on a project.

(42) "Supplies" means all property, including equipment, materials, and printing.

(43) "Using agency" means any state agency which utilizes any supplies, services, or construction procured under this rule.

(44) "Work" means the furnishing of labor or materials, or both.

R131-4-201. Procurement Policy.

Procurement policy powers and duties under R131-4-202 below shall be performed by the Budget Development and Board Operations Subcommittee of the board as created in Title 63C, Chapter 9. Any procurement policy determinations of the subcommittee shall be brought to the board for final approval.

R131-4-202. Powers and Duties of the Budget Development and Board Operations Subcommittee in Regard to Procurement Policies.

(1) Except as otherwise provided in R131-4-102, the Budget Development and Board Operations Subcommittee shall:

(a) make procurement rule recommendations to the board that are substantially similar to the requirements of Title 63G, Chapter 6, Utah Procurement Code or facilitate the implementation of such requirements, governing the procurement, management, and control of any and all supplies, services, and construction to be procured by the board; and

(b) consider and recommend to the board, matters of policy within the provisions of R131-4, including those referred to it by the executive director.

(2)(a) The subcommittee may:

(i) audit and monitor the implementation of the board's rules and the requirements of the Utah Procurement Code and R131-4;

(ii) approve the use of innovative procurement methods proposed by the executive director.

(b) Except as otherwise provided in this rule or as duly authorized by the board, the subcommittee may not exercise authority over the award or administration of

(i) any particular contact; or

(ii) over any dispute, claim, or litigation pertaining to any particular contract.

(3) After receiving the recommendations from the Budget Development and Board Operations Subcommittee, the board shall review the recommendations, and shall make a determination on the recommendations, including the commencement of the rulemaking process.

R131-4-203. Chief Procurement Officer.

The executive director of the board shall be the chief procurement officer.

R131-4-204. Duties of Chief Procurement Officer.

Except as otherwise specifically provided in R131-4, the chief procurement officer serves as the central procurement officer for the board and shall:

(1) adopt office policies governing the internal functions of the staff for the board;

(2) procure or supervise the procurement of all supplies, services, and construction needed by the board;

(3) exercise general supervision and control over all inventories or supplies belonging to the board;

(4) establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and construction; and

(5) prepare statistical data concerning the procurement and

usage of all supplies, services, and construction.

R131-4-205. Delegation of Authority.

The executive director may delegate authority to a designated staff person(s) of the board.

R131-4-206. Specific Statutory Authority.

As stated in Section 63G-6-207:

(1) The authority to procure certain supplies, services, and construction given the public procurement units governed by the following provisions shall be retained:

- (a) Title 53B, State System of Higher Education;
- (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management;
- (c) Title 67, Chapter 5, Attorney General;
- (d) Title 72, Transportation; and
- (e) Title 78A, Chapter 5, District Courts.

(2) This authority extends only to supplies, services, and construction to the extent provided in the cited chapters.

(3)(a) The Department of Transportation may make rules governing the procurement of highway construction or improvement.

(b) This Subsection (3) supersedes Subsections (1) and (2) above.

(4) The legislature may procure supplies and services for its own needs.

R131-4-301. Rules and Regulations for Specifications of Supplies.

R131-4 shall govern the preparation, maintenance, and content of specifications for supplies, services, and construction required by the board. R131-4 shall determine the extent to which a nonemployee who has prepared specifications for use by the board may participate in any board procurement using such specifications.

R131-4-302. Duty of Executive Director in Maintaining Specifications.

The executive director shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies, services, and construction required by the board.

R131-4-303. Purpose of Specifications.

All specifications shall seek to promote overall best quality economy and best use for the purposes intended and encourage competition in satisfying the state's needs, and shall not be unduly restrictive. The requirements of R131-4-301 through R131-4-304 regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers, and draftsmen for public contracts.

R131-4-304. Additional Specification Requirements.

(1) General provisions.

(a) Preference for Commercially Available Products. Recognized, commercially-available products shall be procured wherever practicable. In developing specifications, accepted commercial standards shall be used and unique products shall be avoided where practicable.

(b) Nonrestrictiveness Requirements. All specifications shall describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, or construction item, or procurement from a sole source, unless no other manner of description will meet the need. If needed, a written determination shall justify the use of restrictive specifications over non-restrictive specifications.

(2) Executive Director's Responsibilities.

(a) The executive director shall prepare all project specifications, or

(b) The board may enter into contracts with others to prepare construction specifications when there will not be a substantial conflict of interest. In the latter instance, the executive director shall retain the authority to approve all specifications.

(c) Whenever specifications are prepared by persons other than the board and executive director's staff, the contract for the preparation of specifications shall adhere to the requirements of this rule.

(3) Types of Specifications. The executive director may use any method of specifying construction items, including:

(a) a performance specification stating the results to be achieved with the contractor choosing the means; or

(b) a prescriptive specification describing a means for achieving desired, but normally unstated, ends. Prescriptive specifications shall include the following:

(i) Descriptive specifications, providing detailed written descriptions of the required properties of products, or the workmanship required to fabricate, erect and install without using trade names; or

(ii) Proprietary specifications, identifying desired products by using manufacturers, brand names, model or type designation or important characteristics. This shall consist of:

(A) Base bid, where a rigid standard is specified and there are no allowed substitutions due to the nature of the conditions to be met. This may only be used when very restrictive standards are necessary and there are only definite proprietary products known that will meet the rigid standards needed; and

(B) Or equal, which allows substitutions if properly approved;

(c) a reference standard specification where documents or publications are incorporated by reference as though they were included in their entirety; or

(d) a nonrestrictive specification which may describe elements of prescriptive or performance specifications, or both, in order to describe the end result, thereby giving the contractor latitude in methods, materials, delivery, conditions, cost or other characteristics or considerations to be satisfied.

(4) Procedures for the Development of Specifications.

(a) Specifications may designate alternate supplies or construction items where two or more design, functional, or proprietary performance criteria will satisfactorily meet the procuring agencies' requirements.

(b) Specifications shall contain a nontechnical section to include any solicitation or contract terms or conditions such as requirements for the time and place of bid opening, time of delivery, payment, liquidated damages, and similar contract matters.

(c) Use of Proprietary Specifications.

(i) The executive director shall designate one or more brands as a standard reference and shall state that substantially equivalent products will be considered for award, with particular conditions of approval being described in the specification.

(ii) Unless the executive director determines that the essential characteristics of the brand names included in the proprietary specifications are commonly known in the industry or trade, proprietary specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(iii) Where a proprietary specification is used, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(iv) The board shall solicit sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made in accordance with this rule.

R131-4-401. Contracts Awarded by Sealed Bidding - Procedure.

(1) In General. Competitive sealed bidding, which includes multi-step sealed bidding, shall be an allowable method for the procurement of construction when a single prime contractor is used. Other methods may be considered for procurement of construction when the executive director determines that it best meets the needs for the project. For all other goods, supplies and services, contracts shall be awarded by competitive sealed bidding except as otherwise provided in R131-4. An invitation for bids shall be issued when a contract is to be awarded by competitive sealed bidding. The invitation shall include a purchase description and all contractual terms and conditions applicable to the procurement.

(2) Public Notice of Invitations for Bids.

(a) Public notice of invitations for bids shall be publicized electronically on the Internet, and may be publicized in any or all of the following as determined appropriate:

(i) In a newspaper having general circulation in the area in which the project is located;

(ii) In appropriate trade publications;

(iii) In a newspaper having general circulation in the state; or

(iv) By any other method determined appropriate.

(b) A copy of the public notice shall be available for public inspection at the principal office of the board in Salt Lake City, Utah.

(3) Content of the Public Notice to Contractors for Invitation For Bids. The public notice to contractors for invitation for bids (herein referred to as the "Notice") shall include the following:

(a) The closing time and date for the submission of bids;

(b) The location to which bids are to be delivered;

(c) Directions for obtaining the bidding documents;

(d) A brief description of the project; and

(e) Notice of any mandatory pre-bid meetings.

(4) Bidding Time. Bidding time is the period of time between the date of the first publication of the public notice and the final date and time set for the receipt of bids by the executive director. Bidding time shall be set to provide bidders with reasonable time to prepare their bids and shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular project as determined in writing by the executive director.

(5) Bid Prices. The bidding documents for an invitation for bids shall include a bid price form having a space in which the bid prices shall be inserted and which the bidder shall sign and submit along with all other required documents and materials and may include qualification requirements as appropriate.

(6) Addenda to the Bidding Documents.

(a) Addenda shall be distributed or otherwise made available to all entities known to have obtained bidding documents for a project.

(b) Addenda shall be distributed within a reasonable time to allow all prospective bidders to consider them in preparing bids. If the time set for the final receipt of bids will not permit appropriate consideration, the bidding time shall be extended to allow proper consideration of the addenda. The person responsible for the issuance of bidding documents shall confirm in writing, any addenda communicated to bidders by telephone.

(7) Pre-Opening Modification or Withdrawal of Bids.

(a) Bids may be modified or withdrawn by the bidder by written notice delivered to the place designated in the notice when bids are to be delivered prior to the time set for the opening of bids.

(b) Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.

(c) All documents relating to the modification or

withdrawal of bids shall be made a part of the appropriate project file.

(8) Late Bids, Late Withdrawals, and Late Modifications. Any bid, withdrawal of bid, or modification of bid received after the time and date set for the submission of bids at the place designated in the notice shall be deemed to be late and shall not be considered, unless it is the only bid received in which case it may be considered.

(9) Receipt, Opening, and Recording of Bids.

(a) Upon receipt, all bids and modifications shall be stored in a secure place until the time for bid opening.

(b) Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the invitation for bids. The names of the bidders, the bid price, and other information deemed appropriate by the executive director shall be read aloud or otherwise made available to the public. After the bid opening, the bids shall be tabulated or a bid abstract made, including the amount of each bid. The record (bid tabulation) and opened bids shall be available for public inspection.

(10) Mistakes in Bids.

(a) If a mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible but only at the discretion of the executive director and only to the extent it is not contrary to the interest of the board or the fair treatment of other bidders.

(b) When it appears from a review of the bid that a mistake may have been made, the executive director may request the bidder to confirm the bid in writing. Situations in which confirmation may be requested include obvious, apparent errors on the face of the bid or a bid lower than the other bids submitted that appears to have neglected some part of the project.

(c) Mistakes at Bid Opening. The executive director shall weigh the types of factors described below in which mistakes in bids are discovered after opening but before award. After the bid opening, no changes in the bid prices or other provisions of bids prejudicial to the interest of the board or fair competition may be permitted. These include:

(i) Minor formalities are matters which, in the discretion of the board or executive director, are found to be of form rather than substance evident from the bid document, or are insignificant mistakes that can be waived or corrected without prejudice to other bidders and with respect to which, in the executive director's discretion, the effect on price, quantity, quality, delivery, or contractual conditions is not or will not be significant. The executive director, in the executive director's sole discretion, may waive minor formalities or allow the bidder to correct them depending on which is in the best interest of the board. Examples include the failure of a bidder to:

(A) Sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;

(B) Acknowledge receipt of any addenda to the invitation for bids, but only if it is clear from the bid that the bidder received the addenda and intended to be bound by its terms; the addenda involved had a negligible effect on price, quantity, quality, or delivery; or the bidder acknowledged receipt of the addenda at the bid opening.

(ii) A determination by the executive director that the mistake and the intended bid are clearly evident on the face of the bid document. The bid shall be corrected to reflect the intent of the bidder, and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(iii) Approval to withdraw a low bid if the executive director determines a mistake is clearly evident on the face of

the bid document but the intended amount of the bid is not similarly evident, or if the bidder submits to the executive director proof of evidentiary value which, in the executive director's best judgment, demonstrates that a mistake in calculation or estimation was made.

(d) No bidder shall be allowed to correct a mistake or withdraw a bid because of a mistake discovered after award of the contract; provided, that mistakes of the types described in R131-4-401 may be corrected or the award of the contract canceled if the executive director determines that correction or cancellation will not prejudice the interests of the board or fair competition.

(e) The executive director shall approve or deny in writing all requests to correct or withdraw a bid.

(11) Bid Evaluation and Award. Except as provided below, the contract may be awarded to the lowest qualified responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids and no bid shall be evaluated for any requirements or criteria that are not disclosed in the bidding documents. A reciprocal preference shall be granted to a resident contractor if the provisions of Section 63G-6-405 are met. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable. The criteria may include discounts, transportation costs, and total or life cycle costs.

(12) Cancellation of Invitations For Bids; Rejection Of Bids in Whole or In Part.

(a) Although issuance of an invitation for bids does not compel award of a contract, the executive director may cancel an invitation for bids or reject bids received in whole or in part only when the executive director determines that it is in the best interests of the board to do so.

(b) The reasons for cancellation or rejection shall be documented and made a part of the project file and available for public inspection.

(c) Any determination of nonresponsibility of a bidder shall be made by the executive director in writing. An unreasonable failure of the bidder to promptly supply information regarding responsibility may be grounds for a determination of nonresponsibility. Any bidder determined to be nonresponsible shall be provided with a copy of the written determination within a reasonable time. The board finds that it would impair governmental procurement proceedings by creating a disincentive for bidders to respond to inquiries of nonresponsibility, therefore information furnished by a bidder or pursuant to any inquiry concerning responsibility shall be classified as a protected record pursuant to Section 63G-2-305 and may be disclosed only as provided for in R131-4-411A.

(13)(a) All bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed those funds by more than 5%, the executive director may, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(b) Notwithstanding Subsection (13)(a), if all bids exceed the construction budget by any amount, the executive director may take any action allowed by this rule to award the contract to the lowest responsible and responsive bidder that will complete the construction project within the amount of available funds.

(c) This rule does not restrict in any way, the right of the executive director to use any emergency or sole source

procurement provisions, or any other applicable provisions of State law or rule which may be used to award the construction project.

(14) Tie Bids. Tie bids shall be resolved in accordance with Section 63G-6-426.

(15) Subcontractor Lists. The executive director may provide for subcontractor list requirements in the invitation for bids.

(a) Pursuant to Section 63G-2-305, information contained in the subcontractor list submitted to the board or executive director shall be classified public except for the amount of subcontractor bids which shall be classified as protected until a contract has been awarded to the bidder at which time the subcontractor bid amounts shall be classified as public. During the time that the subcontractor bids are classified protected, they may only be made available to procurement and other officials involved with the review and approval of bids.

(b) Change of Listed Subcontractors. If the executive director requires the submission of a subcontractor list with a deadline, the contractor may change his submitted listed subcontractors only after receiving written permission from the executive director based on complying with all of the following:

(i) The contractor has established in writing that the change is in the best interest of the state and that the contractor establishes an appropriate reason for the change, which may include, but is not limited to, the following reasons: the original subcontractor has failed to perform, or is not qualified or capable of performing, or the subcontractor has requested in writing to be released;

(ii) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors;

(iii) Any requirement set forth by the executive director to ensure that the process used to select a new subcontractor does not give rise to bid shopping;

(iv) Any increase in the cost of the subject subcontractor work shall be borne by the contractor; and

(v) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.

R131-4-401A. Multi-Step Sealed Bidding.

(1) When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers (statement of qualifications) to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(2) Description. Multi-step sealed bidding is a two-phase process. In the first phase, bidders shall submit a statement of qualifications to be evaluated. In the second phase, bidders whose statement of qualifications are determined to be acceptable during the first phase shall be invited to submit price bids.

(3) Use. Multi-step sealed bidding may be used when the executive director deems it to be in the interest of the state.

(4) Procedure for First Phase. The first phase shall be processed in accordance with the notice, substance and procedural requirements of a request for proposal under R131-4-408.

(5) The second phase shall be processed in accordance with the applicable substance and procedural requirements of a competitive sealed bid under R131-4-401. No public notice will be provided for this invitation.

R131-4-402. Contracts Awarded by Reverse Auction.

(1) As used in this Section, "reverse auction" means a process where:

(a) contracts are awarded in an open and interactive

environment, which may include the use of electronic media; and

(b) bids are opened and made public immediately, and bidders given opportunity to submit revised, lower bids, until the bidding process is complete.

(2) Notwithstanding the requirements of this rule, contracts may be awarded through a reverse auction.

(3) Reverse auction is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit a statement of qualifications to be evaluated against the established criteria by the executive director, and a second phase in which those bidders whose statement of qualifications are determined to be acceptable during the first phase submit their price bids through a reverse auction.

(4) Use. The reverse auction method will be used when the executive director deems it to the advantage of the board.

(5) Pre-Bid Conferences in Reverse Auctions. Prior to the submission of a statement of qualifications, a pre-bid conference may be conducted by the executive director. The executive director may also hold a conference of all bidders at any time during the evaluation of the statement of qualifications, or to explain the reverse auction process.

(6) Procedure for Phase One of Reverse Auctions.

(a) Form. A reverse auction shall be initiated by the issuance of an invitation for bids in the form required by R131-4-401. In addition to those requirements, the reverse auction invitation for bids shall state:

(i) that a statement of qualifications are requested;

(ii) that it is a reverse auction procurement, and priced bids will be considered only in the second phase and only from those bidders whose statement of qualifications are found acceptable in the first phase;

(iii) the criteria to be used in the evaluation of the statement of qualifications;

(iv) that the board or executive director, to the extent the executive director finds necessary, may conduct oral or written discussions of the statement of qualifications;

(v) that bidders may designate those portions of the statement of qualifications which contain trade secrets or other proprietary data which are to remain confidential to the extent provided by law; and

(vi) the manner in which the second phase reverse auction will be conducted.

(7) Amendments to the Invitation for Bids. After receipt of the statement of qualifications, amendments to the invitation for bids shall be distributed only to bidders who submitted a statement of qualifications and they shall be allowed to submit new statements of qualifications or to amend those submitted. If, in the opinion of the executive director, a contemplated amendment will significantly change the nature of the procurement, the invitation for bids shall be canceled in accordance with R131-4-401 and a new invitation for bids issued.

(8) Receipt and Handling of Statement of Qualifications. Statement of qualifications shall be opened publicly identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder, and a description sufficient to identify the supply, service, or construction offered. Prior to the selection of the lowest bid of a responsive and responsible bidder following phase two, statement of qualifications shall remain confidential and shall be available only to board personnel and those involved in the selection process having a legitimate interest in them.

(9) Non-Disclosure of Proprietary Data. Bidders may request protection of records in accordance with R131-4-411A.

(10)(a) Evaluation of Statement of Qualifications. The

statement of qualifications submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the invitation for bids. The statement of qualifications shall be categorized as:

(i) acceptable;

(ii) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(iii) unacceptable.

(b) The executive director shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

(c) The executive director may initiate phase two of the procedure if, in the executive director's opinion, there are sufficient acceptable statements of qualifications to assure effective price competition in the second phase without modification or alteration of the offers. If the executive director finds that this is not the case, the executive director shall issue an amendment to the invitation for bids or engage in technical discussions as set forth in R131-4-402(11) below.

(11) Discussion of Statement of Qualifications. Discussion of the statement of qualifications may be conducted by the executive director with any bidder who submits an acceptable or potentially acceptable statement of qualifications. During the course of these discussions, the executive director shall not disclose any information derived from one statement of qualifications offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its statement of qualifications has been finally found unacceptable may submit supplemental information modifying or otherwise amending its statement of qualifications offer at any time until the closing date established by the executive director. This submission may be made at the request of the executive director or upon the bidder's own initiative.

(12) Notice of Unacceptable Statement of Qualifications. When the executive director determines a bidder's statement of qualifications is unacceptable, the executive director shall notify the bidder. After this notification, the bidder shall not be afforded an additional opportunity to modify their statement of qualifications.

(13) Carrying Out Phase Two of Reverse Auctions.

(a) Upon the completion of phase one, the executive director shall invite those qualified bidders to participate in phase two of the reverse auction which is an open and interactive process where pricing is submitted, made public immediately, and bidders are given the opportunity to submit revised, lower bids, until the bidding process is closed.

(b) The invitation for bids shall:

(i) establish a date and time for the beginning of phase two;

(ii) establish a closing date and time. The closing date and time need not be a fixed point in time, but may remain dependent on a variable specified in the invitation for bids.

(c) Following receipt of the first bid after the beginning of phase two, the lowest bid price shall be posted, either manually or electronically, and updated as other bidders submit their bids.

(i) At any time before the closing date and time a bidder may submit a lower bid, provided that the price is below the then lowest bid.

(ii) Bid prices may not be increased after the beginning of phase two.

(14) Mistakes During Reverse Auctions.

(a) Mistakes may be corrected or bids may be withdrawn during phase one:

(i) before statements of qualifications are considered;

(ii) after any discussions have commenced under the procedure for phase one of reverse auctions, discussion of statement of qualifications; or

(iii) when responding to any amendment of the invitation for bids. Otherwise, mistakes may be corrected or withdrawal

permitted in accordance with R131-4-401(10).

(15) A phase two bid may be withdrawn only in accordance with R131-4-401(10). If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the closing date and time, the executive director may cancel the solicitation or reopen phase two bidding to all bidders deemed qualified through phase one by giving notice to those bidders of the new date and time for the beginning of phase two and the new closing date and time.

R131-4-403. Procurement - Use of Recycled Goods.

The executive director shall:

(1) comply with Section 63G-6-406 regarding recycled paper and paper products; and

(2)(a) use for reference, the current listing of recycled items available on state contract as issued by the State Division of Purchasing and General Services under Section 63G-6-204; and

(b) give recycled items consideration when inviting bids and purchasing supplies.

R131-4-404. Preference for Providers of State Products.

(1)(a) All board procurement shall, in all purchases of goods, supplies, equipment, materials, and printing, give a reciprocal preference to those bidders offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in Utah as against those bidders offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in that state.

(b) The amount of reciprocal preference shall be equal to the amount of the preference applied by the other state for that particular good, supply, equipment, material, or printing.

(c)(i) The bidder shall certify on the bid that the goods, supplies, equipment, materials, or printing offered are produced, manufactured, mined, grown, or performed in Utah.

(ii) The reciprocal preference is waived if that certification does not appear on the bid or the product, quality or services is not available from within the state of Utah.

(2)(a) If the bidder submitting the lowest responsive and responsible bid offers goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another bidder has submitted a responsive and responsible bid offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, his bid is equal to or less than the original lowest bid, the executive director shall:

(i) give notice to the bidder offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in Utah that he qualifies as a preferred bidder; and

(ii) make the purchase from the preferred bidder if, within 72 hours after notification to him that he is a preferred bidder, he agrees, in writing, to meet the low bid.

(b) The executive director shall include the exact price submitted by the lowest bidder in the notice he submits to the preferred bidder.

(c) The executive director may not enter into a contract with any other bidder for the purchase until 72 hours have elapsed after notification to the preferred bidder.

(3)(a) If there is more than one preferred bidder, the executive director shall award the contract to the willing preferred bidder who was the lowest preferred bidder originally.

(b) If there were two or more equally low preferred bidders, the executive director shall resolve the tie in accordance

with Section 63G-6-426.

(4) The provisions of R131-4-404 do not apply if such application might jeopardize the receipt of federal funds.

R131-4-405. Preference for Resident Contractors.

(1) As used in this Section, "resident contractor" means a person, partnership, corporation, or other business entity that:

(a) either has its principal place of business in Utah or that employs workers who are residents of this state when available; and

(b) was transacting business on the date when bids for the public contract were first solicited.

(2)(a) When awarding contracts for construction, the board shall grant a resident contractor a reciprocal preference as against a nonresident contractor from any state that gives or requires a preference to contractors from that state.

(b) The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor.

(3)(a) The bidder shall certify on the bid that the bidder qualifies as a resident contractor.

(b) The reciprocal preference is waived if that certification does not appear on the bid or if the resident contractor is not qualified to perform the work as stipulated in the pre-proposal or pre-bid documents.

(4)(a) If the contractor submitting the lowest responsive and responsible bid is not a resident contractor and has its principal place of business in any state that gives or requires a preference to contractors from that state, and if a resident contractor has also submitted a responsive and responsible bid, and, with the benefit of the reciprocal preference, the resident contractor's bid is equal to or less than the original lowest bid, the executive director shall:

(i) give notice to the resident contractor that the contractor qualifies as a preferred resident contractor; and

(ii) issue the contract to the resident contractor if, within 72 hours after notification to the contractor that such contractor is a preferred resident contractor, the contractor agrees, in writing, to meet the low bid.

(b) The executive director shall include the exact price submitted by the lowest bidder in the notice submitted to the preferred resident contractor.

(c) The executive director may not enter into a contract with any other bidder for the construction until 72 hours have elapsed after notification to the preferred resident contractor.

(5)(a) If there is more than one preferred resident contractor, the executive director shall award the contract to the willing preferred resident contractor who was the lowest preferred resident contractor originally.

(b) If there were two or more equally low preferred resident contractors, the executive director shall resolve the tie in accordance with Section 63G-6-426.

(6) The provisions of R131-4-405 do not apply if such application might jeopardize the receipt of federal funds.

R131-4-407. Use of Alkaline Paper.

The Board and executive director shall comply with Section 63G-6-407 regarding the use of Alkaline Paper.

R131-4-408. Use of Competitive Sealed Proposals in lieu of Bids - Procedure.

(1) Considerations for Use. Competitive sealed proposals, which shall be solicited through a request for proposals, may be used, if:

(a) there may be a need for price and service negotiation;

(b) there may be a need for negotiation during performance of the contract;

(c) the relative skills or expertise of the offerors should be evaluated;

(d) characteristics of the product or service sought is important; or

(e) the conditions of the service, product or delivery conditions are unable to be sufficiently described in the invitation for bids.

(2) Determinations.

(a) Before a contract may be entered into by competitive sealed proposals, the executive director shall determine in writing that the use of competitive sealed proposals is more advantageous for state purposes than competitive sealed bidding.

(b) Determinations may be by category of service or construction items. The executive director may modify or revoke a determination and may review previous determinations for current applicability at any time. Competitive sealed proposals may be used for the procurement of services of consultants, professionals, contractors and any other entity sought for procurement by the executive director or the board.

(3) Public Notice. Public notice of the request for proposals shall be given in the same manner provided for giving public notice of an invitation for bids, as provided by R131-4-401.

(4) Proposal Preparation Time. Proposal preparation time is the period of time between the date of first publication of the notice and the date and time set for the receipt of proposals by the board or executive director. For each project, a proposal preparation time-frame shall be included to provide offerors a reasonable time to prepare their proposals, not less than ten calendar days, unless a shorter time is deemed necessary.

(5) Form of Proposal. The request for proposals may state the manner in which proposals are to be submitted, including any forms for that purpose.

(6) Addenda to Requests for Proposals. Addenda to the requests for proposals may be made in the same manner provided for addenda to the bidding documents in connection with invitations for bids by this rule. Addenda may also be issued to qualified proposers after the deadline for proposals and prior to the deadline for best and final offers.

(7) Modification or Withdrawal of Proposals. Proposals may be modified or withdrawn prior to the established due date. For the purposes of this rule, the established due date will be either the date and time announced for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the date and time by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

(8) Late Proposals, Late Withdrawals, or Late Modifications: Except for modifications allowed pursuant to negotiation, any proposal, withdrawal, or modification received at the place designated for receipt of proposals after the established due date as defined in this rule shall be deemed to be late and shall not be considered unless there are no other offerors.

(9) Receipt and Registration of Proposals.

(a) Proposals shall be opened publicly, and shall only identify the names of the offerors in public. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Proposals and modifications shall be held in a secure place until the established due date.

(b) After the date established for receipt of proposals, a register of proposals shall be open to public inspection and shall include for all proposals the name of each offeror, the number of addenda received, if any, and a description sufficient to identify the supply, service, or construction item offered. Prior to award, proposals and modifications shall be shown only to procurement and other officials involved with the review and selection of proposals who shall adhere to the requirements of

GRAMA and this rule.

(10) Evaluation of Proposals.

(a) Evaluation Factors in the Request for Proposals. The request for proposals shall be prepared in a manner to assure maximum practicable competition, state all of the evaluation factors as well as the relative importance of price and other evaluating factors.

(b) Evaluation. The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems may be used but are not required.

(c) Classifying Proposals. Proposals shall be initially classified as:

(i) Acceptable;

(ii) Potentially acceptable, that is, having the possibility of being made acceptable; or

(iii) Unacceptable. Offerors whose proposals are unacceptable shall be so notified.

(11) Proposal Discussions with Individual Offerors.

(a) "Offerors" means only those responsible persons submitting proposals that are acceptable or potentially acceptable, the number of which may be limited to no less than the two best proposals. This shall not include persons who submitted unacceptable proposals.

(b) Purposes of Discussions. Discussions may be held in order to:

(i) review the board's requirements and the offerors' proposals; and

(ii) facilitate the development of a contract that will be most advantageous to the board, taking into consideration price and other evaluation factors listed in the request for proposals.

(c) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Discussions may be conducted for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before the contract is awarded for the purpose of obtaining best and final offers. There shall be no disclosure of any information derived from proposals submitted by competing offerors except as otherwise provided by this rule or law. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

(12) Best and Final Offers. The executive director shall establish a common time and date to submit best and final offers. These shall be submitted only once unless the executive director makes a written determination before each subsequent round of best and final offers that another round is in the best interest of the state, and additional discussions will be conducted or the requirements may be changed. Otherwise, no discussion of, or changes in the best and final offers shall be allowed prior to award. If offerors do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(13) Mistakes in Proposals.

(a) Mistakes discovered before the established due date. An offeror may correct mistakes discovered before the time and date established for receipt of proposals by withdrawing or correcting the proposal as provided in R131-4-408.

(b) Confirmation of proposal. When it appears from a review of the proposal before an award is made, that a mistake has been made, the offeror shall be asked to confirm the proposal. If the offeror alleges that a mistake occurred, the proposal may be corrected or withdrawn during any discussions that are held or the conditions listed below, by this rule, are met.

(c) Mistakes discovered after receipt but before award. This Subsection defines procedures to be applied in four situations in which mistakes in proposals may be discovered after receipt of proposals but before award.

(i) During discussions; prior to best and final offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(ii) Minor formalities. Minor formalities, unless otherwise corrected by an offeror as provided in this Section, shall be treated in accordance with this rule.

(iii) Corrections of mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the correct offer considered only if:

(A) the mistakes and the correct offer are clearly evident on the face of the proposal in which event the proposal may not be withdrawn;

(B) the mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the correct offer, and the correction of the mistake would not be contrary to the fair and equal treatment of other offerors.

(iv) Withdrawals of proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, offeror may be permitted to withdraw a proposal if:

(A) a mistake was made that is clearly evident on the face of the proposal and the intended amount of the offer is not evident; or

(B) the offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made that it does not demonstrate the correct offer or, if the correct offer is also demonstrated, to allow correction on the basis the proof provided would not be contrary to the fair and equal treatment of other offerors.

(d) Mistakes discovered after award. An offeror shall be bound to all terms, conditions and statements in offeror's proposal after award of the contract.

(14) Award.

(a) Award Documentation. A written determination shall be made showing the basis on which the award was found to be most advantageous to the state based on the factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(b) One proposal received. If only one proposal is received in response to a request for proposals, the executive director may make an award or, if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals.

(15) Publicizing Awards.

(a) Notice. After the selection of the successful offeror, notice of award shall be available in the executive director's office in Salt Lake City, Utah and may be available on the Internet.

(b) Information Disclosed. The following shall be disclosed with the notice of award:

(i) the rankings of the proposals;

(ii) the names of the selection committee members;

(iii) the amount of each offeror's cost proposal;

(iv) 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; and

(v) the written justification statement supporting the selection.

(c) Information Classified as Protected. After due consideration and public input, the following has been determined by the board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the board and shall be classified as protected records:

(i) the names of individual selection committee scorers in relation to their individual scores or rankings; and

(ii) non-public financial statements.

(16) Confidentiality of Performance Evaluations and Reference Information. The board finds that it is necessary to maintain the confidentiality of performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing performance evaluations and reference information are classified as protected records under the provisions of Subsections 63G-2-305 and shall be disclosed only to those persons involved with the performance evaluation, the contractor that the information addresses and procurement and other officials involved with the review and selection of proposals. The executive director may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the contractor that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.

R131-4-409. Small Purchases.

(1) Procurements of \$200,000 or Less.

(a) The executive director may make procurements estimated to cost \$200,000 or less by soliciting at least two firms to submit written quotations.

(b) The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record by the board.

(c) If the executive director determines that other factors in addition to cost should be considered in the procurement, the executive director shall solicit proposals from at least two firms. The award shall be made to the firm offering the best proposal as determined through application of the procedures provided for in R131-4-408 except that a public notice is not required and only invited firms may submit proposals.

(2) Procurements of \$50,000 or Less. The executive director may make small purchases of \$50,000 or less in any manner that he shall deem to be adequate and reasonable.

(3) Division of Procurements. Procurements shall not be divided in order to qualify for the procedures outlined in this rule.

R131-4-411. Emergency Procurements.

(1) Application. This Section shall apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

(2) Definition of Emergency Conditions. An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, natural disasters, wars, destruction of property, building or equipment failures, or any emergency proclaimed by governmental authorities.

(3) Scope of Emergency Procurements. Emergency procurements shall be limited to only those items necessary to meet the emergency.

(4) Authority to Make Emergency Procurements.

(a) The executive director may make an emergency procurement when, in the executive director's determination, an emergency condition exists or will exist and the need cannot be met through other procurement methods.

(b) The procurement process shall be considered unsuccessful when all bids or proposals received pursuant to an invitation for bids or request for proposals are nonresponsive, unreasonable, noncompetitive, or exceed available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals. If emergency conditions

exist after or are brought about by an unsuccessful procurement process, an emergency procurement may be made.

(5) Source Selection Methods. The source selection method used for emergency procurement shall be selected by the executive director with a view to assuring that the required items are procured in time to meet the emergency. Given this constraint, as much competition as the executive director determines to be practicable shall be obtained.

(6) Specifications. The executive director may use any appropriate specifications without being subject to the requirements of R131-4-301 through R131-4-304.

(7) Required Construction Contract Clauses. The executive director may modify or not use the construction contract clauses otherwise required by R131-4-601.

(8) Written Determination. The executive director shall make a written determination stating the basis for each emergency procurement and for the selection of the particular source. This determination shall be included in the project file.

R131-4-411A. Protected Records.

(1) General Classification. Records submitted to the board or the executive director in a procurement process are classified as public unless a different classification is determined in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(2) Protected Records. Records meeting the requirements of Section 63G-2-305 will be treated as protected records if the procedural requirements of GRAMA are met. Examples of protected records include the following:

(a) trade secrets, as defined in Section 13-24-2, if the requirements of R131-4-411A(3) are met;

(b) commercial information or nonindividual financial information if the requirements of Subsection 63G-2-305(2) and R131-4-411A(3) are met; and

(c) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the board, including, but not limited to, those records for which such a determination is made in R131-4 or R131-1.

(3) Requests for Protected Status. Persons who believe that a submitted record, or portion thereof, should be protected under the classifications listed in R131-4-411A(2)(a) and R131-4-411A(2)(b) shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. Such statements must address each portion of a document for which protected status is requested.

(4) Notification. A person who complies with R131-4-411A shall be notified by the executive director prior to the executive director's public release of any information for which business confidentiality has been asserted.

(5) Disclosure of Records and Appeal. The records access determination and any further appeal of such determination shall be made in accordance with the provisions of Sections 63G-2-309 and 63G-2-401 et seq., GRAMA.

(6) Not Limit Rights. Nothing in this rule shall be construed to limit the right of the board or executive director to protect a record from public disclosure where such protection is allowed by law.

R131-4-412. Cancellation and Rejection of Bids.

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, as may be specified in the solicitation, when it is in the best interests of the state as determined by the board or executive director in writing. The reasons shall be made part of the contract file.

R131-4-413. Determination of Nonresponsibility of Bidder

or Offeror.

A written determination of nonresponsibility of a bidder or offeror shall be made by the executive director when information of such nonresponsibility is provided to the executive director. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to the bidder or offeror. Information furnished by a bidder or offeror pursuant to R131-4-413 shall not be disclosed outside of the board or executive director's office without prior written consent by the bidder or offeror.

R131-4-414. Prequalification of Suppliers.

Prospective suppliers may be prequalified for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to prequalified suppliers.

R131-4-415. Rules and Regulations to Determine Allowable Incurred Costs - Required Information - Auditing of Books.

(1) Applicability. Cost or pricing data shall be required when negotiating contracts and adjustments to contracts if:

(a) adequate price competition is not obtained as provided in this rule; and

(b) the amounts listed in Subsection (3) below are exceeded.

(2) Adequate Price Competition. Adequate price competition for portions of, or entire contracts, occurs when:

(a) a contract is awarded based on competitive sealed bidding;

(b) a contractor is selected from competitive sealed proposals and cost was one of the selection criteria;

(c) a portion of a contract is awarded for a lump sum amount or a fixed percentage of other costs, and the cost of the lump sum or percentage amount is one of the selection criteria, and when contractor selection is made from competitive sealed proposals;

(d) a portion of a contract is awarded for which adequate price competition that was not otherwise obtained when competitive bids were obtained and documented by either the board, executive director, or the contractor;

(e) costs are based upon established catalogue prices or market prices;

(f) costs are set by law or rule; or

(g) the executive director makes a written determination that other circumstances have resulted in adequate price competition.

(3) Amounts. R131-4-415 does not apply to:

(a) Contracts or portions of contracts costing less than \$200,000, and

(b) Change orders or other price adjustments of less than \$50,000.

(4) Other Applications. R131-4-415 may apply to any contract or price adjustment when it is found by the executive director to be in the best interest of the state and any contract may require cost or pricing data and certifications by the contractor as to the accuracy of such cost or pricing data.

(5) Submission of Cost or Pricing Data and Certification. When cost or pricing data is required, the data shall be submitted prior to beginning price negotiation. The offeror or contractor shall keep the data current throughout the negotiations and certify as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date.

(6) Refusal to Submit. If the offeror fails to submit the required data, the executive director may disqualify the noncomplying offeror, to defer award pending further

investigation, or to enter into the contract. If the matter involves a price adjustment, the executive director may further investigate the price adjustment, disallow any price adjustment, or set the amount of the price adjustment.

(7) **Defective Cost or Pricing Data.** If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the Board shall be entitled to an adjustment of the contract price to exclude any significant sum, including profit or fee, to the extent the contract sum was increased because of the defective data. It shall be assumed that overstated cost or pricing data resulted in an increase of the contract price in the amount of the defect plus any related overhead and profit or fee; therefore, unless documentation can show that the defective data were not used or relied upon, the price may be reduced by a requisite amount. In establishing that defective data caused an increase in the contract price, the executive director shall not be required to reconstruct the negotiation or speculate on the mental attitudes of the negotiating parties if correct data had been submitted at the time of agreement on price.

(8) **Audit.** The state, board or executive director may, in its discretion, and at reasonable times and places, audit or cause to be audited the books and records of any person who has submitted cost or pricing data pursuant to this rule or any contractor, prospective contractor, subcontractor, or prospective subcontractor which are related to the cost or pricing data submitted.

(9) **Retention of Books and Records.** Any contractor who receives a contract or price adjustment for which cost or pricing data is required shall maintain all books and records that relate to the cost or pricing data for three years following the end of the fiscal year in which final payment is made under the prime contract and by the subcontractor for three years following the end of the fiscal year in which final payment is made under the subcontract.

R131-4-416. Cost-Plus-a-Percentage-of-Cost Contract.

(1) Subject to the limitations of R131-4-416, any type of contract which will promote the best interests of the state or the Board may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is only allowed as approved by the board, otherwise it is prohibited. A cost-reimbursement contract with a guaranteed maximum price may be used only when a determination is made in writing by the board that such contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

(2) Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the executive director or the board that:

(a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

R131-4-417. Period of Time for Contract of Supplies.

(1) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the state or the board; provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

(2) Prior to the utilization of a multi-year contract, it shall be determined in writing by the executive director or the board

that estimated requirements cover the period of the contract and are reasonably firm and continuing and that such a contract will serve the best interests of the state or the board by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for that purpose.

R131-4-418. Right to Inspect Place of Business of Contractor or Subcontractor.

The state, board or the executive director may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the board or the executive director.

R131-4-419. Determinations Final Except when Arbitrary and Capricious.

The determinations required by R131-4-401, R131-4-408, R131-4-410, R131-4-411, R131-4-413, R131-4-415, R131-3-416, and R131-4-417 are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

R131-4-420. Factual Information to Attorney General if Collusion Suspected.

When for any reason collusion or other anticompetitive practices are suspected among bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general.

R131-4-421. Records of Contracts Made.

The executive director shall maintain a record listing all contracts made under R131-4-410 or R131-4-111 and shall maintain the record in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. The record shall contain each contractor's name, the amount and type of each contract, and a listing of the supplies, services, or construction procured under each contract.

R131-4-423. Purchase of Prison Industry Goods.

(1) The board shall purchase goods and services produced by the Utah Correctional Industries Division as provided by R131-4-423, which is an exemption from other provisions of R131-4, when in the opinion of the board or executive director such purchase is feasible.

(2) The board or executive director may not purchase any goods or services provided by the Utah Correctional Industries Division from any other source unless it has been determined in writing by the director of the Utah Correctional Industries and the board or executive director, that purchase from the Utah Correctional Industries Division is not feasible due to one of the following circumstances:

(a) the good or service offered by the Utah Correction Industries Division does not meet the reasonable requirements of the executive director or board, including the compatibility with the unique design requirements of the Capitol Hill facilities and grounds;

(b) the good or service cannot be supplied within a reasonable time by the Utah Corrections Industries Division; or

(c) the cost of the good or service, including basic price, transportation costs, and other expenses of acquisition, is not competitive with the cost of procuring the item from another source.

(3) In cases of disagreement, the decision may be appealed

to a board consisting of the director of the Department of Corrections, the executive director, and a neutral third party agreed upon by the other two members.

R131-4-425. Purchase from Community Rehabilitation Programs.

(1) Except as provided under R131-4-425(3) below, notwithstanding any provision in R131-4 to the contrary, the board or executive director shall purchase goods and services produced by a community rehabilitation program using the preferred procurement contract list approved under Section 63G-6-425(2)(b)(iii) if:

(a) the good or service offered for sale by a community rehabilitation program reasonably conforms to the needs and specifications of the board;

(b) the community rehabilitation program can supply the good or service within a reasonable time; and

(c) the price of the good or service is reasonably competitive with the cost of procuring the good or service from another source.

(2) In accordance with Section 63G-6-425, each community rehabilitation program:

(a) may submit a bid to the Persons with Disabilities Advisory Board at any time and not necessarily in response to a request for bids; and

(b) shall certify on any bid it submits to the Persons with Disabilities Advisory Board, the Board or executive director that it is claiming a preference under Section 63G-6-425.

(3) During a fiscal year, the requirement for the board or executive director to purchase goods and services produced by a community rehabilitation program under the preferred procurement list under Section 63G-6-425(4) does not apply if the Division of Purchasing and General Services determines that the total amount of procurement contracts with community rehabilitation programs has reached \$5 million for that fiscal year.

(4) In the case of conflict between a purchase under R131-4-425 and a purchase under R131-4-423, R131-4-425 prevails.

R131-4-501. Alternative Methods of Construction Contracting Management.

(1) Application. This Section contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) Flexibility. The executive director may devise an appropriate construction contract management method for a particular project that will best meet the needs of the board. The methods outlined in this rule are not an exclusive list.

(3) Selection. The executive director shall be expected to consider the results achieved on similar projects in the past and the methods used, other appropriate and effective methods, and how a method could be adapted or combined to meet the needs of the state.

(4) Criteria. Before choosing the construction contracting method, some factors that may be considered include:

(a) when the facility must be ready for occupancy;

(b) the type of project, for example, housing, offices, labs, heavy or specialized construction;

(c) the extent to which the requirements of the occupants are known;

(d) the location of the project;

(e) the size, scope, complexity, and economics of the project;

(f) the amount and type of financing available for the project, including whether the budget is fixed, the source of funding, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds;

(g) the availability, qualification, experience, and available time of assigned State personnel to the project;

(h) the availability, experience and qualifications of outside consultants and contractors.

(5) General Descriptions.

(a) Application of Descriptions. The following descriptions are provided for the more common contracting methods. The methods described are not mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed for all construction projects of the state. In each project, these descriptions may be adapted to fit the circumstances of that project.

(b) Single Prime Contractor. The single prime contractor method is typified by one business entity acting as a general contractor with the state to complete an entire construction project in accordance with drawings and specifications provided by the state within a defined time period. Generally, the drawings and specifications are prepared by an architectural or engineering firm under contract with the state. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(c) Multiple Prime Contractors. Under this method, the board or the board's agent shall contract directly with a number of specialty contractors to complete portions of the project in accordance with the board's drawings and specifications. The board or its agent may have primary responsibility for successful completion of the entire project, or the contracts may provide that one of the multiple prime contractors shall have this responsibility.

(d) Design-Build. The use of a design build provider is authorized if determined to be used in accordance with this rule. In a design-build project, a business entity shall contract directly with the board to meet requirements described in a set of performance specifications. Both the design and construction responsibilities are assumed by the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(e) Construction Manager. The use of a construction manager, including a construction manager/general contractor, is authorized if determined to be used in accordance with this rule and shall be selected in accordance with R131-4. A construction manager shall be experienced in construction, have the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the addition of change orders. A contract with a construction manager may be issued early in a project to assist in the development of a cost effective design. The construction manager may be appointed the single prime contractor, or may be required to guarantee that the project will be completed by a specified time, and not to exceed a specified maximum price. The procurement of a construction manager may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost or, on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager may also provide for a sharing of any savings which are achieved below the guaranteed maximum cost. When entering into any subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the construction manager/general contractor shall procure that subcontractor in accordance with R131-4 in the same manner as if the subcontract work was procured directly by the board.

(f) Sequential Design and Construction. Sequential design and construction is a method whereby design of substantially the entire structure is completed prior to beginning the construction process.

(g) Phased Design and Construction. Phased design and

construction is a method whereby construction is begun when appropriate portions have been designed but before design of the entire structure has been completed. This method is also known as fast track construction.

(h) Design Assist Contracting. Design assist contracting may be used when it is determined by the executive director that a contractor (including a particular subcontractor trade) is needed subject to the following:

(i) it is determined that the design assist contractor (DAC) has a unique knowledge of a material or product that warrants the interaction of the DAC early on with the designer;

(ii) the DAC will be providing construction estimates, details and documents as well as the construction or installation of materials or products into the project;

(iii) the DAC is selected through a competitive sealed proposal process where qualifications are the main criteria for selection;

(iv) the DAC will provide information to the executive director and the designer of the project as needed to define the scope of the work for a fee; and

(v) a contract may be entered with a DAC only when the proposed cost for the work is equal to or less than the budget established by the board for the project, provided that the board may increase the budget, the board/executive director may use the information provided by the DAC and initiate a procurement process for the construction or installation; or the board/executive director may reduce the scope of the work.

R131-4-502. Procurement of Design-Build Highway Project Contracts.

The board may contract with the Department of Transportation as needed for procurement of design-build transportation project contracts surrounding Capitol Hill.

R131-4-503. Bid Security Requirements.

(1) Bid security in amount equal to at least 5% of the amount of the bid shall be required for all competitive sealed bidding for construction contracts with an amount over \$50,000. The board finds that requiring a bid bond for construction contracts of \$50,000 or less is presumed not necessary to protect the state or the board, though the executive director or the board has the right on an individual contract to so require the bonds. Bid security shall be a bond in a form and from a surety company that meets the requirements of R131-4-504.

(2) When a bidder fails to comply with the requirement for bid security set forth in the invitation for bids, the bid shall be rejected unless, pursuant to R131-4, it is determined by the executive director that the failure to comply with the security requirements is nonsubstantial.

(3) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in R131-4-401. If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security. Failure to submit an acceptable bid security in connection with an invitation for bids shall be deemed nonsubstantial where only one bid is received, and there is not sufficient time to rebid the contract.

(4) When issuing an invitation for bid under R131-4, the executive director may not require a person or entity who is bidding for a contract to obtain a bond of the type referred to in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.

R131-4-504. Bonds Necessary When Contract is Awarded - Waiver - Action - Attorneys' Fees.

(1) When a construction contract for an amount over \$50,000, is awarded under R131-4, the contractor to whom the contract is awarded shall deliver the following bonds or security to the executive director, which shall become binding on the

parties upon the execution of the contract:

(a) a performance bond satisfactory to the executive director that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other form satisfactory to the state; and

(b) a payment bond satisfactory to the executive director that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other form satisfactory to the state, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.

(2) The board finds that requiring a performance or payment bond for construction contracts of \$50,000 or less is presumed not necessary to protect the state or the board, though the executive director or the board has the right on an individual contract to so require the bonds.

(3) If a contractor fails to deliver the required bonds, the contractor's bid shall be found nonresponsive and its bid security shall be forfeited.

(4) Forms of Bonds. Bid bonds, payment bonds and performance bonds must be from sureties meeting the requirements of this rule and must be on the exact bond forms most recently adopted by the board and on file with the board.

(5) Surety firm requirements. All surety firms must be authorized to do business in the state of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A co-surety may be utilized to satisfy this requirement.

(6) Waiver. The executive director may waive the bonding requirement if the executive director finds that bonds cannot be reasonably obtained for the work involved and, after seeking advice from the attorney general, that such bonds are not necessary to protect the board or the state, which finding shall be documented in the project files.

(7) A person shall have a right of action on a payment bond in accordance with Section 63G-6-505.

R131-4-505. Preliminary Notice Requirement.

(1) Any person furnishing labor, service, equipment, or material for which a payment bond claim may be made under R131-4, shall provide preliminary notice to the designated agent as prescribed by Section 38-1-32, except that this preliminary notice requirement shall not apply:

(a) to a person performing labor for wages; or

(b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the project or improvement for which labor, service, equipment or material is furnished.

(2) Any person who fails to provide the preliminary notice required by Subsection (1) may not make a payment bond claim under the Utah Procurement Code or R131-4.

(3) The preliminary notice required by Subsection (1) must be provided prior to commencement of any action on the payment bond.

R131-4-506. Form of Bonds - Effect of Certified Copy.

The form of the bonds shall be as required in R131-4-503 and R131-4-504 above. Any person may obtain from the executive director a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

R131-4-507. Qualifications of Contractors.

(1) Pre-Bidding Requirements. The following documents must be on file with the board before the bidding documents for

a project may be issued to prospective bidders.

(a) If the type of work involved with the project requires a contractor's license, a photocopy of the bidder's current Utah contractor's license showing date issued, expiration date, bid limit amount or similar restriction, and the class of work for which licensed;(b) A statement from the bidder's surety stating that it will bond the bidder for an amount at least equal to the estimated cost of the contract as determined by the executive director. This requirement can be met by having the surety file an annual statement with the board showing the bonding limit it has established for the bidder.

(2) A form of surety statement and, when applicable, a form for prequalification, are available at the principal office of the board.

(3) Project Specific Requirements. The board may include additional qualification requirements in the solicitation documents as may be appropriate for a specific project.

R131-4-601. Construction Contract Clauses.

(1) Required Contract Clauses. Pursuant to Section 63G-6-601, the document entitled "Required Construction Contract Clauses", dated March 28, 2001 and on file with the executive director, is hereby incorporated by reference. Except as provided in this rule, the executive director shall include some or all of these clauses in all construction contracts for more than \$50,000.

(2) Revisions to Contract Clauses. The executive director may modify the clauses for inclusion in any particular contract. The clauses required by this Section may be modified for use in any particular contract when, pursuant to this rule, the executive director makes a written determination describing the circumstances justifying the variation or variations. Notice of any material variations from the contract clauses required by this Section shall be included in any invitation for bids or request for proposals. Any variations shall be supported by a written determination by the executive director that describes the circumstances justifying the variations, and notice of any material variation shall be included in the invitation for bids or request for proposals.

R131-4-602. Certification of Change Order.

Under a construction contract, any change order which increases the contract amount shall be subject to prior written certification that the change order is within the determined project or contract budget. The certification shall be made by the executive director. If the certification discloses a resulting increase in the total project or contract budget, the executive director shall not execute or make the change order unless sufficient funds are available or the scope of the project or contract is adjusted to permit the degree of completion feasible within the total project or contract budget as it existed prior to the change order under consideration. However, with respect to the validity, as to the contractor, of any executed change order upon which the contractor has reasonably relied, it shall be presumed that there has been compliance with the provisions of this rule.

R131-4-701. Procured in Accordance with R131-1.

Architectural and engineering services shall be procured in accordance with R131-1.

R131-4-703. Selection as Part of Design-Build or Lease.

Notwithstanding any other provision of R131-4, architect-engineer services may be procured by the board as part of the services obtained in a design-build contract or as part of the services obtained in a lease contract for real property, provided that the qualifications of those providing the architect-engineer services are part of the consideration in the selection process.

R131-4-801. In General.

While the board is exempt from the requirements of Title 63G, Chapter 6, Utah Procurement Code and is required to adopt procurement rules substantially similar to the requirements of that chapter, the board recognizes that the provisions of Title 63G, Chapter 6, Utah Procurement Code Section 63G-6-801 through 63G-6-820 shall apply to the procurement processes of the board and the executive director. The following R131-801A through R131-4-820 shall be operative, whether through the Utah Procurement Code or through the rules themselves.

R131-4-801A. Protest to Executive Director - Time - Authority to Resolve Protest.

(1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the executive director. A protest with respect to an invitation for bids or a request for proposals shall be submitted in writing prior to the opening of bids or the closing date for proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to the protest prior to bid opening or the closing date for proposals. The protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto.

(2) The executive director shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve the protest.

R131-4-802. Effect of Timely Protest.

In the event of a timely protest under R131-4-801A(1), Section 63G-6-810 or R131-4-815(1), the board shall not proceed further with the solicitation or with the award of the contract until all administrative and judicial remedies have been exhausted or until the executive director after consultation with the head of any applicable using agency or the head of any applicable purchasing agency, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

R131-4-803. Costs to or Against Protestor.

(1) When a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, the protestor shall be entitled to the following relief as a claim against the state:

(a) the reasonable costs incurred in connection with the solicitation, including bid preparation and appeal costs; and

(b) any equitable relief determined to be appropriate by the reviewing administrative or judicial body.

(2) When a protest is not sustained by the procurement appeals board, the protestor shall reimburse the board or the Division of Purchasing and General Services, in accordance with which agency incurred the expense, for the per diem and expenses paid to witnesses or appeals board members and any additional expenses incurred by the state agency staff who have provided materials and administrative services to the procurement appeals board for that case.

R131-4-804. Debarment from Consideration for Award of Contracts - Causes for Debarment.

(1) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the executive director after consultation with the attorney general and any applicable using agency, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period exceeding three years. The executive director, after consultation with the attorney general and any applicable using agency, shall have authority to suspend

a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three months unless an indictment has been issued for an offense which would be a cause for debarment under Subsection (2) of R131-4-804, in which case the suspension shall, at the request of the attorney general, remain in effect until after the trial of the suspended person.

(2) The causes for debarment include the following:

(a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state contractor;

(c) conviction under state or federal antitrust statutes;

(d) failure without good cause to perform in accordance with the terms of the contract; or

(e) any other cause the executive director determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for any cause listed in rules and regulations.

R131-4-805. Authority to Resolve Controversy Between Capitol Preservation Board and Contractor.

The board/executive director is authorized, prior to commencement of an action in court concerning the controversy, to settle and resolve a controversy which arises between the board/executive director and a contractor under or by virtue of a contract between them. This includes, without limitation, controversies based upon breach of contract, mistakes, misrepresentation, or other cause for contract modification or rescission.

R131-4-806. Decisions of Executive Director to be in Writing - Effect of no Writing.

(1) The executive director, or board if determined by the board, shall promptly issue a written decision regarding any protest, debarment or suspension, or contract controversy if it is not settled by a mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to judicial or administrative review as provided in the Utah Procurement Code and R131-4.

(2) A decision shall be effective until stayed or reversed on appeal, except to the extent provided in R131-4-802. A copy of the decision under Subsection (1) above shall be mailed or otherwise furnished immediately to the protestor, prospective contractor, or contractor. The decision shall be final and conclusive unless the protestor, prospective contractor, or contractor appeals administratively to the procurement appeals board in accordance with Subsection 63G-6-810(2) or the protestor, prospective contractor, or contractor commences an action in district court in accordance with R131-4-815 (Section 63G-6-815).

(3) If the executive director or board, depending who is considering the matter, does not issue the written decision regarding a contract controversy within 60 calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

R131-4-807. Procurement Appeals Board.

The board recognizes the provisions of Sections 63G-6-807 through 63G-6-813, related to the procurement appeals board,

as being applicable to the procurement processes of the board and the executive director.

R131-4-814. Right to Appeal to Court of Appeals.

In accordance with Section 63G-6-814, any person receiving an adverse decision of the board may appeal a decision of the procurement appeals board to the court of appeals. However, no appeal may be made by the board unless recommended by the executive director and approved by the attorney general.

R131-4-815. Jurisdiction of District Court.

The board recognizes the jurisdictional provisions of Section 63G-6-815 regarding the district court.

R131-4-816. Effect of Prior Determination by Agents of State.

The board recognizes the provisions of Section 63G-6-816 as being applicable in that in any judicial action under R131-4-815, determinations by employees, agents, or other persons appointed by the state shall be final and conclusive only as provided in R131-4-419, R131-4-806, and R131-4-807.

R131-4-817. Statutes of Limitations.

(1) The board recognizes the statute or limitation requirements of Section 63G-6-817 as being applicable and therefore:

(a) Any action under R131-4-815(1)(a) shall be initiated as follows:

(i) within 20 calendar days after the aggrieved person knows or should have known of the facts giving rise to the action; provided, however, that an action with respect to an invitation for bids or request for proposals shall be initiated prior to the opening of bids or the closing date for proposals unless the aggrieved person did not know and should not have known of the facts giving rise to the action prior to bid opening or the closing date for proposals; or

(ii) within 14 calendar days after receipt of a final administrative decision pursuant to either R131-4-806 or R131-4-807, whichever is applicable.

(b) Any action under R131-4-815(1)(b) shall be commenced within six months after receipt of a final administrative decision pursuant to R131-4-806 or R131-4-807, whichever is applicable.

(c) The statutory limitations on an action between private persons on a contract or for breach of contract shall apply to any action commenced pursuant to R131-4-815(1)(c), except notice of appeals from the procurement appeals board pursuant to R131-4-807 concerning actions on a contract or for breach of contract shall be filed within one year after the date of the procurement appeals board decision.

R131-4-818. Effect of Violation Prior to Award of Contract.

The board recognizes Section 63G-6-818 as being applicable and therefore, if prior to award it is determined administratively or upon administrative or judicial review that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award shall be cancelled or revised to comply with the law.

R131-4-819. Effect of Violation after Award of Contract.

The board recognizes Section 63G-6-819 as being applicable and therefore, if after an award it is determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law:

(1) If the person awarded the contract has not acted fraudulently or in bad faith:

(a) The contract may be ratified and affirmed if it is determined that doing so is in the best interests of the state; or

(b) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to termination, plus a reasonable profit;

(2) If the person awarded the contract has acted fraudulently or in bad faith:

(a) The contract may be declared null and void; or

(b) The contract may be ratified and affirmed if such action is in the best interests of the state, without prejudice to the board's and the state's rights to any appropriate damages.

R131-4-820. Interest Rate.

The board recognizes Section 63G-6-820 as being applicable and therefore:

(1) Except as provided in (2) below, in controversies between the board, including the executive director, and contractors under R131-4-801 through R131-4-820, interest on amounts ultimately determined to be due to a contractor or to the board and the state are payable at the rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

(2) This rule does not apply to public assistance benefits programs.

R131-4-901. Public Procurement Units.

The board recognizes the applicability of Sections 63G-6-901 through 63G-6-907 and the board is authorized to enter into agreements under those Sections and those Sections shall be operative in regard to such agreements.

R131-4-1001. Accepting or Offering Emolument.

To the extent allowed by law, the provisions of Sections 63G-6-1001 and 63G-6-1002 restricting the acceptance or offering of emolument shall apply.

KEY: contracts, public buildings, procurement

July 22, 2014

63C-9-301

Notice of Continuation January 11, 2016

R156. Commerce, Occupational and Professional Licensing.
R156-3a. Architect Licensing Act Rule.

R156-3a-101. Title.

This rule is known as the "Architect Licensing Act Rule".

R156-3a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 3a, as used in Title 58, Chapters 1, 3a, and 22 or this rule:

(1) "ARE" means the NCARB Architectural Registration Examination.

(2) "Committee" means the IDP Committee created in Section R156-3a-201.

(3) "Complete and final" as used in Subsection 58-3a-603(1) means "complete construction plans" as defined in Subsection 58-3a-102(4).

(4) "EESA" means the Education Evaluation Services for Architects.

(5) "Employee, subordinate, associate, or drafter of an architect" as used in Subsections 58-3a-102(8), 58-3a-603(1)(b) and this rule means one or more individuals not licensed as an architect who are working for, with, or providing architectural services directly to the licensed architect under the supervision of the licensed architect.

(6) "Incidental practice" means "architecture work as is incidental to the practice of engineering" as used in Subsection 58-22-102(9) and "engineering work as is incidental to the practice of architecture" as used in Subsection 58-3a-102(6) which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is secondary and substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession;

(c) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsection 58-3a-603(1) or Subsection 58-22-603(1);

(d) unless exempt from licensure as provided in Subsection 58-3a-304(1)(e), is work that affects not greater than 49 occupants as determined in Section 1004 of the 2009 International Building Code;

(e) unless exempt from licensure as provided in Subsection 58-3a-304(1)(e), is work included on a project with a construction value not greater than 15 percent of the overall construction value for the project including all changes or additions to the contracted or agreed upon work; and

(f) shall not include work on a building or related structure in an occupancy category of III or IV as defined in Section 1604.5 of the 2009 International Building Code.

(7) "Intern Development Program" or "IDP" as used in Subsection R156-3a-302(1) means a NCARB approved training program.

(8) "NAAB" means the National Architectural Accrediting Board.

(9) "NCARB" means the National Council of Architectural Registration Boards.

(10) "Program of diversified practical experience" as used in Subsection 58-3a-302(1)(e) means:

(a) current licensure in a recognized jurisdiction; or

(b) the training standards and requirements set forth in the Intern Development Program.

(11) "Recognized jurisdiction" as used in Subsections 58-3a-302(2)(d)(i) and (iii), for licensure by endorsement, means any jurisdiction that is a member of NCARB.

(12) "Responsible charge" by a principal, as used in Subsection 58-3a-102(7), means direct control and management by a principal over the practice of architecture by an organization.

(13) "Technical submissions", as used in Section R156-3a-

601, means documents which are:

(a) required by public authorities for building permits or regulatory approvals; or

(b) intended for construction purposes, including all addenda and other changes to submissions.

(14) "Under the direction of the architect" as used in Subsection 58-3a-102(8), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of an architect" means that the unlicensed employee, subordinate, associate, or drafter of the architect engages in the practice of architecture only on work initiated by the architect, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of the architect.

(15) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 3a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-3a-502.

R156-3a-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 3a.

R156-3a-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.

R156-3a-201. Advisory Peer Committee Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f), the IDP Committee as an advisory peer committee to the Architect Licensing Board consisting of one or more members as follows:

(a) a State IDP Coordinator;

(b) an Education Coordinator; or

(c) an Intern IDP Coordinator.

(2) The committee shall be appointed and serve in accordance with Section R156-1-205.

(3) The duties and responsibilities of the committee shall include assisting the Board in its duties, functions, and responsibilities defined in Subsection 58-1-202(1)(e) as follows:

(a) promote an awareness of IDP by holding meetings and seminars on IDP;

(b) establish a network of sponsors and advisors for IDP interns;

(c) encourage firms to support IDP;

(d) act as a resource to respond to questions on IDP received from advisors, sponsors, and interns; and

(e) report to the Board as directed.

R156-3a-301. Qualifications for Licensure - Architecture Program Criteria.

In accordance with Subsection 58-3a-302(1)(d), the architecture program criteria are established as follows.

(1) The architecture program shall be accredited by either the National Architectural Accrediting Board (NAAB), or the Canadian Architectural Certification Board (CACB), or an architectural program equivalent to a NAAB accredited program.

(2) Equivalency shall be documented by submitting one of the following:

(a) If educated in a foreign country, an applicant shall submit a comprehensive report prepared by EESA stating that the applicant has successfully completed an educational program that is equivalent to the NAAB accredited educational program.

(i) Deficiencies in general education or history, human behavior and environment may be satisfied by successfully completing the deficiencies in course work at a recognized

college or university or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas.

(ii) Deficiencies in design, technical systems, or practice course work may be completed at an NAAB accredited educational program.

(b) Alternatively, an applicant may submit verification of a current NCARB Certification.

(c)(i) If an applicant was previously licensed and practicing in Utah under a license that was granted under prior statute or rule but allowed the license to lapse for more than two years, the applicant may reinstate the license by demonstrating that their combined education, supervised experience and licensed practice demonstrate that the applicant's training is equivalent to an NAAB accredited educational program.

(ii) If the combined education and experience is not demonstrated to be equivalent, the Division, in collaboration with the Board, may:

(A) determine whether continuing education can bring the combined education and experience up to equivalency, and if so, specify the type of continuing education required; or

(B) determine that the applicant shall be required to obtain the actual degree under Subsection (1).

R156-3a-302. Qualifications for Licensure - Program of Diversified Practical Experience.

In accordance with Subsection 58-3a-302(1)(e), an applicant shall establish completion of a program of diversified practical experience requirement by submitting documentation of:

- (1) IDP;
- (2) current licensure in a recognized jurisdiction; or
- (3) current NCARB Certification.

R156-3a-303. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsections 58-3a-302(1)(f) and 58-3a-302(2)(e), an applicant for licensure as an architect (whether by education and experience or by endorsement) shall submit documentation establishing:

(a) current NCARB Certification; or

(b) passing scores on all divisions of the ARE as established by NCARB.

(2) An applicant for licensure may apply directly to NCARB to sit for any part of the ARE examination anytime after having completed the education requirements specified in Section R156-3a-301.

R156-3a-304. Continuing Education for Architects.

In accordance with Section 58-3a-303.5, the continuing education standards for architects are established as follows:

(1)(a) During each two year period ending on December 31 of each odd numbered year, a licensed architect shall complete not less than 24 hours of continuing education directly related to the licensee's professional practice.

(b) At least 12 hours should be completed each year.

(2) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(3) Continuing education under this section shall:

(a) have an identifiable, clear statement of purpose and defined objective for the educational program directly related to the practice of an architect and directly related to topics involving the public health, safety, and welfare of architectural practice and the ethical standards of architectural practice;

(i) health, safety, welfare and ethical standards as used in this subsection are defined to include the following:

(A) The definition of "health" shall include, but not be limited to, aspects of architecture that have salutary effects among users of buildings or sites and that address environmental issues. Examples include all aspects of air quality, provisions of personal hygiene, and use of non-toxic materials and finishes.

(B) The definition of "safety" shall include, but not be limited to, aspects of architecture intended to limit or prevent accidental injury or death among users of buildings or construction sites. Examples include fire-rated egress enclosures, automatic sprinkler systems, stairs with correct rise-to-run proportions, and accommodations for users with disabilities.

(C) The definition of "welfare" shall include, but not be limited to, aspects of architecture that consist of values that may be spiritual, physical, aesthetic and monetary in nature. Examples include spaces that afford natural light or views of nature or whose proportions, color or materials engender positive emotional responses from its users.

(D)(a) The definition of "ethical standards of architectural practice" shall include, but not be limited to the NCARB rules of conduct specified in Subsection R156-3a-502(4).

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the continuing education program and records of that registration and completion are available for review.

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

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of eight hours per two year period may be recognized for teaching in a college or university or for teaching continuing education courses in the field of architecture, provided it is the first time the material has been taught during the preceding 12 months;

(c) a maximum of three hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of architecture and submitted for publication; and

(d) unlimited hours may be recognized for continuing education that is provided via the Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(5) A licensee shall be responsible for maintaining records of completed continuing education for a period of six years after the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to continuing education to demonstrate it meets the requirements under this section.

(6) A licensee who is unable to complete the continuing education requirement for reasons such as a medical or related condition, humanitarian or ecclesiastical services, or extended presence in a geographical area where continuing education is not available, may be excused from the requirement for a period of up to three years as provided in Section R156-1-308d.

(7) Any licensee who fails to timely complete the continuing education hours required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(8) Any applicant for reinstatement shall be required to complete 24 hours of continuing education complying with this rule within two years prior to the date of application for reinstatement of licensure.

R156-3a-305. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 3a is established by rule in Subsection R156-1-308a(1).

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

R156-3a-306. Inactive Status.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee shall not engage in the practice of architecture while the license is on inactive status except to identify the individual as an inactive licensee.

(2) A license, prior to being placed on inactive status, shall be active and in good standing.

(3) Inactive status licensees are not required to fulfill the continuing education requirement.

(4) In addition to the requirements in Subsection R156-1-305(6) to reactivate an inactive license, a licensee shall provide documentation that the licensee, within two years prior to the license being reactivated, completed 24 hours of continuing education.

(5) Prior to a license being reactivated, a licensee shall meet the requirements for license renewal.

R156-3a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report, or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider, the plan, specification, report, or set of construction plans to be complete and final; or

(b) a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise reasonable charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter;

(4) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the July 2011 edition of the NCARB "Rules of Conduct", which is hereby incorporated by reference; or

(5) failing as a supervising architect to verify actual work experience when requested by a subordinate, associate or drafter of an architect who is or has been an employee.

R156-3a-503. Administrative Penalties.

(1) In accordance with Section 58-3a-502, the following fine schedule shall apply to citations issued to individuals licensed under Title 58, Chapters 1 and 3a:

TABLE

FINE SCHEDULE

Violation	First Offense	Second Offense
58-1-501(1)(a)	\$ 800.00	\$1,600.00
58-1-501(1)(b)	\$1,000.00	\$2,000.00
58-1-501(1)(c)	\$1,000.00	\$2,000.00
58-1-501(1)(d)	\$1,000.00	\$2,000.00
58-3a-501(1)	\$ 800.00	\$1,600.00
58-3a-501(2)	\$ 800.00	\$1,600.00

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not

to exceed the maximum fine allowed under Subsection 58-3a-502(1)(i).

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-3a-601. Architectural Seal - Requirements.

In accordance with Section 58-3a-601, all technical submissions prepared by the licensee or prepared under the supervision of the licensee, shall be signed and dated with the licensee's seal. Electronically generated seals and signatures are acceptable. It is the responsibility of the licensee to provide adequate security when documents with electronic seals and electronic signatures are distributed. Sheets subsequent to the cover of specifications are not required to be sealed, signed and dated.

(1) Each seal shall be a circular seal, 1-1/2 inches minimum diameter and shall include the licensee's name, license number, "State of Utah", and "Licensed Architect".

KEY: architects, licensing

January 24, 2013

Notice of Continuation January 7, 2016

58-3a-101

58-3a-303.5

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.**R156-9a. Uniform Athlete Agents Act Rule.****R156-9a-101. Title.**

This rule shall be known as the "Uniform Athlete Agents Act Rule".

R156-9a-102. Definitions.

(1) "Unprofessional conduct" as defined in Title 58, Chapter 1 and Title 15, Chapter 9, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-9a-502.

R156-9a-103. Authority.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 15, Chapter 9.

R156-9a-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.

R156-9a-303. Renewal Cycle - Procedure.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 15, Chapter 9 is established by rule in Section R156-1-308a.

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

R156-9a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing as an athlete agent to notify an educational institution in accordance with the requirements of Section 15-9-111;

(2) failing to retain for a period of five years any records containing the names, addresses, direct costs and agency contracts of each individual represented by the athlete agent;

(3) failing to allow Division investigative staff access to any records in accordance with Section 15-9-113; and

(4) failing as an athlete agent to comply with the requirements of Section 15-9-110.

KEY: licensing, athlete agent**July 17, 2001****Notice of Continuation January 7, 2016****15-9-103(1)(b)****58-1-106(1)(a)**

R156. Commerce, Occupational and Professional Licensing.**R156-37f. Controlled Substance Database Act Rule.****R156-37f-101. Title.**

This rule shall be known as the "Controlled Substance Database Act Rule".

R156-37f-102. Definitions.

In addition to the definitions in Sections 58-17b-102, 58-37-2 and 58-37f-102, as used in this chapter:

(1) "ASAP" means the American Society for Automation in Pharmacy system.

(2) "DEA" means Drug Enforcement Administration.

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

(4) "NCPDP" means National Council for Prescription Drug Programs.

(5) "NDC" means National Drug Code.

(6) "Positive identification" means:

(a) one of the following photo identifications issued by a foreign or domestic government:

- (i) driver's license;
- (ii) non-driver identification card;
- (iii) passport;
- (iv) military identification; or
- (v) concealed weapons permit; or

(b) if the individual does not have government-issued identification, alternative evidence of the individual's identity as deemed appropriate by the pharmacist, as long as the pharmacist documents in a prescription record a description of how the individual was positively identified.

(7) "Research facility" means a facility in which research takes place that has policies and procedures describing such research.

(8) "Rx" means a prescription.

R156-37f-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 37f.

R156-37f-104. Organization - Relationship to Rule R156-1.

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

R156-37f-203. Submission, Collection, and Maintenance of Data.

(1) The format used as a guide for submission to the Database shall be in accordance with any version of the ASAP Telecommunications Format for Controlled Substances published by the American Society for Automation in Pharmacy. The Division may approve alternative formats substantially similar to this standard. This standard is further classified by the Database as follows:

(a) Mandatory Data. The following Database data fields are mandatory:

- (i) pharmacy NABP or NCPDP number;
- (ii) customer identification number;
- (iii) patient birth date;
- (iv) patient gender code;
- (v) date filled;
- (vi) Rx number;
- (vii) new-refill code;
- (viii) metric quantity;
- (ix) days supply;
- (x) NDC number;
- (xi) prescriber identification number;
- (xii) date Rx written;
- (xiii) number refills authorized;
- (xiv) patient last name;

(xv) patient first name; and

(xvi) patient street address;

(xvii) five digit zip code.

(b) Preferred Data. The following Database data fields are strongly suggested:

(i) compound code;

(ii) DEA suffix;

(iii) Rx origin code;

(iv) customer location;

(v) alternate prescriber number; and

(vi) state in which the prescription is filled.

(c) Optional Data. All other data fields in the ASAP Format not included in Subsections (a) and (b) are optional.

(2) Upon request, the Division will consider approving alternative formats, or adjustments to the ASAP Format, as might be necessary due to the capability or functionality of Database collection instruments. A proposed alternative format shall contain all mandatory data elements.

(3) In accordance with Subsection 58-37f-203(1)(a), the data required in Subsection (1) shall be submitted to the Database through one of the following methods:

(a) electronic data sent via a secured internet transfer method, including sFTP site transfer;

(b) secure web base service; or

(c) any other electronic method approved by the Database manager prior to submission.

(4) In accordance with Subsection 58-37f-203(1)(a):

(a) Effective January 1, 2016, each pharmacy or pharmacy group shall submit data collected on a daily basis either in real time or daily batch file reporting. The submitted data shall be from the point of sale (POS) date.

(i) If the data is submitted by a single pharmacy entity, the data shall be submitted in chronological order according to the date each prescription was filled.

(ii) If the data is submitted by a pharmacy group, the data is required to be sorted by individual pharmacy within the group, and the data of each individual pharmacy within the group is required to be submitted in chronological order according to the date each prescription was filled.

(b)(i) A Class A, B, or D pharmacy or pharmacy group that has a controlled substance license but is not dispensing controlled substances and does not anticipate doing so in the immediate future may request a waiver or submit a certification of such, in a form preapproved by the Division, in lieu of daily null reporting.

(ii) The waiver or certification must be resubmitted at the end of each calendar year.

(iii) If a pharmacy or pharmacy group that has submitted a waiver or certification under this Subsection (5)(b) dispenses a controlled substance:

(A) the waiver or certification shall immediately and automatically terminate;

(B) the pharmacy or pharmacy group shall provide written notice of the waiver or certification termination to the Division within seven days of dispensing the controlled substance; and

(C) the Database reporting requirements shall be applicable to the pharmacy or pharmacy group immediately upon the dispensing of the controlled substance.

R156-37f-301. Access to Database Information.

In accordance with Subsections 58-37f-301(1)(a) and (b):

(1) The Division Director may designate those individuals employed by the Division who may have access to the information in the Database (Database staff).

(2)(a) A request for information from the Database may be made:

(i) directly to the Database by electronic submission, if the requester is registered to use the Database; or

(ii) by oral or written submission to the Database staff, if

the requester is not registered to use the Database.

(b) An oral request may be submitted by telephone or in person.

(c) A written request may be submitted by facsimile, email, regular mail, or in person except as otherwise provided herein.

(d) The Division may in its discretion require a requestor to verify the requestor's identity.

(3) The following Database information may be disseminated to a verified requestor who is permitted to obtain the information:

- (a) dispensing/reporting pharmacy ID number/name;
- (b) subject's birth date;
- (c) date prescription was filled;
- (d) prescription (Rx) number;
- (e) metric quantity;
- (f) days supply;
- (g) NDC code/drug name;
- (h) prescriber ID/name;
- (i) date prescription was written;
- (j) subject's last name;
- (k) subject's first name; and
- (l) subject's street address;

(4)(a) Federal, state and local law enforcement authorities and state and local prosecutors requesting information from the Database under Subsection 58-37f-301(2)(k) must provide a valid search warrant authorized by the courts and may be provided using one of the following methods:

- (i) in person;
- (ii) be email to csdb@utah.gov;
- (iii) facsimile; or
- (iv) U.S. Mail.

(b) Information in the search warrant should be limited to subject's name and birth date.

(c) Information provided as a result of the search warrant shall be in accordance with Subsection (3).

(5)(a) An individual may receive an accounting of persons or entities that have requested or received Database information about the individual.

(b) An individual may request the information in person or in writing by the following means:

- (i) email;
 - (ii) facsimile; or
 - (iii) U.S. Mail.
- (c) The request for information shall include the following:
- (i) individuals' full name, including all aliases;
 - (ii) birth date;
 - (iii) home address;
 - (iv) government issued identification; and
 - (v) date-range.

(d) The results may be disseminated in accordance with Subsection (14).

(6) An individual whose records are contained within the Database may obtain his or her own information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity; or

(b) submitting a signed and notarized request that includes the requester's:

- (i) full name;
- (ii) complete home address;
- (iii) date of birth; and
- (iv) driver license or state identification card number.

(7) A requestor holding power of attorney for an individual whose records are contained within the Database may obtain the individual's information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity; and

- (b) providing:

(i) an original, properly executed power of attorney designation; and

(ii) a signed and notarized request, executed by the individual whose information is contained within the Database, and including the individual's:

- (A) full name;
- (B) complete home address;
- (C) date of birth; and
- (D) driver license or state identification card number verifying the individual's identity.

(8) A requestor who is the legal guardian of a minor or incapacitated individual whose records are contained within the Database may obtain the individual information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity;

(b) submitting the minor or incapacitated individual's:

- (i) full name;
- (ii) complete home address;
- (iii) date of birth; and
- (iv) if applicable, state identification card number verifying the individual's identity; and

(c) submitting legal proof that the requestor is the guardian of the individual who is the subject of the request for information from the Database.

(9) A requestor who has a release-of-records from an individual whose records are contained within the Database may obtain the individual's information and records by:

(a) submitting a request in writing;

(b) submitting an original, signed and notarized release-of-records in a format acceptable to the Database staff, identifying the purpose of the release; and

(c) submitting the individual's:

- (i) full name;
- (ii) complete home address;
- (iii) telephone number;
- (iv) date of birth; and
- (v) driver license or state identification card number

verifying the identity of the person who is the subject of the request.

(10) An employee of a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(d)if, prior to making the request:

(a) the licensed practitioner has provided to the Division a written designation that includes the designating practitioner's DEA number and the designated employee's:

- (i) full name;
- (ii) complete home address;
- (iii) e-mail address;
- (iv) date of birth; and
- (v) driver license number or state identification card number;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification;

(c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(11) An employee of a business that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(d) if, prior to making the request:

(a) the licensed practitioner and employing business have provided to the Division a written designation that includes:

- (i) the designating practitioner's DEA number;
- (ii) the name of the employing business; and
- (iii) the designated employee's:
 - (A) full name;
 - (B) complete home address;
 - (C) e-mail address;
 - (D) date of birth; and
 - (E) driver license number or state identification card number;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;

(c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(12) An individual who is employed in the emergency room of a hospital that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(d) if, prior to making the request:

(a) the practitioner and the hospital operating the emergency room have provided to the Division a written designation that includes:

- (i) the designating practitioner's DEA number;
- (ii) the name of the hospital;
- (iii) the names of all emergency room practitioners employed at the hospital; and
- (iv) the designated employee's:
 - (A) full name;
 - (B) complete home address;
 - (C) e-mail address;
 - (C) date of birth; and
 - (D) driver license number or state identification card number;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;

(c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(13) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator shall:

(a) demonstrate to the satisfaction of the Division that the research is part of an approved project of the Utah Department of Health;

(b) provide a description of the research to be conducted, including:

- (i) a research protocol for the project; and
- (ii) a description of the data needed from the Database to conduct that research;

(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access being strictly restricted to the requesting scientific investigator;

(d) provide for electronic data to be stored on a secure database computer system with access being strictly restricted to the requesting scientific investigator; and

(e) pay all relevant expenses for data transfer and manipulation.

(14) Database information that may be disseminated under Section 58-37f-301 may be disseminated by the Database staff either:

- (a) verbally;

- (b) by facsimile;
- (c) by email;
- (d) by U.S. mail; or
- (e) where adequate technology is in place to ensure that a record will not be compromised, intercepted, or misdirected, by electronic access.

**KEY: controlled substance database, licensing
January 7, 2016** **58-1-106(1)(a)
58-37f-301(1)**

R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rule.

R156-46b-101. Title.

This rule is known as the "Division Utah Administrative Procedures Act Rule."

R156-46b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Title 63G, Chapter 4, Subsection 58-1-108(1), and Subsection 58-1-106(1)(a). The purposes of this rule include:

- (a) classifying Division adjudicative proceedings;
- (b) clarifying the identity of presiding officers at Division adjudicative proceedings; and
- (c) defining procedures for Division adjudicative proceedings which are consistent with the requirements of Titles 58 and 63G and Rule R151-4.

R156-46b-201. Formal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

- (a) special appeals board held in accordance with Section 58-1-402;
- (b) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and
- (c) board of appeal held in accordance with Subsection 15A-1-207(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

- (a) disciplinary proceedings, except those classified as informal proceedings under Section R156-46b-202, that result in the following sanctions:
 - (i) revocation of licensure;
 - (ii) suspension of licensure;
 - (iii) restricted licensure;
 - (iv) probationary licensure;
 - (v) issuance of a cease and desist order except when imposed through a citation;
 - (vi) administrative fine except when imposed through a citation; and
 - (vii) issuance of a public reprimand;
- (b) unilateral modification of a disciplinary order; and
- (c) termination of diversion agreements.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by other than a notice of agency action are classified as informal adjudicative proceedings:

- (a) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;
- (b) denial of application for initial licensure or relicensure;
- (c) denial of application for renewal or reinstatement of licensure;
- (d) approval or denial of application for inactive or emeritus licensure status;
- (e) board of appeal under Subsection 15A-1-207(3);
- (f) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11;
- (g) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);
- (h) approval or denial of request to surrender licensure;
- (i) approval or denial of request for entry into diversion program under Section 58-1-404;
- (j) matters relating to diversion program;
- (k) citation hearings held in accordance with citation

authority established under Title 58;

(l) approval or denial of request for modification of disciplinary order;

(m) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(n) approval or denial of request for correction of procedural or clerical mistakes;

(o) approval or denial of request for correction of other than procedural or clerical mistakes;

(p) disciplinary sanctions imposed in a stipulation or memorandum of understanding with an applicant for licensure; and

(q) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action are classified as informal adjudicative proceedings:

(a) nondisciplinary proceeding which results in cancellation of licensure;

(b) disciplinary proceedings against:

(i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;

(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and

(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306.

(c) disciplinary proceedings initiated by a notice of agency action and order to show cause concerning violations of an order governing a license;

(d) disciplinary proceedings initiated by a notice of agency action in which the allegations of misconduct are limited to one or more of the following:

(i) Subsection 58-1-501(2)(c) or (d); or

(ii) Subsections R156-1-501(1) through (5).

R156-46b-301. Designation.

The presiding officers for Division adjudicative proceedings are as defined at Subsection 63G-4-103(1)(h) and as specifically established by Section 58-1-109 and by Section R156-1-109.

R156-46b-401. In General.

(1) The procedures for formal Division adjudicative proceedings are set forth in Sections 63G-4-204 through 63G-4-208, Rule R151-4-114, and this rule.

(2) The procedures for informal Division adjudicative proceedings are set forth in Section 63G-4-203, Rule R151-4-114, and this rule.

R156-46b-402. Response to Notice of Agency Action in an Informal Proceeding.

A written response or answer to the allegations in a notice of agency action or incorporated by reference into a notice of agency action that initiates an informal adjudicative proceeding may, as set forth in a notice of agency action, be required to be filed within 30 days of the mailing date of the notice of agency action or other date specified in the notice of agency action.

R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) Evidentiary hearings are not required for informal Division adjudicative proceedings unless required by statute or rule, or permitted by rule and requested by a party within the time prescribed by rule.

(2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule must be submitted in writing no later than 20 days following the issuance of the notice of agency action if the proceeding was initiated by the Division, or together with the request for agency action if the proceeding was not initiated by the Division.

(3) An evidentiary hearing is required for the following informal proceedings:

(a) R156-46b-202(1)(f), board of appeal held in accordance with Subsection 15A-1-207(3); and

(b) R156-46b-202(1)(l), citation hearings held in accordance with Title 58.

(4) An evidentiary hearing is permitted for an informal proceeding pertaining to matters relating to a diversion program in accordance with R156-46b-202(1)(k).

(5) Unless otherwise agreed by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63G-4-203(1)(d). Timely notice means service of a Notice of Hearing upon all parties not later than ten days prior to any scheduled evidentiary hearing.

(6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a Division informal adjudicative proceeding.

R156-46b-404. Orders in Informal Adjudicative Proceedings.

(1) Orders issued in Division informal adjudicative proceedings shall comply with Subsection 63G-4-203(1)(i).

(2) Issuance of a license or approval of related requests in response to a request for agency action is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i).

(3) Issuance of a letter denying a license or related requests is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i). The letter must explain the reasons for the denial and the rights of the parties to seek agency review, including the time limits for requesting review.

(4) Unless otherwise specified by the director, the fact finder who serves as the presiding officer at an evidentiary hearing convened in Division informal adjudicative proceedings shall issue a final order.

(5) Orders issued in Division informal adjudicative proceedings in which an evidentiary hearing is convened shall comply with the requirements of Subsection 63G-4-208(1).

R156-46b-405. Informal Agency Advice.

(1) The Division may issue an informal guidance letter in response to a request for advice unless the request specifically seeks a declaratory order.

(2) A notice shall appear in the informal guidance letter notifying the subject of the letter that the letter is an informal guidance letter only and is not intended as a formal declaratory order. The notice shall also provide the citation where the requirements which govern declaratory orders are found.

KEY: administrative procedures, government hearings, occupational licensing

November 21, 2013 63G-4-102(6)
Notice of Continuation January 5, 2016 58-1-106(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-60b. Marriage and Family Therapist Licensing Act Rule.

R156-60b-101. Title.

This rule is known as the "Marriage and Family Therapist Licensing Act Rule".

R156-60b-102. Definitions.

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

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "Deficiency", as used in Subsection 58-60-117(1)(d), means no more than a combined total of six semester or eight quarter hours in:

(a) theoretical foundations of marital and family therapy;
 (b) assessment and treatment in marriage and family therapy, including Diagnostic Statistical Manual (DSM);

(c) human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(d) research methodology and data analysis; and

(e) electives in marriage and family therapy.

(3) "Directly related to marriage and family therapy", as used in R156-60b-304(2)(a), means that the continuing education course meets at least one of the following criteria:

(a) approved by an international, national, or state marriage and family therapy association, national or state marriage and family therapy regulatory board, or a COAMFTE accredited program; or

(b) title, objective, or official description of the course indicates instruction on relationships, couples, or families.

(4) "Face to face supervision" as described in Subsection R156-60b-302a(1)(b)(ii)(G) includes both individual and group supervision.

(5) "Group supervision" means supervision between the supervisor and no more than three supervisees, unless preapproved by the Board.

(6) "Individual supervision" means supervision between the supervisor and one or two supervisees.

(7) "Practicum", as used in R156-60b-302a(1)(b)(ii)(G) means a clinical program of training at an accredited school under general supervision in a setting other than a student's private practice.

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

R156-60b-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 60, Part 3.

R156-60b-104. Organization - Relationship to R156-1.

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

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

(1) Pursuant to Subsection 58-60-305(1)(d), an applicant applying for licensure as a marriage and family therapist shall:

(a) produce certified transcripts evidencing completion of a clinical master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education at the time the applicant obtained the education; or

(b)(i) produce certified transcripts evidencing completion of a clinical master's degree in marriage and family therapy or equivalent from a program accredited by a professional

accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education.

(ii) A program under Subsection (1)(b)(i) shall include the following:

(A) six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;

(B) nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy, including Diagnostic Statistical Manual (DSM);

(C) six semester hours/nine quarter hours of course work in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(D) three semester hours/four quarter hours in professional ethics;

(E) three semester hours/four quarter hours in research methodology and data analysis;

(F) three semester hours/four quarter hours in electives in marriage and family therapy; and

(G) a clinical practicum of not fewer than 600 hours which includes not fewer than 100 hours of face to face supervision and not fewer than 500 direct contact hours of face to face supervised clinical practice of which not less than 250 hours shall be with couples or families who are physically present in the therapy room.

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

(1) Pursuant to Subsections 58-60-305(1)(e) and (f), an applicant shall complete marriage and family therapy and mental health therapy training consisting of a minimum of 4,000 hours of supervised training which shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy;

(c) be completed under the supervision of a marriage and family therapist supervisor meeting the requirements under Section 58-60-307;

(d) include at least 100 hours of direct supervision spread uniformly throughout the training period;

(e) in accordance with Subsection 58-60-305(1)(f), include a minimum of 1,000 hours of mental health therapy of which at least 500 hours are in couple or family therapy with two or more clients participating and at least one physically present; and

(f) hours completed in a group therapy session may count only if the supervisee functions as the primary therapist.

(2) An applicant for licensure as a marriage and family therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the marriage and family therapy training requirements outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-305(1)(e) and (f), and Subsection R156-60b-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the Division and Board that the training completed outside the state is equivalent to and in all respects meets the requirements under this subsection.

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

Pursuant to the provisions of Subsection 58-60-305(1)(g), an applicant for licensure as a marriage and family therapist must pass the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards.

R156-60b-302d. Qualifications to be a Marriage and Family Therapist Training Supervisor.

Pursuant to the provisions of Subsection 58-60-307(1), to be qualified as a marriage and family therapist supervisor for training required under Subsections 58-60-305(1)(e) and (f), an individual shall:

- (1) be licensed as a marriage and family therapist in good standing for not less than two years;
- (2) be currently licensed as a marriage and family therapist in the state in which the training is being performed; and
- (3) meet one of the following three options:
 - (a) be currently approved by AAMFT as a marriage and family therapist supervisor;
 - (b) have successfully completed a supervision course in a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited marriage and family therapy (MFT) program at an accredited university; or
 - (c)(i) have successfully completed 20 clock hours of instruction sponsored by AAMFT or the Utah Association for Marriage and Family Therapy (UAMFT).
 - (ii) The instruction under Subsection (3)(c)(i) shall include the following:
 - (A) four hours of review of models of MFT and supervision;
 - (B) eight hours of MFT supervision processes and practice;
 - (C) four hours of research on effective outcomes and processes of supervision; and
 - (D) four hours of AAMFT Code of Ethics, state rules and case studies related to MFT supervision.

R156-60b-302e. Duties and Responsibilities of a Supervisor of Marriage and Family Therapist and Mental Health Therapy Training.

The duties and responsibilities of a marriage and family therapist supervisor are further defined, clarified or established to provide the supervisor shall:

- (1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;
- (2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;
- (3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;
- (4) provide periodic review of the client records assigned to the supervisee;
- (5) comply with the confidentiality requirements of Section 58-60-114;
- (6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of marriage and family therapy and report violations to the Division;
- (7) supervise only a supervisee who is an employee of a public or private mental health agency;
- (8) submit appropriate documentation to the Division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised marriage and family therapist training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of marriage and family therapy and mental health therapy;
- (9) complete four hours of the required 40 hours of continuing professional education directly related to marriage and family therapy supervisor training in each two year

continuing professional education period established;

- (10) supervise not more than three supervisees at any given time unless approved by the Board and Division;
- (11) provide at least one hour of face to face supervision for each ten hours of client contact by the supervisee.

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

- (1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308a(1).
- (2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-60b-304. Continuing Education.

- (1) In accordance with Section 58-60-105, there is hereby established a continuing education requirement for all individuals licensed under Title 58, Chapter 60, Part 3, as a marriage and family therapist.
 - (2) During each two year period commencing October 1st of each even numbered year, a marriage and family therapist shall be required to complete not fewer than 40 hours of continuing education directly related to the licensee's professional practice of which:
 - (a) at least 15 hours must be directly related to marriage and family therapy; and
 - (b) at least six hours must be in ethics/law, of which at least three hours must be directly related to marriage and family therapy.
 - (3) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.
 - (4) Continuing education under this section shall:
 - (a) be relevant to the licensee's professional practice;
 - (b) be prepared and presented by individuals who are qualified by education, training, and experience to provide continuing education relevant to the practice of a mental health therapist; and
 - (c) have a method of verification of attendance and completion.
 - (5) Credit for continuing education shall be recognized in accordance with the following:
 - (a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences which meet the criteria listed in Subsection (4) above, and which are approved by, conducted by, or under the sponsorship of universities, colleges or professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of mental health therapy;
 - (b) a maximum of 14 hours per two year period may be recognized for:
 - (i) teaching courses under Subsection (5)(a); or
 - (ii) supervision of an individual completing the experience requirement for licensure as a mental health therapist;
 - (c) a maximum of 15 hours per two year period may be recognized for clinical readings, internet or distance learning courses directly related to practice as a mental health therapist; and
 - (d) a maximum of two hours per two year period may be for continuing education from the Division of Occupational and Professional Licensing.
 - (6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years.
 - (7) A licensee requesting a waiver of the continuing

education requirement must comply with requirements as established by rule in R156-1-308d.

(8) If a licensee completes more than the required number of hours of continuing education during a two year renewal cycle specified in Subsection (2), up to ten hours of the excess over the required number may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-60b-306. License Reinstatement - Requirements.

An applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

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

(2) upon the recommendation of the Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of marriage and family therapy and mental health therapy training as a marriage and family therapist-temporary;

(3) pass the Examination of Marital and Family Therapy of the American Association for Marriage and Family Therapists if it is determined by the Board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a marriage and family therapist; and

(4) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a marriage and family therapist.

R156-60b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60b-302d and R156-60b-302e;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60b-302b;

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to maintain professional boundaries with a client within two years after the formal termination of therapy or last professional contact, with or without client consent, including engaging in any of the following:

(a) dual or multiple relationships; or

(b) romantic, intimate or sexual relationship;

(6) if engaging in any activity or relationship referenced in Subsection (5) with a client after two years following the formal termination of therapy or last professional contact, failing to demonstrate that there has been no exploitation or injury to the client or to the client's immediate family;

(7) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of the personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and that individual;

(8) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(9) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(10) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(11) exploiting a client for personal gain;

(12) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(13) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(14) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(15) failure to cooperate with the Division during an investigation; and

(16) failure to abide by provisions 1 to 8.8 of the Code of Ethics of the American Association for Marriage and Family Therapy (AAMFT) as adopted by the AAMFT effective July 1, 2012, which is adopted and incorporated by reference.

KEY: licensing, therapists, marriage and family therapist
January 7, 2016 **58-1-106(1)(a)**
Notice of Continuation August 5, 2014 **58-1-202(1)(a)**
58-60-301

R156. Commerce, Occupational and Professional Licensing.
R156-60c. Clinical Mental Health Counselor Licensing Act Rule.

R156-60c-101. Title.

This rule is known as the "Clinical Mental Health Counselor Licensing Act Rule".

R156-60c-102. Definitions.

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

(1) "Deficiency", as used in Subsection 58-60-117(1)(d), means:

(a) no more than a combined total of six semester or nine quarter hours in:

- (i) group counseling and group work;
- (ii) human growth and development;
- (iii) career development;
- (iv) substance-related and addictive disorders; and
- (v) research and program evaluation.

(2) "Internship" means:

(a) one or more courses completed as part of a program at an accredited school:

(i) in a public or private agency engaged in the clinical practice of mental health therapy as defined in Subsection 58-60-102(7); and

(ii) under supervision provided by a qualified mental health training supervisor as defined in Section R156-60c-401.

(3) "Practicum" means:

(a) one or more courses completed as part of a program at an accredited school:

(i) in a public or private agency engaged in the clinical practice of mental health therapy as defined in Subsection 58-60-102(7); and

(ii) under supervision provided by a qualified mental health training supervisor as defined in Section R156-60c-401.

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

R156-60c-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1) to enable the Division to administer Title 58, Chapter 60, Part 4.

R156-60c-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.

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

(1) Pursuant to Subsection 58-60-405(1)(d)(i), an applicant for licensure as a clinical mental health counselor shall:

(a) produce certified transcripts evidencing completion of at least 60 semester or 90 quarter credit hours completed as part of a master's or doctorate degree conferred to the applicant in clinical mental health counseling or counselor education and supervision from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP); or

(b)(i) produce certified transcripts evidencing completion of at least 60 semester or 90 quarter credit hours as part of a master's or doctorate degree conferred to the applicant in clinical mental health counseling or an equivalent field from a program affiliated with an institution that has accreditation that is recognized by the Council for Higher Education Accreditation (CHEA).

(ii) A program under Subsection (1)(b)(i) shall include the following graduate level course work:

(A) a minimum of two semester or three quarter hours in professional counseling orientation and ethical practice based on the standards of the American Counseling Association (ACA), American Mental Health Counselors Association (AMHCA), or National Board of Certified Counselors (NBCC);

(B) a minimum of two semester or three quarter hours in social and cultural diversity;

(C) a minimum of two semester or three quarter hours in group counseling and group work;

(D) a minimum of two semester or three quarter hours in human growth and development;

(E) a minimum of two semester or three quarter hours in career development;

(F) a minimum of six semester or eight quarter hours in counseling and helping relationships;

(G) a minimum of two semester or three quarter hours in substance-related and addictive disorders;

(H) a minimum of two semester or three quarter hours in assessment and testing;

(I) a minimum of four semester or six quarter hours in mental status examination and the appraisal of DSM maladaptive and psychopathological behavior;

(J) a minimum of two semester or three quarter hours in research and program evaluation;

(K) a minimum of four semester or six quarter hours of internship or practicum as defined in Subsection R156-60c-102(1) or (2) that includes combined completion of at least 1,000 hours of supervised clinical training of which at least 400 hours shall be in providing clinical mental health counseling directly to clients as defined in Subsection 58-60-102(7); and

(L) a minimum of 34 semester or 52 quarter hours of course work related to the practice of counseling of which no more than six semester or eight quarter hours of credit for thesis, dissertation or project hours shall be counted toward the required hours in this subsection.

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

(1) The clinical mental health counselor and mental health therapy training qualifying an applicant for licensure as a clinical mental health counselor under Subsections 58-60-405(1)(e) and (f) shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is licensed as a licensed associate clinical mental health counselor or licensed associate clinical mental health counselor extern;

(c) be completed while the applicant is an employee, as defined in Subsection R156-60-102(3), of a public or private agency engaged in mental health therapy under the supervision of a qualified clinical mental health counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, physician, or marriage and family therapist; and

(c) be completed under a program of supervision by a mental health therapist meeting the requirements under Sections R156-60c-401 and R156-60c-402.

(2) An applicant for licensure as a clinical mental health counselor, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the clinical mental health counselor and mental health therapy training requirements under Subsection (1) outside the state may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-405(1)(e) and (f), and Subsections R156-60c-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the Division and Board that the training completed outside the state is equivalent to and in all respects

meets the requirements under this Subsection.

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

Under Subsection 58-60-405(1)(g), an applicant for licensure as a clinical mental health counselor shall pass the National Clinical Mental Health Counseling Examination of the National Board for Certified Counselors.

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

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

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

R156-60c-304. Continuing Education.

(1) There is hereby established a continuing education requirement for all individuals licensed under Title 58, Chapter 60, Part 4, as a clinical mental health counselor and associate clinical mental health counselor.

(2) During each two year period commencing October 1st of each even numbered year, a clinical mental health counselor or licensed associate clinical mental health counselor shall complete at least 40 hours of continuing education directly related to the licensee's professional practice of which at least six hours shall be in ethics/law.

(3) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased proportionally, according to the date of licensure.

(4) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;
 (b) be prepared and presented by individuals who are qualified by education, training and experience to provide continuing education regarding clinical mental health counseling; and

(c) document and verify attendance and completion.

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

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of at least one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 10 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing education courses in the field of clinical mental health counseling, or supervising of an individual completing the experience requirement for licensure in a mental health therapist license classification; and

(c) a maximum of 10 hours per two year period may be recognized for distance learning, clinical readings, or internet-based courses directly related to practice as a clinical mental health counselor or as otherwise approved by the Division.

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

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

(8) If a licensee completes more than the required number

of continuing education hours during a two-year renewal cycle specified in Subsection (2), up to ten hours of the excess may be carried over to the next two-year renewal cycle.

(9) No education received prior to licensure in Utah may be used towards the continuing education requirements of Subsection (2).

R156-60c-306. License Reinstatement - Requirements.

In addition to the requirements established in Section R156-1-308e, an applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) if deemed necessary, meet with the Board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a clinical mental health counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of clinical training as an associate clinical mental health counselor extern;

(3) pass the National Counseling Examination of the National Board for Certified Counselors if it is determined by the Board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a clinical mental health counselor;

(4) pass the National Clinical Mental Health Counseling Examination if it is determined by the Board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a clinical mental health counselor; and

(5) complete a minimum of 40 hours of continuing education in subjects determined by the Board as necessary to ensure the applicant's ability to engage safely and competently in practice as a clinical mental health counselor.

R156-60c-401. Requirements to be Qualified as a Clinical Mental Health Counselor Training Supervisor.

In accordance with Subsections 58-60-405(1)(e) and (f), in order for an individual to be qualified as a clinical mental health counselor training supervisor, the individual shall have the following qualifications:

(1) be currently licensed in good standing in a profession set forth for a supervisor under Subsection 58-60-405(1)(e) in the state in which the supervised training is being performed;

(2) have engaged in lawful practice of mental health therapy as a physician, clinical mental health counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist for not fewer than 4,000 hours in a period of not less than two years prior to beginning supervision activities; and

(3) be employed by or have a contract with the mental health agency that employs the supervisee, but not be employed by the supervisee, nor be employed by an agency owned in total or in part by the supervisee, or in which the supervisee has any controlling interest.

R156-60c-402. Duties and Responsibilities of a Supervisor of Clinical Mental Health Counselor.

The duties and responsibilities of a licensee providing supervision to an individual completing supervised clinical mental health counselor training requirements for licensure as a clinical mental health counselor are to:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in

which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of clinical mental health counseling and report violations to the Division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the Division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised clinical mental health counselor training, including the supervisor's evaluation of the supervisee's competence in the practice of clinical mental health counseling;

(9) supervise not more than three supervisees at any given time unless approved by the Board and Division; and

(10) assure each supervisee is licensed as a licensed associate clinical mental health counselor or licensed associate clinical mental health counselor extern prior to beginning the supervised training of the supervisee as required under Subsection 58-60-405(1)(e) and (f).

R156-60c-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision duties of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60c-401 and R156-60c-402;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60c-401(3) and R156-60c-402(7);

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the counselor and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or

may exist between the counselor and that individual;

(11) engaging in physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) using a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failing to cooperate with the Division during an investigation; and

(19) failing to abide by the provisions of the American Mental Health Counselors Association Code of Ethics, last amended March 2010, which is adopted and incorporated by reference.

KEY: licensing, counselors, mental health, clinical mental health counselor

January 7, 2016

Notice of Continuation December 9, 2014

58-60-401

58-1-106(1)(a)

58-1-202(1)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-60d. Substance Use Disorder Counselor Act Rule.
R156-60d-101. Title.**

This rule is known as the "Substance Use Disorder Counselor Act Rule."

R156-60d-102. Definitions.

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

(1) "Accredited institution of higher education that meet division standards", as used in Subsections 58-60-506(2)(a)(i) and (5)(a)(i), means an educational institution that has accreditation that is recognized by the Council for Higher Education Accreditation of the American Council on Education (CHEA).

(2) "ASAM" means the American Society of Addiction Medicine Patient Placement Criteria.

(3) "DSM-IV or 5" means the Diagnostic Statistical Manual of Mental Health Disorders published by the American Psychiatric Association.

(4) "General supervision" means that the supervisor provides consultation with the supervisee by personal face to face contact, or direct voice contact by telephone or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.

(5) "ICRC" means the International Certification and Reciprocity Consortium.

(6) "Initial assessment" means the procedure of gathering psycho-social information, which may include the application of the Addiction Severity Index, in order to recommend a level of treatment and to assist the mental health therapist supervisor in the information collection process and may include a referral to an appropriate treatment program.

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

(8) "Prerequisite courses, as used in Subsection 58-60-506(2)(a)(iii) and (5)(a)(iii) means courses completed before qualifying for licensure.

(9) "SASSI" means Substance Abuse Subtle Screening Inventory.

(10) "Screening", as used in Subsection 58-60-502(9)(b) and (10)(b), means a brief interview conducted in person or by telephone to determine if there is a potential substance abuse problem. If a potential problem is identified, the screening may include a referral for an initial assessment or a substance use disorder evaluation. The screening may also include a preliminary ASAM level recommendation in order to expedite the subsequent assessment and evaluation process. Screening instruments such as the SASSI may be included in the screening process.

(11) "Substance use disorder evaluation" means the process used to interpret information gathered from an initial assessment, other instruments as needed, and a face to face interview by a licensed mental health therapist in order to determine if an individual meets the DSM-IV or 5 criteria for substance abuse or dependence and is in need of treatment. If the need for treatment is determined, the substance use disorder evaluation process includes the determination of a DSM-IV or 5 diagnosis and the determination of an individualized treatment plan.

(12) "Substance use disorder education program", as used in Subsection 58-60-506(2)(b) and (5)(b), means college or university coursework at an accredited institution.

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

R156-60d-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 60, Part 5.

R156-60d-104. Organization - Relationship to Rule R156-1.

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

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

(1) In accordance with Subsection 58-60-506(2)(a)(iii) and (5)(a)(iii), two prerequisite courses shall be completed at an accredited institution and shall cover the following subjects:

- (a) human development across the lifespan; and
- (b) general psychology.

(2) In accordance with Subsection 58-60-506(5)(a)(ii), completion of the equivalent of an associate's degree includes not less than 90 quarter or 60 semester credit hours of course work from accredited institutions of higher education that have accreditation recognized by the Council for Higher Education Accreditation of the American Council on Education (CHEA).

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

(1) In accordance with Subsection 58-60-506(2)(c), the 4,000 hours of supervised experience in substance use disorder treatment required to qualify an applicant for the advanced substance use disorder counselor license shall be:

(a) supervised experience providing substance use disorder counseling services as defined in Subsection 58-60-502(9);

(b) supervised at a ratio of one hour of face to face direct supervision for every 40 hours of substance use disorder counseling supervision provided by a supervisor meeting qualifications established in Section 58-60-508; and

(c) completed only under the direct supervision of an advanced substance use disorder counselor or mental health therapist unless otherwise approved by the Division in collaboration with the Board.

(2) In accordance with Subsection 58-60-506(5)(c), the 2,000 hours of supervised experience in substance use disorder treatment required to qualify an applicant for the substance use disorder counselor license shall be:

(a) supervised experience providing substance use disorder counseling services as defined in Subsection 58-60-502(10);

(b) supervised at a ratio of one hour of face to face direct supervision for every 40 hours of substance use disorder counseling supervision provided by a supervisor meeting qualifications established in Section 58-60-508; and

(c) completed only when under the direct supervision of a substance use disorder counselor or mental health therapist unless otherwise approved by the Division in collaboration with the Board.

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

In accordance with Subsections 58-60-506(1)(e) and 58-60-115(5)(b), the examination required is:

(1) for licensure as a certified advanced substance use disorder counselor and an advanced substance use disorder counselor:

(a) the written NAADAC National Certification Exam Level II or MAC with a minimum criterion score set by NAADAC; or

(b) the written ICRC Advanced Alcohol and Drug (AADC) Examination with a minimum criterion score as set by ICRC; and

(2) for licensure as a certified substance use disorder counselor or substance use disorder counselor:

(a) the written NAADAC National Certification Exam Levels I, II or MAC with a minimum criterion score set by

NAADAC; or

(b) the written ICRC Alcohol and Drug Counselor (ADC) or Advanced Alcohol and Drug Counselor (AADC) Examination with a minimum criterion score as set by ICRC.

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

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

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

R156-60d-304. Continuing Education.

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

(2) Continuing education shall consist of 40 hours of education directly related to the licensee's professional practice. A licensed advanced substance use disorder counselor and licensed substance use disorder counselor shall complete the requirement during each two year license renewal cycle. A certified advanced substance use disorder counselor and a certified substance use disorder counselor shall complete the requirement during each two year period following the date of initial licensure. At least six of the 40 required hours must be in the area of professional ethics and responsibilities.

(3) The required number of hours of continuing education for a licensed advanced substance use disorder counselor or a licensed substance use disorder counselor who first becomes licensed during the two year renewal cycle shall be decreased in a pro rata amount equal to any part of that two year renewal cycle preceding the date on which that individual first became licensed.

(4) The standards for continuing education shall include:

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

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

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

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

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

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

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

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

(c) a maximum of 15 hours per two year period may be recognized for distance learning, clinical readings or internet-based courses directly related to practice as a substance use disorder counselor.

(6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years after close of the two year period to which

the records pertain. It is the responsibility of the licensee to maintain such information with respect to continuing education to demonstrate it meets the requirements under this section.

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

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

In accordance with Section R156-1-308g, an applicant for reinstatement of a license after two years following expiration of that license shall demonstrate competency by:

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

(2) passing the examination required in Section R156-60d-302c if it is determined necessary by the Board to demonstrate the applicant's ability to engage safely and competently in practice as a substance use disorder counselor; and

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

R156-60d-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violation of any provision of the NAADAC Code of Ethics: Teaching Tool, January 2011 edition, which is hereby incorporated by reference;

(2) acting as a supervisor without ensuring that the supervisee holds the requisite license;

(3) exercising undue influence over the clinical judgment of a supervisor over whom the licensee has administrative control;

(4) if licensed as a licensed advanced substance use disorder counselor or a licensed substance use disorder counselor, accepting the duties as a supervisor of a certified advanced substance use disorder counselor, certified advanced substance use disorder counselor intern, certified substance use disorder counselor, or a certified substance use disorder counselor intern who has any supervisory control over the licensed advanced substance use disorder counselor or licensed substance use disorder counselor; and

(5) directing one's mental health therapist supervisor to engage in a practice that would violate any statute, rule, or generally accepted professional or ethical standard of the supervisor's profession.

KEY: licensing, substance use disorder counselors

January 22, 2015

58-60-501

Notice of Continuation January 5, 2016

58-1-106(1)(a)

58-1-202(1)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-69. Dentist and Dental Hygienist Practice Act Rule.
R156-69-101. Title.**

This rule is known as the "Dentist and Dental Hygienist Practice Act Rule."

R156-69-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 69, as used in Title 58, Chapters 1 and 69 or this rule:

- (1) "ACLS" means Advanced Cardiac Life Support.
- (2) "ADA" means the American Dental Association.
- (3) "ADA CERP" means American Dental Association Continuing Education Recognition Program.
- (4) "Advertising or otherwise holding oneself out to the public as a dentist" means representing or promoting oneself as a dentist through any of the following or similar methods:
 - (a) business names;
 - (b) business signs;
 - (c) door or window lettering;
 - (d) business cards;
 - (e) letterhead;
 - (f) business announcements;
 - (g) flyers;
 - (h) mailers;
 - (i) promotions;
 - (j) advertisements;
 - (k) radio or television commercials;
 - (l) listings in printed or online telephone directories; or
 - (m) any other type of advertisement or promotional communication.
- (5) "BCLS" means Basic Cardiac Life Support.
- (6) "ADHA" means the American Dental Hygienists' Association.
- (7) "CPR" means cardiopulmonary resuscitation.
- (8) "CRDTS" means the Central Regional Dental Testing Service, Inc.
- (9) "Competency" means displaying special skill or knowledge derived from training and experience.
- (10) "Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, produced by a pharmacologic or non-pharmacologic method, or a combination thereof.
- (11) "DANB" means the Dental Assisting National Board, Inc.
- (12) "Deep sedation" means a controlled state of depressed consciousness, accompanied by partial loss of protective reflexes, including inability to respond purposefully to verbal command, produced by a pharmacologic or non-pharmacologic method, or combination thereof.
- (13) "General anesthesia" means a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method or a combination thereof.
- (14) "NERB" means Northeast Regional Board of Dental Examiners, Inc.
- (15) "PALS" means Pediatric Advanced Life Support.
- (16) "Practice of dentistry" in regard to administering anesthesia is further defined as follows:
 - (a) a Class I permit allows for local anesthesia which is the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug;
 - (b) a Class II permit allows for minimal sedation which is a minimally depressed level of consciousness induced by nitrous oxide, or by a pharmacological method, or by both, that retains the patient's ability to independently and consciously maintain

an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected;

(c) a Class III permit allows for moderate sedation in which a drug induced depression of consciousness occurs during which a patient responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patient's airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained; and

(d) a Class IV permit allows for deep sedation in which a drug induced depression of consciousness occurs from which a patient cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. A patient may require assistance in maintaining an airway and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(17) "Prominent disclaimer" means a disclaimer as described in and as required by Subsection R156-69-502(2)(ii) that:

(a) if in writing, is in the same size of lettering as the largest lettering otherwise contained in an advertisement, publication, or other communication in which the disclaimer appears; or

(b) if not in writing, is in the same volume and speed as the slowest speed and highest volume otherwise included in a radio or television commercial or other oral advertisement or promotion in which the disclaimer appears.

(18) "Specialty area" means an area of dentistry proposed in a formal application by a sponsoring organization to the Council on Dental Education and Licensure and formally approved by the ADA as meeting the "Requirements for Recognition of Dental Specialists". Specialty areas include the following:

- (a) orthodontics;
 - (b) oral and maxillofacial surgery;
 - (c) oral and maxillofacial pathology;
 - (d) pediatric dentistry;
 - (e) periodontics;
 - (f) endodontics;
 - (g) prosthodontics;
 - (h) dental public health; and
 - (i) oral and maxillofacial radiology.
- (19) "SRTA" means Southern Regional Testing Agency, Inc.

(20) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 69, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-69-502.

- (21) "UDA" means Utah Dental Association.
- (22) "UDHA" means Utah Dental Hygienists' Association.
- (23) "WREB" means the Western Regional Examining Board.

R156-69-103. 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 69.

R156-69-104. 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.

R156-69-201. Classifications of Anesthesia and Analgesia Permits - Dentist.

In accordance with Subsection 58-69-301(4)(a), a dentist may be issued an anesthesia and analgesia permit in the following classifications:

- (1) class I permit;
- (2) class II permit;
- (3) class III permit; and
- (4) class IV permit.

R156-69-202. Qualifications for Anesthesia and Analgesia Permits - Dentist.

In accordance with Subsection 58-69-301(4)(b), the qualifications for anesthesia and analgesia permits are:

- (1) for a class I permit:
 - (a) current licensure as a dentist in Utah; and
 - (b) documentation of current CPR or BCLS certification;
- (2) for a class II permit:
 - (a) current licensure as a dentist in Utah;
 - (b) documentation of current BCLS certification;
 - (c) evidence of successful completion of training in the administration of nitrous oxide and pharmacological methods of conscious sedation that:
 - (i) conforms to the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007, which is incorporated by reference; or
 - (ii) is the substantial equivalent of Subsection (2)(c)(i) provided in a continuing education format offered by an American Dental Association accredited school; and
 - (d) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(2);
- (3) for a class III permit:
 - (a) compliance with Subsections (1)(a) and (2) above;
 - (b) evidence of current Advanced Cardiac Life Support (ACLS) certification;
 - (c) evidence of holding a current Utah controlled substance license in good standing and a current Drug Enforcement Administration (DEA) Registration in good standing;
 - (d) evidence of successful completion of:
 - (i)(A) a comprehensive predoctoral or post doctoral training in the administration of conscious sedation that conforms to the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007, including a letter from the course director documenting competency in performing conscious sedation; and
 - (B) 60 hours of didactic education in sedation and successful completion of 20 cases; or
 - (ii) the substantial equivalent of Subsection (3)(d)(i) provided in a continuing education format offered by an American Dental Association accredited school; and
 - (e) certification that the applicant will comply the scope of practice as set forth in Subsection R156-69-601(3); and
- (4) for a class IV permit:
 - (a) compliance with Subsections (1), (2), and (3) above;
 - (b) evidence of current ACLS certification;
 - (c) evidence of having successfully completed advanced training in the administration of general anesthesia and deep sedation consisting of not less than one year in a program which conforms to the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007, and a letter from the course director documenting competency in performing general anesthesia and deep sedation;
 - (d) documentation of successful completion of advanced training in obtaining a health history, performing a physical examination and diagnosis of a patient consistent with the administration of general anesthesia or deep sedation; and
 - (e) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(4).

R156-69-203. Classification of Anesthesia and Analgesia

Permits - Dental Hygienist.

In accordance with Subsection 58-69-301(4)(a), a dental hygienist may be issued an anesthesia and analgesia permit in the classification of local anesthesia.

R156-69-204. Qualifications for Anesthesia and Analgesia Permits - Dental Hygienist.

In accordance with Subsection 58-69-301(4)(b), the qualifications for a local anesthesia permit are the following:

- (1) current Utah licensure as a dental hygienist or documentation of meeting all requirements for licensure as a dental hygienist;
- (2) successful completion of a program of training in the administration of local anesthetics that:
 - (i) is accredited by the Commission on Dental Accreditation of the ADA; or
 - (ii) is the substantial equivalent of Subsection (2)(i) provided in a continuing education format offered by an American Dental Association accredited school; and
- (3)(a) a passing score on the WREB, NERB, SRTA, or CRDTS anesthesia examination; or
- (b) documentation of having a current, active license to administer local anesthesia in another state in the United States; and
- (4) documentation of current CPR or BCLS certification.

R156-69-302b. Qualifications for Licensure - Examination Requirements - Dentist.

In accordance with Subsections 58-69-302(1)(f) and (g), the examination requirements for licensure as a dentist include the periodontics section and are established as the following:

- (1) the WREB examination with a passing score as established by the WREB;
- (2) the NERB examination with a passing score as established by the NERB;
- (3) the SRTA examination with a passing score as established by the SRTA; or
- (4) the CRDTS examination with a passing score as established by the CRDTS.

R156-69-302c. Qualifications for Licensure - Examination Requirements - Dental Hygienist.

In accordance with Subsections 58-69-302(3)(f) and (g), the examination requirements for licensure as a dental hygienist are established as the following:

- (1) the WREB examination with a passing score as established by the WREB;
- (2) the NERB examination with a passing score as established by the NERB;
- (3) the SRTA examination with a passing score as established by the SRTA; or
- (4) the CRDTS examination with a passing score as established by the CRDTS.

R156-69-303. 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 69, is established by rule in Section R156-1-308a.

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

R156-69-304a. Continuing Education - Dentist and Dental Hygienist.

In accordance with Section 58-69-304, qualified continuing professional education requirements are established as the following:

- (1) All licensed dentists and dental hygienists shall complete 30 hours of qualified continuing professional

education during each two year period of licensure.

(2) Qualified continuing professional education hours for licensees who have not been licensed for the entire two year period will be prorated from the date of licensure.

(3) Continuing education under this section shall:

- (a) be relevant to the licensee's professional practice;
- (b) be prepared and presented by individuals who are qualified by education, training and experience to provide dental and dental hygiene continuing education; and
- (c) have a method of verification of attendance and completion.

(4) Credit for continuing education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences, or training sessions which meet the criteria listed in Subsection (3) above, and which are approved by, conducted by or under sponsorship of:

(i) the Division of Occupational and Professional Licensing;

(ii) recognized universities and colleges;

(iii) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of dentistry and dental hygiene; or

(iv) ADA or any subgroup thereof, the ADHA or any subgroup thereof, an accredited dental, dental hygiene or dental postgraduate program, a government agency, a recognized health care professional association or a peer study club;

(b) a maximum of ten hours per two year period may be recognized for teaching continuing education relevant to dentistry and dental hygiene;

(c) a maximum of 15 hours per two year period may be recognized for continuing education that is provided via Internet or through home study which provides an examination and a completion certificate;

(d) a maximum of six hours per two year period may be recognized for continuing education provided by the Division of Occupational and Professional Licensing; and

(e) qualified continuing professional education may include up to three hours in practice and office management.

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

(6) Hours for recertification in CPR, BCLS, ACLS and PALS do not count as continuing education.

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

R156-69-502. Unprofessional Conduct.

"Unprofessional Conduct" includes the following:

(1) failing to provide continuous in-operative observation by a trained dental patient care staff member for any patient under nitrous oxide administration;

(2) advertising or otherwise holding oneself out to the public as a dentist or dental group that practices in a specialty area unless:

(i) each dentist has successfully completed an advanced educational program accredited by the ADA's Commission on Dental Accreditation (or its equivalent if completed prior to

1967) of two or more years in length, as specified by the Council on Dental Education and Licensure;

(ii) as specified in Subsection 58-69-502(2)(b), the advertisement or other method of holding oneself out to the public as a dentist or dental group includes a prominent disclaimer that the dentist or dentists performing services are licensed as general dentists or that the specialty services will be provided by a general dentist;

(iii) the advertisement or other method of holding oneself out to the public as a dentist or dental group that practices in a specialty area includes a prominent disclaimer that the dentist or dentists performing services is a specialist, but not qualified as a specialist in the specialty area being advertised; or

(iv) otherwise advertising in a specialty area by representing that a dentist has attained any education, training or certification in the specialty area when the dentist has not met the criteria;

(3) advertising in any form that is misleading, deceptive, or false; including the display of any credential, education, or training that is inaccurate, or the making of any unsubstantiated claim of superiority in training, skill, experience, or any other quantifiable aspect;

(4) prescribing treatments and medications outside the scope of dentistry;

(5) prescribing for oneself any Schedule II or III controlled substance;

(6) engaging in practice as a dentist or dental hygienist without prominently displaying a copy of the current Utah license;

(7) failing to personally maintain current CPR or BCLS certification, or employing patient care staff who fail to maintain current CPR or BCLS certification;

(8) providing consulting or other dental services under anonymity;

(9) engaging in unethical or illegal billing practices or fraud, including:

(a) reporting an incorrect treatment date for the purpose of obtaining payment;

(b) reporting charges for services not rendered;

(c) incorrectly reporting services rendered for the purpose of obtaining payment;

(d) generally representing a charge to a third party that is different from that charged to the patient;

(10) failing to establish and maintain appropriate dental records;

(11) failing to maintain patient records for a period of seven years;

(12) failing to provide copies of x-rays, reports or records to a patient or the patient's designee upon written request and payment of a nominal fee for copies regardless of the payment status of the services reflected in the record; and

(13) failing to submit a complete report to the Division within 30 calendar days concerning an incident, in which any anesthetic or sedative drug was administered to any patient, which resulted in, either directly or indirectly, the death or adverse event resulting in patient admission to a hospital.

R156-69-601. Scope of Practice - Anesthesia and Analgesia Permits.

In accordance with Subsection 58-69-301(4)(a), the scope of practice permitted under each classification of anesthesia and analgesia permit includes the following:

(1) A dentist with a class I permit:

(a) may administer or supervise the administration of any legal form of non-drug induced conscious sedation or drug induced conscious sedation except:

(i) the administration of inhalation agents including nitrous oxide; and

(ii) the administration of any drug for sedation by any

parenteral route; and

(b) shall maintain and ensure that all patient care staff maintain current CPR certification.

(2) A dentist with a class II permit:

(a) may administer or supervise the administration of nitrous oxide induced conscious sedation in addition to the privileges granted to one holding a Class I permit; and

(b) shall ensure that:

(i) every patient under nitrous oxide administration is under continuous in-operative observation by a member of the dental patient care staff;

(ii) nitrous oxide and oxygen flow rates and sedation duration and clearing times are appropriately documented in patient records;

(iii) reasonable and prudent controls are in place and followed in regard to nitrous oxide to ensure the health and safety of patients, dental office personnel, and the general public;

(iv) the dental facility is equipped with adequate and appropriate equipment, in good working order, to assess vital signs; and

(v) equipment used in the administration of nitrous oxide has a scavenging system and that all gas delivery units have an oxygen fail-safe system.

(3) A dentist with a class III permit:

(a) may administer or supervise the administration of parenteral conscious sedation in addition to the privileges granted one holding a Class I and Class II permit; and

(b) shall ensure that:

(i) the dental facility has adequate and appropriate monitoring equipment, including pulse oximetry, current emergency drugs, and equipment capable of delivering oxygen under positive pressure;

(ii) the patient's heart rate, blood pressure, respirations and responsiveness are checked at specific intervals during the anesthesia and recovery period and that these observations are appropriately recorded in the patient record;

(iii) the dental facility is equipped to treat emergencies providing immediate access to advanced airway equipment, and resuscitation medications;

(iv) the above equipment is inspected annually by a certified technician and is calibrated and in good working order;

(v) inhalation agents' flow rates and sedation duration and clearing times are appropriately documented in patient records; and

(vi) a minimum of two persons, with one person constantly monitoring the patient, are present during the administration of parenteral conscious sedation as follows:

(A) an operating permittee dentist and a BCLS certified assistant trained and qualified to monitor appropriate and required physiologic parameters;

(B) an operating dentist and a permittee dentist; or

(C) an operating permittee dentist and another licensed professional qualified to administer this class of anesthesia.

(4) A dentist with a class IV permit;

(a) may administer or supervise the administration of general anesthesia or deep sedation in addition to the privileges granted one holding a class I, II and III permit; and

(b) shall ensure that:

(i) the dental facility is equipped with precordial stethoscope for continuous monitoring of cardiac function and respiratory work, electrocardiographic monitoring and pulse oximetry, means of monitoring blood pressure, and temperature monitoring; the preceding or equivalent monitoring of the patient will be used for all patients during all general anesthesia or deep sedation procedures; in addition, temperature monitoring will be used for children;

(ii) the dental facility is equipped to treat emergencies providing immediate access to advanced airway equipment,

resuscitation medications, and defibrillator;

(iii) the above equipment is inspected annually by a certified technician and is calibrated and in good working order; and

(iv) three qualified and appropriately trained individuals are present during the administration of general anesthesia or deep sedation as follows:

(A) an operating dentist holding a permit under this classification, an anesthesia assistant trained to observe and monitor the patient using the equipment required above, and an individual to assist the operating dentist;

(B) an operating dentist, an assistant to the dentist and a dentist holding a permit under this classification; or

(C) another licensed professional qualified to administer this class of anesthesia and an individual to assist the operating dentist.

(5) Any dentist administering any anesthesia to a patient which results in, either directly or indirectly, the death or adverse event resulting in hospitalization of a patient shall submit a complete report of the incident to the Board within 30 days.

R156-69-602. Practice of Dental Hygiene.

In accordance with Subsection 58-69-102(7)(a)(ix), other practices of dental hygiene include performing laser bleaching and laser periodontal debridement.

R156-69-603. Use of Unlicensed Individuals as Dental Assistants.

In accordance with Section 58-69-803, the standards regulating the use of unlicensed individuals as dental assistants are that an unlicensed individual shall not, under any circumstance:

(1) render definitive treatment diagnosis;

(2) place, condense, carve, finish or polish restorative materials, or perform final cementation;

(3) cut hard or soft tissue or extract teeth;

(4) remove stains, deposits, or accretions, except as is incidental to polishing teeth coronally with a rubber cup;

(5) initially introduce nitrous oxide and oxygen to a patient for the purpose of establishing and recording a safe plane of analgesia for the patient, except under the direct supervision of a licensed dentist;

(6) remove bonded materials from the teeth with a rotary dental instrument or use any rotary dental instrument within the oral cavity except to polish teeth coronally with a rubber cup;

(7) take jaw registrations or oral impressions for supplying artificial teeth as substitutes for natural teeth, except for diagnostic or opposing models for the fabrication of temporary or provisional restorations or appliances;

(8) correct or attempt to correct the malposition or malocclusion of teeth, or make an adjustment that will result in the movement of teeth upon an appliance which is worn in the mouth;

(9) perform sub-gingival instrumentation;

(10) render decisions concerning the use of drugs, their dosage or prescription;

(11) expose radiographs without meeting the following criteria:

(a) completing a dental assisting course accredited by the ADA Commission on Dental Accreditation; or

(b) passing one of the following examinations:

(i) the DANB Radiation Health and Safety Examination (RHS); or

(ii) a radiology exam approved by the Board that meets the criteria established in Section R156-69-604; or

(12) work without a current CPR or BCLS certification.

R156-69-604. Radiology Course for Unlicensed Individuals

as Dental Assistants.

In accordance with Section 58-69-803 and Subsection 58-54-4.3(2), the radiology course in Subsection R156-69-603(11) shall include radiology theory consisting of:

- (1) orientation to radiation technology;
- (2) terminology;
- (3) radiographic dental anatomy and pathology (cursory);
- (4) radiation physics (basic);
- (5) radiation protection to patient and operator;
- (6) radiation biology including interaction of ionizing radiation on cells, tissues and matter;
- (7) factors influencing biological response to cells and tissues to ionizing radiation and cumulative effects of x-radiation;
- (8) intraoral and extraoral radiographic techniques;
- (9) processing techniques including proper disposal of chemicals; and
- (10) infection control in dental radiology.

KEY: licensing, dentists, dental hygienists

December 22, 2015

Notice of Continuation January 21, 2016

58-69-101

58-1-106(1)(a)

58-1-202(1)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-78. Vocational Rehabilitation Counselors Licensing
Act Rule.**

R156-78-101. Title.

This rule is known as the "Vocational Rehabilitation Counselors Licensing Act Rule".

R156-78-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 78, as used in Title 58, Chapters 1 and 78 or in this rule:

(1) "Disability related work experience", as used in Subsection 58-78-302(1)(e), means the practice of providing vocational rehabilitation services as defined in Subsection 58-78-102(3).

(2) "In-service" means a continuing education course that meets the requirements in Subsection R156-78-304(4) and is hosted or sponsored by an employer and not by a professional association, society or organization related to the profession.

(3) "LVRC" means a licensed vocational rehabilitation counselor.

(4) "Related field", as used in Subsection 58-78-302(1)(d), includes any of the following:

- (a) psychology;
- (b) clinical psychology;
- (c) counseling psychology;
- (d) professional guidance and counseling;
- (e) social work;
- (f) educational counseling;
- (g) educational psychology with rehabilitation counseling emphasis;

(h) special education with rehabilitation counseling emphasis; and

(i) any other field deemed substantially related to the practice of rehabilitation counseling by the Board and Division.

(5) "Supervision", as used in Subsections 58-78-302(1)(e) and 58-78-304(1) means general supervision in that the supervising licensee:

(a) establishes a professional relationship with the supervisee which ensures that the work being performed is consistent with the scope and standards of the profession;

(b) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio, or some other means, whether or not the supervising licensee is located on the same premises as the person being supervised;

(c) provides necessary consultation within a reasonable period of time; and

(d) maintains routine personal contact with the person being supervised.

(6) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 78, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-78-502.

(7) "Vocational assessment", as used in Subsection 58-78-102(3)(c), includes the performance of forensic evaluations.

R156-78-103. 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 78.

R156-78-104. Organization - Relationship to Rule R156-1.

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

R156-78-302b. Experience Requirement.

(1) An applicant for licensure verifying completion of the experience requirement established in Subsection 58-78-302(1)(e) with experience that was not completed under the supervision of an LVRC must apply for licensure before January

1, 2011 for the applicant's experience to count toward completion of the experience requirement. Applicants for licensure who apply on or after January 1, 2011 must verify completion of experience under the supervision of an LVRC.

(2) A maximum of 2,000 hours of supervised experience during any one year period may be credited toward the 4,000 hour supervised experience requirement.

R156-78-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-78-302(1)(f), the examination requirements for licensure as an LVRC include passing the Certified Rehabilitation Counselor Examination administered by the Commission on Rehabilitation Counselor Certification.

R156-78-303. 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 78 is established by rule in Section R156-1-308a.

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

R156-78-304. Continuing Education.

(1) In accordance with Subsection 58-78-303(3), there is established a continuing education requirement for all individuals licensed under Title 58, Chapter 78 as an LVRC.

(2) During the two-year license renewal period commencing April 1 of each odd-numbered year, an LVRC shall be required to complete not less than 40 hours of continuing education directly related to the licensee's professional practice of which a minimum of four hours must be completed in ethics/law.

(3) The required number of hours of continuing education for an individual who first becomes licensed during the two-year period shall be decreased in a pro-rata amount equal to any part of that two-year period preceding the date on which that individual first became licensed.

(4) Continuing education under this Section shall:

- (a) be relevant to the licensee's professional practice;
- (b) be prepared and presented by individuals who are qualified by education, training and experience to provide continuing education relevant to the practice of vocational rehabilitation counseling; and
- (c) have a method of verification of attendance and completion.

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

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, conferences or training sessions which meet the criteria listed in Subsection (4) above, and which are approved by, conducted by, or under the sponsorship of:

(i) universities and colleges; or

(ii) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of vocational rehabilitation counselors;

(b) a maximum of 20 hours per two-year period may be recognized for:

(i) teaching courses under Subsection (5)(a); or

(ii) supervision of an individual completing the experience requirement for licensure as an LVRC;

(c) a maximum of 12 hours per two-year period may be recognized for in-service directly related to practice as an LVRC; and

(d) a maximum of 24 hours of continuing education per two-year period may be recognized for internet or distance-

learning courses that include an examination and issuance of a completion certificate.

(6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years.

(7) A licensee requesting a waiver of the continuing education requirement must comply with requirements as established by rule in Section R156-1-308d.

(8) If a licensee completes more than the required number of hours of continuing education during a two-year renewal cycle specified in Subsection (2), up to ten hours of the excess over the required number may be carried over to the next two-year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-78-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

(a) violating any provision of the Code of Professional Ethics for Rehabilitation Counselors, published by the Commission on Rehabilitation Counselor Certification, effective January 1, 2010, which is hereby adopted and incorporated by reference;

(b) failing to report in writing to the Division unlawful or unprofessional conduct as defined in Section 58-78-501, 58-78-502 and this Section, by a person licensed under Title 58, Chapter 78 within ten days after learning of the conduct, if the conduct:

(i)(A) results in disciplinary action taken by the licensee's employer or a professional association; or

(B) results in a significant adverse impact on the public's health, safety or welfare; and

(ii) was not known by the licensee to have already been reported to the Division; and

(c) failing to provide general supervision as defined in Subsection R156-78-102(4).

KEY: licensing, vocational rehabilitation counselor

January 7, 2016

58-78-101

Notice of Continuation August 14, 2014

58-1-106(1)(a)

58-1-202(1)(a)

R277. Education, Administration.**R277-207. Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions.****R277-207-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) 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 establish rebuttable presumptions for UPPAC and Board review of UPPAC cases.

R277-207-2. Rebuttable Presumptions.

(1) UPPAC and the Board shall consider the rebuttable presumptions in this section when evaluating a case of educator misconduct.

(2)(a) Revocation is presumed appropriate if an educator:

(i) is subject to mandatory revocation under Subsection 53A-6-501(5)(b);

(ii) is convicted of, admits to, or is found pursuant to an evidentiary hearing to have engaged in viewing child pornography, whether real or simulated, on or off school property;

(iii) is convicted three or more times of any combination of drug, alcohol, violence, or sexual offenses in the three years previous to the most recent conviction;

(iv) is convicted of an offense that requires the educator to register as a sex offender under Subsection 77-41-105(3);

(v) except as provided in Subsection (2)(c), is convicted of any felony; or

(vi) intentionally provides alcohol or illegal drugs to a minor.

(b) Early release or work release permitted by the jail may not be considered by UPPAC or the Board for purposes of calculating the jail time in Subsection (2)(a)(iii).

(c) An educator who is convicted of a felony may apply for a reinstatement hearing if the educator's felony is:

(i) expunged; or

(ii) reduced to a misdemeanor pursuant to Section 76-3-402.

(3) Suspension of three years or more is presumed appropriate if an educator:

(a) engages in a boundary violation of a sexually suggestive nature that is not sexually explicit conduct;

(b) is convicted of child abuse if the conduct results in a conviction of a class A misdemeanor or higher;

(c) is convicted of an offense that results in the educator being placed on court supervision for three or more years; or

(d) is convicted of intentional theft or misappropriation of public funds.

(4) Suspension of one to three years is presumed appropriate, if an educator:

(a) willfully or knowingly creates, views, or gains access to sexually inappropriate material on school property or using school equipment;

(b) is convicted of one or more misdemeanor violence offenses in the last 3 years;

(c) is convicted of using physical force with a minor if the conviction is a class B misdemeanor or lower;

(d) engages in repeated incidents of or a single egregious incident of excessive physical force or discipline to a child or student that:

(i) does not result in a criminal conviction; and

(ii) does not meet the circumstances described in Subsection 53A-11-802(2);

(e) threatens a student physically, verbally, or electronically;

(f) engages in a pattern of inappropriately fraternizing with a student under a circumstance not described in Subsection (3)(a);

(g) engages in multiple incidents or a pattern of theft or misappropriation of public funds that does not result in a criminal conviction;

(h) attends a school or school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or illegal drugs;

(i) is convicted of two drug-related offenses or alcohol-related offenses in the three years previous to the most recent conviction;

(j) engages in a pattern of or a single egregious incident of:

(i) harassing;

(ii) bullying; or

(iii) threatening a co-worker or community member;

(k) knowingly and deliberately falsifies or misrepresents information on an education-related document; or

(l) knowingly and deliberately teaches, counsels, or assists a student in a manner that undermines or disregards the lawful, express directives of a parent.

(5) A short-term suspension is presumed appropriate if an educator:

(a) has three or more incidents of inappropriate conduct that would otherwise warrant lesser discipline; or

(b) fails to report to appropriate authorities suspected child or sexual abuse.

(6) A letter of admonition, letter of warning, or letter of reprimand, with or without probation, is presumed appropriate if an educator:

(a) engages in a miscellaneous minimal boundary violation with a student or minor, whether physical, electronic, or verbal;

(b) engages in minimal inappropriate physical contact with a student;

(c) engages in unprofessional communications or conduct with a student, co-worker, community member, or parent;

(d) engages in an inappropriate discussion with a student that violates state or federal law;

(e) knowingly violates a requirement or procedure for special education needs;

(f) knowingly violates a standardized testing protocol;

(g) is convicted of one of the following with or without court probation:

(i) a single driving under the influence of alcohol or drugs offense under Section 41-6a-502;

(ii) impaired driving under Section 41-6a-502.5; or

(iii) a charge that contains identical or substantially similar elements to the state's driving under the influence of alcohol or drugs law or under the law of another state or territory;

(h) carelessly mismanages public funds or fails to accurately account for receipt and expenditure of public funds entrusted to the educator's care;

(i) fails to make a report required by Rule R277-516;

(j) is convicted of one or two misdemeanor offenses not otherwise listed;

(k) engages in an activity that constitute or create the appearance of a conflict of interest with the educator's professional responsibility; or

(l) engages in other minor violations of the Utah Educator Standards in Rule R277-515.

(7) In considering a presumption described in this section, UPPAC or the Board shall consider deviating from the presumptions if:

(a) the presumption does not involve a revocation mandated by statute; and

(b) aggravating or mitigating factors exist that warrant deviation from the presumption.

- (8) An aggravating factor may include the following:
- (a) the educator has engaged in prior misconduct;
 - (b) the educator presents a serious threat to a student;
 - (c) the educator's misconduct directly involved a student;
 - (d) the educator's misconduct involved a particularly vulnerable student;
 - (e) the educator's misconduct resulted in physical or psychological harm to a student;
 - (f) the educator violated multiple standards of professional conduct;
 - (g) the educator's attitude does not reflect responsibility for the misconduct or the consequences of the misconduct;
 - (h) the educator's misconduct continued after investigation by the LEA or UPPAC;
 - (i) the educator holds a position of heightened authority as an administrator;
 - (j) the educator's misconduct had a significant impact on the LEA or the community;
 - (k) the educator's misconduct was witnessed by a student;
 - (l) the educator was not honest or cooperative in the course of UPPAC's investigation;
 - (m) the educator was convicted of crime as a result of the misconduct; and
 - (n) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator's misconduct.
- (9) A mitigating factor may include the following:
- (a) the educator's misconduct was the result of strong provocation;
 - (b) the educator was young and new to the profession;
 - (c) the educator's attitude reflects recognition of the nature and consequences of the misconduct and demonstrates a reasonable expectation that the educator will not repeat the misconduct;
 - (d) the educator's attitude suggests amenability to supervision and training;
 - (e) the educator has little or no prior disciplinary history;
 - (f) since the misconduct, the educator has an extended period of misconduct-free classroom time;
 - (g) the educator was a less active participant in a larger offense;
 - (h) the educator's misconduct was directed or approved, whether implicitly or explicitly, by a supervisor or person in authority over the educator;
 - (i) the educator has voluntarily sought treatment or made restitution for the misconduct;
 - (j) there was insufficient training or other policies that might have prevented the misconduct;
 - (k) any other factor that, in the view of UPPAC or the Board, warrants a less serious consequence for the educator's misconduct.
- (10)(a) UPPAC and the Board have sole discretion to determine the weight they give to an aggravating or mitigating factor.
- (b) The weight UPPAC or the Board give an aggravating or mitigating factor may vary in each case and any one aggravating or mitigating factor may outweigh some or all other aggravating or mitigating factors.

**KEY: educator, disciplinary presumptions
January 11, 2016**

**Art X, Sec 3
53A-6-306
53A-1-401(3)**

R277. Education, Administration.**R277-510. Educator Licensing - Highly Qualified Assignment.****R277-510-1. Definitions.**

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

B. "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

C. "Date of hire" means the date on which the initial employment contract is signed between educator and employer for a position requiring a professional educator license.

D. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program, consistent with R277-503-1E and R277-503-5.

E. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23) or 34 CFR 200.56.

F. "IDEA" means the Individuals with Disabilities Education Act, Title 1, Part A, Section 602.

G. "Multiple subject teacher" means a teacher in a necessarily existent small school as defined under R277-445 or as a special education teacher consistent with IDEA, Title 1, Part A, Section 602, or in a Youth in Custody program as defined under R277-709 or a board-designated alternative school whose size meets necessarily existent small school criteria as defined under R277-445, who teaches two or more Core academic subjects defined under R277-510-1B or under R277-700.

H. "NCLB" means the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), 20 U.S.C. 7801.

I. "Restricted endorsement" means an endorsement available and limited to teachers in necessarily existent small schools as determined under R277-445, teachers in alternative schools that meet the size criteria of R277-445, and teachers in youth in custody programs or to special educators seeking highly qualified status in mathematics, language arts, or science. Teacher qualifications shall include at least nine semester hours of USOE-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

J. "Teacher of record" for the purposes of this rule means the teacher to whom students are assigned for purposes of reporting for USOE data submissions.

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

R277-510-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(1)(a) which directs the Board to establish rules setting minimum standards for educators who provide direct student services, 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 assignment to meet federal requirements for highly qualified status.

R277-510-3. NCLB Highly Qualified Assignments - Early Childhood Teachers K-3.

A. For a teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned in an elementary school as the classroom teacher of record shall meet the NCLB requirements for the assignment. The teacher shall have:

- (1) a bachelor's degree; and
 - (2) an educator license with an early childhood area of concentration; and
 - (3) a passing score at the level designated by the USOE on a Board-approved subject area test.
- B. NCLB requirements do not apply to pre-K assignments.

R277-510-4. NCLB Highly Qualified Assignments - Elementary Teachers 1-8.

A. For a teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned in an elementary school as the classroom teacher of record shall meet the NCLB requirements for the assignment. The teacher shall have:

- (1) a bachelor's degree; and
- (2) an educator license with an elementary area of concentration; and
- (3) a passing score at the level designated by the USOE on a Board-approved subject area test.

B. A teacher holding a license with an elementary area of concentration assigned to teach an NCLB core academic subject in a secondary school shall meet the requirements of R277-510-5A.

R277-510-5. NCLB Highly Qualified Assignments - Secondary Teachers 6-12.

A. For a teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. The teacher shall have:

- (1) a bachelor's degree; and
- (2) an educator license with a secondary area of concentration and endorsement in the content area assigned; and
- (3) at least one of the following in the assignment content area:

(a) a university major degree, masters degree, doctoral degree, or National Board Certification in a related NCLB core academic content area; or

(b) a course work equivalent of a major degree (30 semester or 45 quarter hours) in a related NCLB core academic content area; or

(c) a passing score at the level designated by the USOE on a Board-approved subject area test; if no Board-approved test is available, an endorsement is sufficient for highly qualified status.

B. An assignment in grades 7 or 8 given to a teacher holding an elementary area of concentration may be designated as NCLB highly qualified if the teacher holds an endorsement in the content area and meets one of the requirements of R277-510-5A(3) above.

C. These requirements are only applicable to NCLB core academic subject assignments.

D. Each NCLB core academic course assignment is subject to the above standards.

R277-510-6. NCLB Highly Qualified Assignments - Special Education Teachers.

A. For a special education teacher assignment in grades K-8 to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned as the classroom teacher of record for a NCLB core academic subject shall have:

- (1) a bachelor's degree; and
- (2) an educator license with a special education area of concentration; and
- (3) any one of the following in the assignment content area:

(a) a passing score on a Board-approved elementary content test; or

(b) a university major degree, masters degree, doctoral degree, or National Board Certification and an endorsement in the content area; or

(c) a course work equivalent of a major degree (30 semester or 45 quarter hours) and an endorsement in the content area; or

(d) a passing score at the level designated by the USOE on a Board-approved subject area test and an endorsement in the content area.

(4) A special educator who would be NCLB highly qualified as a teacher of record in an elementary/early childhood regular education assignment is also NCLB highly qualified as a teacher of record in a special education assignment.

B. For a special education teacher assignment in grades 7-12 to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned as the classroom teacher of record for a NCLB core academic subject shall have:

(1) a bachelor's degree; and

(2) an educator license with a special education area of concentration; and

(3) any one of the following in the assignment content area:

(a) a passing score at the level designated by the USOE on a Board-approved subject area test.

(b) a passing score on a Board-approved content test; or

(c) documentation of satisfactory professional development and experience as approved by the USOE; or

(d) a university major degree, masters degree, doctoral degree, or National Board Certification; or

(e) a course work equivalent of a major degree (30 semester or 45 quarter hours).

C. IDEA may contain requirements for teacher qualifications in addition to the requirements of NCLB and this rule. R277-510 does not replace, supercede, or nullify any of those requirements.

R277-510-7. NCLB Highly Qualified Assignments - Small Schools Multiple Subject Teachers 7 - 12.

A. For a small school multiple subject teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. The teacher shall have:

(1) a bachelor's degree; and

(2) an educator license with a secondary area of concentration; and

(3) an endorsement in the assignment content area; and

(4) at least one of the following in the assignment content area:

(a) a university major degree, masters degree, doctoral degree, or National Board Certification; or

(b) a course work equivalent of a major degree (30 semester or 45 quarter hours); or

(c) a passing score at the level designated by the USOE on a Board-approved subject area test.

B. The Director of Educator Quality and Licensing at the USOE shall annually publish a list of qualifying small schools, consistent with R277-445.

R277-510-8. LEA Highly Qualified Plans.

A. Each school district and charter school shall submit a plan to the USOE describing strategies for progressing toward and maintaining the highly qualified status of all educator assignments to which this rule applies. Each plan shall be updated annually.

B. The USOE shall review school district and charter

school plans and provide technical support to districts and charter schools to assist them in carrying out their plans to the extent of staff/resources available.

C. The USOE shall set timelines for submission and review of school district and charter school plans.

R277-510-9. Highly Qualified Timelines and Rules in Relation to Other Board Rules.

A. Documented determinations of highly qualified status under previously enacted Board rules shall remain in effect notwithstanding any subsequent changes in highly qualified requirements.

B. Other Board rules may include requirements related to licensure or educator assignment that do not specifically apply to NCLB highly qualified assignment status. R277-510 does not supercede, replace, or nullify any of these requirements.

KEY: educators, highly qualified

March 10, 2009

Notice of Continuation January 14, 2016

Art X Sec 3

53A-1-401(1)(a)

53A-1-401(3)

R277. Education, Administration.**R277-705. Secondary School Completion and Diplomas.****R277-705-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
- (b) Subsections 53A-1-402(1)(b) and (c), which direct the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; and
- (c) 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:
- (a) provide consistent definitions;
- (b) provide alternative methods for a student to earn credit and alternate methods for schools to award credit; and
- (c) provide rules and procedures for the assessment of all students as required by law.

R277-705-2. Definitions.

- (1) "Demonstrated competence" means subject mastery as determined by LEA standards and review. LEA review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.
- (2) "Diploma" means an official document awarded by an LEA consistent with state and LEA graduation requirements and the provisions of this rule.
- (3)(a) "Secondary school" means grades 7-12 in whatever kind of school the grade levels exist.
- (b) Grade 6 may be considered a secondary grade for some purposes.
- (4) "Section 504 plan" means a written statement of reasonable accommodations for a student with a qualifying disability that is developed, reviewed, and revised in accordance with Section 504 of the Rehabilitation Act of 1973.
- (5)(a) "Special purpose school" means a school designated by a regional accrediting agency, adopted by the Board.
- (b) "Special purpose school" includes a school:
- (i) that serves a specific population such as a student with a disability, youth in custody, or a school with a specific curricular emphasis; and
- (ii) with curricula designed to serve specific populations that may be modified from a traditional program.
- (6) "Supplemental education provider" means a private school or educational service provider:
- (a) that may or may not be accredited; and
- (b) that provides courses or services similar to public school courses or classes.
- (7)(a) "Transcript" means an official document or record generated by one or several schools which includes:
- (i) the courses in which a secondary student was enrolled;
- (ii) grades and units of credit earned; and
- (iii) citizenship and attendance records.
- (b) A transcript is one part of a student's permanent record or cumulative file that may include:
- (i) birth certificate
- (ii) immunization records; and
- (iii) other information as determined by the school in possession of the record.
- (8) "Unit of credit" means credit awarded for a course taken:
- (a) consistent with this rule;
- (b) upon LEA authorization; or
- (c) for mastery demonstrated by approved methods.

R277-705-3. Required LEA Policy Explaining Student Credit.

- (1)(a) An LEA governing board shall establish a policy, in an open meeting, explaining the process and standards for

acceptance and reciprocity of credits earned by a student in accordance with state law.

(b) An LEA policy described in Subsection (1)(a) shall include specific and adequate notice to a student and a parent of all policy requirements and limitations.

(2)(a) An LEA shall accept credits and grades awarded to a student from a school or a provider accredited by an accrediting entity adopted by the Board.

(b) An LEA policy may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted.

(3) An LEA policy shall provide various methods for a student to earn credit from a non-accredited source, course work, or education provider including:

(a) satisfaction of coursework by demonstrated competency, as evaluated at the LEA level;

(b) assessment as proctored and determined at the school or school level;

(c) review of student work or projects by an LEA administrator; and

(d) satisfaction of electronic or correspondence coursework, as approved at the LEA level.

(4) An LEA may require documentation of compliance with Section 53A-11-102 prior to reviewing a student's home school or competency work, assessment or materials.

(5) An LEA policy for participation in extracurricular activities, awards, recognitions, and enhanced diplomas may be determined locally consistent with the law and this rule.

(6) An LEA has the final decision-making authority for the awarding of credit and grades from a non-accredited source consistent with state law, due process, and this rule.

R277-705-4. Diplomas and Certificates of Completion.

(1) An LEA shall award diplomas and certificates of completion.

(2) An LEA shall establish criteria for a student to earn a certificate of completion that may be awarded to a student who:

(a) has completed the student's senior year;

(b) is exiting the school system; and

(c) has not met all state or LEA requirements for a diploma.

R277-705-5. Students with Disabilities.

(1) A student with a disability served by a special education program shall satisfy high school completion or graduation criteria, consistent with state and federal law and the student's IEP.

(2) An LEA may award a student a certificate of completion consistent with state and federal law and the student's IEP or Section 504 Plan.

R277-705-6. Adult Education Students.

(1) An adult education student is eligible only for an adult education secondary diploma.

(2) An adult education diploma may not be upgraded or changed to a traditional, high school-specific diploma.

(3) A school district shall establish a policy:

(a) allowing or disallowing adult education student participation in graduation activities or ceremonies; and

(b) establishing timelines and criteria for satisfying adult education graduation and diploma requirements.

R277-705-7. Student Rights and Responsibilities Related to Graduation, Transcripts and Receipt of Diplomas.

(1) An LEA shall supervise the granting of credit and awarding of diplomas, but may delegate the responsibility to schools within the LEA.

(2) An LEA may determine criteria for a student's participation in graduation activities, honors, and exercises,

independent of a student's receipt of a diploma or certificate of completion.

(3) A diploma, a certificate, credits, or an unofficial transcript may not be withheld from a student for nonpayment of school fees.

(4)(a) An LEA shall establish a consistent timeline for all students for completion of graduation requirements.

(b) A timeline described in Subsection (4)(a) shall be consistent with state law and this rule.

(5) An LEA's graduation requirements may not apply retroactively.

KEY: adult education, high school credit, graduation requirements

January 7, 2016

Art X Sec 3

Notice of Continuation November 10, 2015 53A-1-402(1)(b)

53A-1-401(3)

R280. Education, Rehabilitation.**R280-204. Utah State Office of Rehabilitation Employee Background Check Requirement.****R280-204-1. Definitions.**

A. "BCI" means the Utah Bureau of Criminal Identification.

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

C. "Criminal background check" means the submission by an employee of fingerprints through a law enforcement unit, through the Utah State Office of Education paper/card fingerprinting process or by means of an electronic fingerprinting scanning machine, review by the BCI for comparison with recorded arrests and convictions and discussion or explanation of resulting criminal arrest or conviction information as determined by this rule and USOR procedures.

D. "Significant unsupervised access" means a period of time that an employee, volunteer or intern covered by this rule may spend with a Rehabilitation client during which the employee or volunteer is alone with the client for more than a brief time, provides services for clients protected under this rule on a regular basis by assignment, or who generally works with clients protected under this rule.

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

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

G. "USOR employee" means employees, including consultants, temporary employees, interns and traditional employees of the USOR or agencies or subdivisions of the USOR.

R280-204-2. Authority and Purpose.

A. This rule is authorized by 53A-24-103 which places the USOR under the policy direction of the Board. The Board is authorized under 53A-1-401(3) to adopt rules and policies in accordance with its responsibilities.

B. The purpose of this rule is to establish definitions and procedures under which criminal background checks may be required of designated USOR employees and volunteers and under which employees, prospective employees and volunteers may receive notice of required background check requirements and review.

R280-204-3. Criminal Background Check Requirement for Designated USOR Employees.

A. Background checks shall be completed for all USOR employees hired, transferred, or assigned to the USOR after February 28, 2003 who have significant unsupervised access to clients.

B. Background checks shall be completed on all designated USOR employees by July 1, 2007.

C. Background checks shall be completed on designated USOR employees hired before March 2, 2006.

D. The USOR Executive Director shall review supervisor recommendations of USOR employee positions identified for background checks under R280-204-3B and C and designate employee and volunteer positions for which background checks are necessary. Designated employees and volunteers shall receive adequate notice of the required background check from their supervisors.

E. All USOR volunteers may be required, following reasonable notice, to complete a criminal background check.

R280-204-4. Criminal Background Check Requirement for USOR Employees Hired After March 1, 2006.

A. Employees hired for USOR positions after March 1, 2006 in positions designated by the USOR Executive Director shall be required to complete a criminal background check and review prior to final and official hiring by the USOR.

B. Background checks shall be required for prospective

transfers from outside USOR after March 1, 2006 for designated positions.

C. Background checks may be required at the discretion of the USOR Executive Director for USOR employees reassigned or promoted to designated positions.

D. New employees, transfer employees from other state government positions and volunteers may provide information from background checks that were completed by the BCI or by the applicant at live scan sites no more than 12 months prior to the date of employment by USOR instead of completing a new background check.

E. Prospective transferees or employees shall receive notice of the background check requirement in the job/employment notice.

R280-204-5. USOR Procedures for Review of Criminal Background Check Information.

A. Background checks of designated USOR employees hired between February 28, 2003 and March 1, 2006 shall take place using one of the following methods as directed by the USOR:

(1) using fingerprint cards submitted to the BCI; or

(2) using the live scan process at any Utah live scan location.

B. All background checks that identify arrests or convictions shall be reviewed by USOR staff.

C. USOR staff shall notify the background check applicant in a timely manner that arrest(s), conviction(s), or both, were reported as a result of the background check.

D. Designated USOR staff shall review arrests, convictions, or both, and determine if the arrests or convictions pose risks to USOR clients.

E. USOR current and prospective employees whose background checks reveal arrests or convictions shall have an opportunity to provide an explanation or additional information to USOR staff.

F. The review of criminal background check information may result in a prospective USOR employee not being hired, in disciplinary action for current USOR employees, or termination of a volunteer's participation with the USOR.

G. Current employees shall have adequate due process consistent with USOR policies prior to discipline resulting from background check review.

R280-204-6. Criminal Background Check Costs and Fees.

A. All costs and fees associated with criminal background checks of USOR employees hired before March 2, 2006 shall be borne by the USOR.

B. All costs and fees associated with criminal background checks of USOR employees hired after March 1, 2006 shall be the responsibility of the employee or prospective employee. The USOR may contribute to criminal background check costs and expenses as funds are available and at the discretion of the USOR.

C. The responsibility for costs and fees of employees transferred within USOR or from other government agencies shall be determined on a case-by-case basis.

D. The responsibility for costs and fees of USOR volunteers shall be determined on a case-by-case basis.

E. A criminal background check fee schedule shall be available to prospective USOR employees from the USOR. Costs may include a fee for review of fingerprint cards to the BCI, a fee for use of live scan equipment or a fee for review of fingerprint results by the USOR.

R280-204-7. Miscellaneous Provisions.

A. Confidentiality:

(1) All criminal background information received by the USOR shall be secured by the designated USOE section.

(2) All criminal background check records maintained by USOR and USOE are protected under Section 63G-2-305 with the exception of public employee information under Section 63G-2-201.

B. The USOR or USOE has no liability for any errors or misinformation received from the BCI as a result of a criminal fingerprint background check. Correction of any misinformation is the responsibility of the fingerprint background check applicant.

KEY: criminal background checks

April 3, 2006

53A-24-103

Notice of Continuation January 14, 2016

53A-1-401(3)

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-15. Standards for Protection Against Radiation.

R313-15-1. Purpose, Authority and Scope.

(1) Rule R313-15 establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses issued by the Director. These rules are issued pursuant to Subsections 19-3-104(4) and 19-3-104(7).

(2) The requirements of Rule R313-15 are designed to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in Rule R313-15. However, nothing in Rule R313-15 shall be construed as limiting actions that may be necessary to protect health and safety.

(3) Except as specifically provided in other sections of these rules, Rule R313-15 applies to persons licensed or registered by the Director to receive, possess, use, transfer, or dispose of sources of radiation. The limits in Rule R313-15 do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with Rule R313-32 (incorporating 10 CFR 35.75 by reference), or to exposure from voluntary participation in medical research programs.

R313-15-2. Definitions.

"Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

"Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

"Assigned protection factor" (APF) means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

"Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

"Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than ten days, for Class W, Weeks, from ten to 100 days, and for Class Y, Years, of greater than 100 days. For purposes of these rules, "lung class" and "inhalation class" are equivalent terms.

"Constraint (dose constraint)" in accordance with 10 CFR 20.1003, (2010), means a value above which specified licensee actions are required.

"Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the

declaration in writing or is no longer pregnant.

"Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

"Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

"Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

"Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

"Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

"Filtering facepiece" (dust mask) means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

"Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

"Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

"Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

"Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

"Inhalation class", refer to "Class".

"Labeled package" means a package labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in U.S. Department of Transportation regulations 49 CFR 172.403 and 49 CFR 172.436 through 440, (2009). Labeling of packages containing radioactive materials is required by the U.S. Department of Transportation if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by U.S. Department of Transportation regulations 49 CFR 173.403 and 49 CFR 173.421 through 424, (2009).

"Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

"Lung class", refer to "Class".

"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.

"Negative pressure respirator" (tight fitting) means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

"Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, "deterministic effect" is an equivalent term.

"Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

"Positive pressure respirator" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

"Powered air-purifying respirator" (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

"Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

"Qualitative fit test" (QLFT) means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

"Quantitative fit test" (QNFT) means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

"Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

"Reference Man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of the Reference Man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

"Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

"Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

"Self-contained breathing apparatus" (SCBA) means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

"Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these rules, "probabilistic effect" is an equivalent term.

"Supplied-air respirator" (SAR) or airline respirator means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

"Tight-fitting facepiece" means a respiratory inlet covering

that forms a complete seal with the face.

"User seal check" (fit check) means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a radiation source or one meter from any surface that the radiation penetrates.

"Weighting factor" w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

TABLE

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30(1)
Whole Body	1.00(2)

(1) 0.30 results from 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

(2) For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

R313-15-3. Implementation.

(1) Any existing license or registration condition that is more restrictive than Rule R313-15 remains in force until there is an amendment or renewal of the license or registration.

(2) If a license or registration condition exempts a licensee or registrant from a provision of Rule R313-15 in effect on or before January 1, 1994, it also exempts the licensee or registrant from the corresponding provision of Rule R313-15.

(3) If a license or registration condition cites provisions of Rule R313-15 in effect prior to January 1, 1994, which do not correspond to any provisions of Rule R313-15, the license or registration condition remains in force until there is an amendment or renewal of the license or registration that modifies or removes this condition.

R313-15-101. Radiation Protection Programs.

(1) Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of Rule R313-15. See Section R313-15-1102 for recordkeeping requirements relating to these programs.

(2) The licensee or registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).

(3) The licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation.

(4) To implement the ALARA requirements of Subsection R313-15-101(2), and notwithstanding the requirements in Section R313-15-301, a constraint on air emissions of radioactive material to the environment, excluding radon-222

and its decay products, shall be established by licensees or registrants such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 0.1 mSv (0.01 rem) per year from these emissions. If a licensee or registrant subject to this requirement exceeds this dose constraint, the licensee or registrant shall report the exceedance as provided in Section R313-15-1203 and promptly take appropriate corrective action to ensure against recurrence.

R313-15-201. Occupational Dose Limits for Adults.

(1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to Section R313-15-206, to the following dose limits:

(a) An annual limit, which is the more limiting of:

(i) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or

(ii) The sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).

(b) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities which are:

(i) A lens dose equivalent of 0.15 Sv (15 rem), and

(ii) A shallow dose equivalent of 0.50 Sv (50 rem) to the skin of the whole body or to the skin of any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See Subsections R313-15-206(5)(a) and R313-15-206(5)(b).

(3) When the external exposure is determined by measurement with an external personal monitoring device, the deep dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the Director, U.S. Nuclear Regulatory Commission, or an Agreement State. The assigned deep dose equivalent must be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent must be the dose averaged over the contiguous ten square centimeters of skin receiving the highest exposure.

(a) The deep dose equivalent, lens dose equivalent and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable; or

(b) When a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in Subsection R313-15-502(1)(d), the effective dose equivalent for external radiation shall be determined as follows:

(i) When only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in Subsection R313-15-201(1), the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation; or

(ii) When individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table 1 of Appendix B of 10

CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See Section R313-15-1107.

(5) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to ten milligrams in a week in consideration of chemical toxicity. See footnote 3, of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(6) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See Subsection R313-15-205(5).

R313-15-202. Compliance with Requirements for Summation of External and Internal Doses.

(1) If the licensee or registrant is required to monitor pursuant to both Subsections R313-15-502(1) and R313-15-502(2), the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee or registrant is required to monitor only pursuant to Subsection R313-15-502(1) or only pursuant to Subsection R313-15-502(2), then summation is not required to demonstrate compliance with the dose limits. The licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses pursuant to Subsections R313-15-202(2), R313-15-202(3) and R313-15-202(4). The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(2) Intake by Inhalation. If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(a) The sum of the fractions of the inhalation ALI for each radionuclide, or

(b) The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000, or

(c) The sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T , and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than ten percent of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

(3) Intake by Oral Ingestion. If the occupationally exposed individual receives an intake of radionuclides by oral ingestion greater than ten percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(4) Intake through Wounds or Absorption through Skin. The licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for pursuant to Subsection R313-15-202(4).

R313-15-203. Determination of External Dose from Airborne Radioactive Material.

(1) Licensees or registrants shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, lens dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See footnotes 1 and 2 of Appendix B of 10

CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(2) Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

R313-15-204. Determination of Internal Exposure.

(1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee or registrant shall, when required pursuant to Section R313-15-502, take suitable and timely measurements of:

- (a) Concentrations of radioactive materials in air in work areas; or
- (b) Quantities of radionuclides in the body; or
- (c) Quantities of radionuclides excreted from the body; or
- (d) Combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in Section R313-15-703, or the assessment of intake is based on bioassays, the licensee or registrant shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee or registrant may:

- (a) Use that information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document that information in the individual's record; and
- (b) Upon prior approval of the Director, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and
- (c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(4) If the licensee or registrant chooses to assess intakes of Class Y material using the measurements given in Subsections R313-15-204(1)(b) or R313-15-204(1)(c), the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required by Section R313-15-1202 or Section R313-15-1203. This delay permits the licensee or registrant to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(a) The sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, for each radionuclide in the mixture; or

(b) The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if:

- (a) The licensee or registrant uses the total activity of the

mixture in demonstrating compliance with the dose limits in Section R313-15-201 and in complying with the monitoring requirements in Subsection R313-15-502(2), and

(b) The concentration of any radionuclide disregarded is less than ten percent of its DAC, and

(c) The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30 percent.

(8) When determining the committed effective dose equivalent, the following information may be considered:

(a) In order to calculate the committed effective dose equivalent, the licensee or registrant may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(b) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.50 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), that is, the stochastic ALI, is listed in parentheses in Table 1 of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference. The licensee or registrant may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee or registrant uses the stochastic ALI, the licensee or registrant shall also demonstrate that the limit in Subsection R313-15-201(1)(a)(ii) is met.

R313-15-205. Determination of Prior Occupational Dose.

(1) For each individual likely to receive, in a year, an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall Determine the occupational radiation dose received during the current year; and

(2) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

(a) The internal and external doses from all previous planned special exposures; and

(b) All doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

(3) In complying with the requirements of Subsections R313-15-205(1) or (2), a licensee or registrant may:

(a) Accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year;

(b) Attempt to obtain the records of cumulative occupational radiation dose. A licensee or registrant may accept, as the record of cumulative radiation dose, an up-to-date form DWMRC-05 or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant; and

(c) Obtain reports of the individual's dose equivalents from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, other electronic media or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(4) The licensee or registrant shall record the exposure history, as required by Subsection R313-15-205(1) or (2), on form DWMRC-05, or other clear and legible record, of all the information required on form DWMRC-05. The form or record

shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing form DWMRC-05 or equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on form DWMRC-05 or equivalent indicating the periods of time for which data are not available.

(5) For the purpose of complying with this requirement, licensees or registrants are not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed pursuant to the rules in Rule R313-15 in effect before January 1, 1994. Further, occupational exposure histories obtained and recorded on form DWMRC-05 or equivalent before January 1, 1994, would not have included effective dose equivalent, but may be used in the absence of specific information on the intake of radionuclides by the individual.

(6) If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

(a) In establishing administrative controls under Subsection R313-15-201(6) for the current year, that the allowable dose limit for the individual is reduced by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(b) That the individual is not available for planned special exposures.

(7) The licensee or registrant shall retain the records on form DWMRC-05 or equivalent until the Director terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing form DWMRC-05 or equivalent for three years after the record is made. This includes records required under the standards for protection against radiation in effect prior to January 1, 1994.

R313-15-206. Planned Special Exposures.

A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in Section R313-15-201 provided that each of the following conditions is satisfied:

(1) The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the dose estimated to result from the planned special exposure are unavailable or impractical.

(2) The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(3) Before a planned special exposure, the licensee or registrant ensures that each individual involved is:

(a) Informed of the purpose of the planned operation; and

(b) Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(c) Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(4) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains prior doses as required by Subsection R313-15-205(2) during the lifetime of the individual for each individual involved.

(5) Subject to Subsection R313-15-201(2), the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned

special exposures and all doses in excess of the limits to exceed:

(a) The numerical values of any of the dose limits in Subsection R313-15-201(1) in any year; and

(b) Five times the annual dose limits in Subsection R313-15-201(1) during the individual's lifetime.

(6) The licensee or registrant maintains records of the conduct of a planned special exposure in accordance with Section R313-15-1106 and submits a written report in accordance with Section R313-15-1204.

(7) The licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to Subsection R313-15-201(1) but shall be included in evaluations required by Subsections R313-15-206(4) and R313-15-206(5).

R313-15-207. Occupational Dose Limits for Minors.

The annual occupational dose limits for minors are ten percent of the annual occupational dose limits specified for adult workers in Section R313-15-201.

R313-15-208. Dose to an Embryo/Fetus.

(1) The licensee or registrant shall ensure that the dose equivalent to the embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed five mSv (0.5 rem). See Section R313-15-1107 for recordkeeping requirements.

(2) The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in Subsection R313-15-208(1).

(3) The dose equivalent to an embryo/fetus is the sum of:

(a) The deep dose equivalent to the declared pregnant woman; and

(b) The dose equivalent resulting from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.

(4) If the dose equivalent to the embryo/fetus is found to have exceeded five mSv (0.5 rem) or is within 0.5 mSv (0.05 rem) of this dose by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with Subsection R313-15-208(1) if the additional dose equivalent to the embryo/fetus does not exceed 0.50 mSv (0.05 rem) during the remainder of the pregnancy.

R313-15-301. Dose Limits for Individual Members of the Public.

(1) Each licensee or registrant shall conduct operations so that:

(a) The total effective dose equivalent to individual members of the public from the licensed or registered operation does not exceed one mSv (0.1 rem) in a year, exclusive of the dose contributions from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released, under Rule R313-32 (incorporating 10 CFR 35.75 by reference), from voluntary participation in medical research programs, and from the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with Section R313-15-1003; and

(b) The dose in any unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with Rule R313-32 (incorporating 10 CFR 35.75 by reference), does not exceed 0.02 mSv (0.002 rem) in any one hour; and

(c) Notwithstanding Subsection R313-15-301(1)(a), a licensee may permit visitors to an individual who cannot be released, under R313-32 (incorporating 10 CFR 35.75 by reference), to receive a radiation dose greater than one mSv (0.1 rem) if:

(i) The radiation dose received does not exceed five mSv (0.5 rem); and

(ii) The authorized user, as defined in R313-32, has determined before the visit that it is appropriate.; and

(d) The total effective dose equivalent to individual members of the public from infrequent exposure to radiation from radiation machines does not exceed 5 mSv (0.5 rem) in a year.

(2) If the licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public continue to apply to those individuals.

(3) A licensee, registrant, or an applicant for a license or registration may apply for prior Director authorization to operate up to an annual dose limit for an individual member of the public of five mSv (0.5 rem). This application shall include the following information:

(a) Demonstration of the need for and the expected duration of operations in excess of the limit in Subsection R313-15-301(1); and

(b) The licensee's or registrant's program to assess and control dose within the five mSv (0.5 rem) annual limit; and

(c) The procedures to be followed to maintain the dose ALARA.

(4) In addition to the requirements of R313-15, a licensee subject to the provisions of the United States Environmental Protection Agency's generally applicable environmental radiation standards in 40 CFR 190 shall comply with those standards.

(5) The Director may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.

R313-15-302. Compliance with Dose Limits for Individual Members of the Public.

(1) The licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in Section R313-15-301.

(2) A licensee or registrant shall show compliance with the annual dose limit in Section R313-15-301 by:

(a) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(b) Demonstrating that:

(i) The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Table II of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; and

(ii) If an individual were continuously present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.50 mSv (0.05 rem) in a year.

(3) Upon approval from the Director, the licensee or registrant may adjust the effluent concentration values in Appendix B, Table II of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as, aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical

form.

R313-15-401. Radiological Criteria for License Termination - General Provisions.

(1) The criteria in Sections R313-15-401 through R313-15-406 apply to the decommissioning of facilities licensed under Rules R313-22 and R313-25, as well as other facilities subject to the Act. For low-level waste disposal facilities (Rule R313-25), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities.

(2) The criteria in Sections R313-15-401 through R313-15-406 do not apply to sites which:

(a) Have been decommissioned prior to the effective date of the rule in accordance with criteria approved by the Director;

(b) Have previously submitted and received Director approval on a license termination plan or decommissioning plan; or

(c) Submit a sufficient license termination plan or decommissioning plan before the effective date of the rule with criteria approved by the Director.

(3) After a site has been decommissioned and the license terminated in accordance with the criteria in Sections R313-15-401 through R313-15-406, the Director will require additional cleanup only if, based on new information, the Director determines that the criteria in Sections R313-15-401 through R313-15-406 was not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(4) When calculating the total effective dose equivalent to the average member of the critical group, the licensee shall determine the peak annual total effective dose equivalent dose expected within the first 1000 years after decommissioning.

R313-15-402. Radiological Criteria for Unrestricted Use.

A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent to an average member of the critical group that does not exceed 0.25 mSv (0.025 rem) per year, including no greater than 0.04 mSv (0.004 rem) committed effective dose equivalent or total effective dose equivalent to an average member of the critical group from groundwater sources, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels which are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

R313-15-403. Criteria for License Termination Under Restricted Conditions.

A site will be considered acceptable for license termination under restricted conditions if:

(1) The licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of Section R313-15-402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal; and

(2) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem) per year; and

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a

governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are:

(a) Funds placed into an account segregated from the licensee's assets outside the licensee's administrative control as described in Subsection R313-22-35(6)(a);

(b) Surety method, insurance, or other guarantee method as described in Subsection R313-22-35(6)(b);

(c) A statement of intent in the case of Federal, State, or local Government licensees, as described in Subsection R313-22-35(6)(d); or

(d) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity; and

(4) The licensee has submitted a decommissioning plan or license termination plan to the Director indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4) and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the license termination plan or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice;

(a) Licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning:

(i) Whether provisions for institutional controls proposed by the licensee;

(A) Will provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem) total effective dose equivalent per year;

(B) Will be enforceable; and

(C) Will not impose undue burdens on the local community or other affected parties; and

(ii) Whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site; and

(b) In seeking advice on the issues identified in Subsection R313-15-403(4)(a), the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(5) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group is as low as reasonably achievable and would not exceed either:

(a) one mSv (0.1 rem) per year; or

(b) five mSv (0.5 rem) per year provided the licensee:

(i) Demonstrates that further reductions in residual radioactivity necessary to comply with the one mSv (0.1 rem) per year value of Subsection R313-15-403(5)(a) are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) Makes provisions for durable institutional controls; and

(iii) Provides sufficient financial assurance to enable a

responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every five years to assure that the institutional controls remain in place as necessary to meet the criteria of Subsection R313-15-403(2) and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in Subsection R313-15-403(3).

R313-15-404. Alternate Criteria for License Termination.

(1) The Director may terminate a license using alternative criteria greater than the dose criterion of Section R313-15-402, and Subsections R313-15-403(2) and R313-15-403(4)(a)(i)(A), if the licensee:

(a) Provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the one mSv (0.1 rem) per year limit of Subsection R313-15-301(1)(a), by submitting an analysis of possible sources of exposure; and

(b) Has employed, to the extent practical, restrictions on site use according to the provisions of Section R313-15-403 in minimizing exposures at the site; and

(c) Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; and

(d) Has submitted a decommissioning plan or license termination plan to the Director indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4), and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or license termination plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning; and

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(2) The use of alternate criteria to terminate a license requires the approval of the Director after consideration of recommendations from the Division's staff, comments provided by federal, state and local governments, and any public comments submitted pursuant to Section R313-15-405.

R313-15-405. Public Notification and Public Participation.

Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site pursuant to Sections R313-15-403 or R313-15-404, or whenever the Director deems such notice to be in the public interest, the Director shall:

(1) Notify and solicit comments from:

(a) Local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(b) Federal, state and local governments for cases where the licensee proposes to release a site pursuant to Section R313-15-404.

(2) Publish a notice in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of

the site, and solicit comments from affected parties.

R313-15-406. Minimization of Contamination.

Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of waste.

R313-15-501. Surveys and Monitoring - General.

(1) Each licensee or registrant shall make, or cause to be made, surveys that:

(a) Are necessary for the licensee or registrant to comply with Rule R313-15; and

(b) Are necessary under the circumstances to evaluate:

(i) The magnitude and the extent of radiation levels; and

(ii) Concentrations or quantities of radioactive material; and

(iii) The potential radiological hazards.

(2) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated at intervals not to exceed 12 months for the radiation measured, except when a more frequent interval is specified in another applicable part of these rules or a license condition.

(3) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with Section R313-15-201, with other applicable provisions of these rules, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(4) The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

R313-15-502. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose.

Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of Rule R313-15. As a minimum:

(1) Each licensee or registrant shall monitor occupational exposure to radiation from licensed, unlicensed, and registered radiation sources under the control of the licensee and shall supply and require the use of individual monitoring devices by:

(a) Adults likely to receive, in one year from sources external to the body, a dose in excess of ten percent of the limits in Subsection R313-15-201(1); and

(b) Minors likely to receive, in one year, from radiation sources external to the body, a deep dose equivalent in excess of one mSv (0.1 rem), a lens dose equivalent in excess of 1.5 mSv (0.15 rem), or a shallow dose equivalent to the skin or to the extremities in excess of five mSv (0.5 rem); and

(c) Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of one mSv (0.1 rem); and

(d) Individuals entering a high or very high radiation area; and

(e) Individuals working with medical fluoroscopic equipment.

(i) An individual monitoring device used for the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located under the protective apron at the waist.

(A) If an individual monitoring device worn by a declared pregnant woman has a monthly reported dose equivalent value in excess of 0.5 mSv (50 mrem), the value to be used for determining the dose to the embryo/fetus, pursuant to Subsection R313-15-208(3)(a) for radiation from medical fluoroscopy, may be the value reported by the individual monitoring device worn at the waist underneath the protective apron which has been corrected for the potential overestimation of dose recorded by the monitoring device because of the overlying tissue of the pregnant individual. This correction shall be performed by a radiation safety officer of an institutional radiation safety committee, a qualified expert approved by the Director.

(ii) An individual monitoring device used for lens dose equivalent shall be located at the neck, or an unshielded location closer to the eye, outside the protective apron.

(iii) When only one individual monitoring device is used to determine the effective dose equivalent for external radiation pursuant to Subsection R313-15-201(3)(b), it shall be located at the neck outside the protective apron. When a second individual monitoring device is used, for the same purpose, it shall be located under the protective apron at the waist. Note: The second individual monitoring device is required for a declared pregnant woman.

(iv) A registrant is not required to supply and require the use of individual monitoring devices provided the registrant has conducted a survey, pursuant to Section R313-15-501, that demonstrates that the working environment the individual encounters will not likely result in a dose in excess of ten percent of the limits in Subsection R313-15-201(1), and that the individual is neither a minor nor a declared pregnant woman.

(2) Each licensee or registrant shall monitor, to determine compliance with Section R313-15-204, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(a) Adults likely to receive, in one year, an intake in excess of ten percent of the applicable ALI(s) in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; and

(b) Minors likely to receive, in one year, a committed effective dose equivalent in excess of one mSv (0.1 rem); and

(c) Declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of one mSv (0.1 rem).

Note: All of the occupational doses in Section R313-15-201 continue to be applicable to the declared pregnant worker as long as the embryo/fetus dose limit is not exceeded.

R313-15-503. Location of Individual Monitoring Devices.

Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with Subsection R313-15-502(1) wear individual monitoring devices as follows:

(1) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar).

(2) An individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located at the waist under any protective apron being worn by the woman.

(3) An individual monitoring device used for monitoring

the lens dose equivalent, to demonstrate compliance with Subsection R313-15-201(1)(b)(i), shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye.

(4) An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with Subsection R313-15-201(1)(b)(ii), shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

R313-15-601. Control of Access to High Radiation Areas.

(1) The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(a) A control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of one mSv (0.1 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates; or

(b) A control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(c) Entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by Subsection R313-15-601(1) for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(3) The licensee or registrant may apply to the Director for approval of alternative methods for controlling access to high radiation areas.

(4) The licensee or registrant shall establish the controls required by Subsections R313-15-601(1) and R313-15-601(3) in a way that does not prevent individuals from leaving a high radiation area.

(5) The licensee or registrant is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation provided that:

(a) The packages do not remain in the area longer than three days; and

(b) The dose rate at one meter from the external surface of any package does not exceed 0.1 mSv (0.01 rem) per hour.

(6) The licensee or registrant is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in Rule R313-15 and to operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

(7) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in Section R313-15-601 if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-602. Control of Access to Very High Radiation

Areas.

(1) In addition to the requirements in Section R313-15-601, the licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at five Gy (500 rad) or more in one hour at one meter from a source of radiation or any surface through which the radiation penetrates. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation, or to non-self-shielded irradiators.

(2) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as described in Subsection R313-15-602(1) if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-603. Control of Access to Very High Radiation Areas -- Irradiators.

(1) Section R313-15-603 applies to licensees or registrants with sources of radiation in non-self-shielded irradiators. Section R313-15-603 does not apply to sources of radiation that are used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create a high level of radiation in an area that is accessible to any individual.

(2) Each area in which there may exist radiation levels in excess of five Gy (500 rad) in one hour at one meter from a source of radiation that is used to irradiate materials shall meet the following requirements:

(a) Each entrance or access point shall be equipped with entry control devices which:

(i) Function automatically to prevent any individual from inadvertently entering a very high radiation area; and

(ii) Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(iii) Prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of one mSv (0.1 rem) in one hour.

(b) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by Subsection R313-15-603(2)(a):

(i) The radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices.

(c) The licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(i) The radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee or registrant or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(d) When the shield for stored sealed sources is a liquid, the licensee or registrant shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(e) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of Subsections R313-15-603(2)(c) and R313-15-603(2)(d).

(f) Each area shall be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, which shall be installed in the area and which can prevent the source of radiation from being put into operation.

(g) Each area shall be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the source of radiation.

(h) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour.

(i) The entry control devices required in Subsection R313-15-603(2)(a) shall be tested for proper functioning. See Section R313-15-1110 for recordkeeping requirements.

(i) Testing shall be conducted prior to initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day; and

(ii) Testing shall be conducted prior to resumption of operation of the source of radiation after any unintentional interruption; and

(iii) The licensee or registrant shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(j) The licensee or registrant shall not conduct operations, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(k) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, shall be controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any loose radioactive material that is carried toward such an exit and automatically to prevent loose radioactive material from being carried out of the area.

(3) Licensees, registrants, or applicants for licenses or registrations for sources of radiation within the purview of Subsection R313-15-603(2) which will be used in a variety of positions or in locations, such as open fields or forests, that make it impractical to comply with certain requirements of Subsection R313-15-603(2), such as those for the automatic control of radiation levels, may apply to the Director for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to those specified in Subsection R313-15-603(2). At least one of the alternative measures shall include an entry-preventing

interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

(4) The entry control devices required by Subsections R313-15-603(2) and R313-15-603(3) shall be established in such a way that no individual will be prevented from leaving the area.

R313-15-701. Use of Process or Other Engineering Controls.

The licensee or registrant shall use, to the extent practical, process or other engineering controls, such as, containment, decontamination, or ventilation, to control the concentration of radioactive material in air.

R313-15-702. Use of Other Controls.

(1) When it is not practical to apply process or other engineering controls to control the concentration of radioactive material in the air to values below those that define an airborne radioactivity area, the licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

- (a) Control of access; or
- (b) Limitation of exposure times; or
- (c) Use of respiratory protection equipment; or
- (d) Other controls.

(2) If the licensee or registrant performs an ALARA analysis to determine whether or not respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee or registrant should also consider the impact of respirator use on workers' industrial health and safety.

R313-15-703. Use of Individual Respiratory Protection Equipment.

If the licensee or registrant uses respiratory protection equipment to limit the intake of radioactive material:

(1) Except as provided in Subsection R313-15-703(2), the licensee or registrant shall use only respiratory protection equipment that is tested and certified by the National Institute for Occupational Safety and Health.

(2) The licensee or registrant may use equipment that has not been tested or certified by the National Institute for Occupational Safety and Health or for which there is no schedule for testing or certification, provided the licensee or registrant has submitted to the Director and the Director has approved an application for authorized use of that equipment. The application must include a demonstration by testing, or a demonstration on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(3) The licensee or registrant shall implement and maintain a respiratory protection program that includes:

- (a) Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses; and
- (b) Surveys and bioassays, as necessary, to evaluate actual intakes; and
- (c) Testing of respirators for operability, user seal check for face sealing devices and functional check for others, immediately prior to each use; and
- (d) Written procedures regarding
 - (i) Monitoring, including air sampling and bioassays;
 - (ii) Supervision and training of respirator users;
 - (iii) Fit testing;
 - (iv) Respirator selection;
 - (v) Breathing air quality;
 - (vi) Inventory and control;
 - (vii) Storage, issuance, maintenance, repair, testing, and

quality assurance of respiratory protection equipment;

(viii) Recordkeeping; and

(ix) Limitations on periods of respirator use and relief from respirator use; and

(e) Determination by a physician prior to initial fitting of respirators, before the first field use of non-face sealing respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment; and

(f) Fit testing, with fit factor greater than or equal to ten times the APF for negative pressure devices, and a fit factor greater than or equal to 500 for positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed one year. Fit testing must be performed with the facepiece operating in the negative pressure mode.

(4) The licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(5) The licensee or registrant shall also consider limitations appropriate to the type and mode of use. When selecting respiratory devices the licensee shall provide for vision correction, adequate communication, low temperature work environments, and the concurrent use of other safety or radiological protection equipment. The licensee or registrant shall use equipment in such a way as not to interfere with the proper operation of the respirator.

(6) Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The standby persons must be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons must be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

(7) Atmosphere-supplying respirators must be supplied with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 ed. and included in 29 CFR 1910.134(i)(1)(ii)(A) through (E), (2010). Grade D quality air criteria include:

(a) Oxygen content (v/v) of 19.5 to 23.5%;

(b) Hydrocarbon (condensed) content of five milligrams per cubic meter of air or less;

(c) Carbon monoxide (CO) content of ten ppm or less;

(d) Carbon dioxide content of 1,000 ppm or less; and

(e) Lack of noticeable odor.

(8) The licensee shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face and facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

(9) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without

respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value must be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

R313-15-704. Further Restrictions on the Use of Respiratory Protection Equipment.

The Director may impose restrictions in addition to the provisions of Section R313-15-702, Section R313-15-703, and Appendix A of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference to:

(1) Ensure that the respiratory protection program of the licensee or registrant is adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(2) Limit the extent to which a licensee or registrant may use respiratory protection equipment instead of process or other engineering controls.

R313-15-705. Application for Use of Higher Assigned Protection Factors.

The licensee or registrant shall obtain authorization from the Director before using assigned protection factors in excess of those specified in Appendix A of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference. The Director may authorize a licensee or registrant to use higher assigned protection factors on receipt of an application that:

(1) Describes the situation for which a need exists for higher protection factors; and

(2) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

R313-15-801. Security and Control of Licensed or Registered Sources of Radiation.

(1) The licensee or registrant shall secure licensed or registered radioactive material from unauthorized removal or access.

(2) The licensee or registrant shall maintain constant surveillance, and use devices or administrative procedures to prevent unauthorized use of licensed or registered radioactive material that is in an unrestricted area and that is not in storage.

(3) The registrant shall secure registered radiation machines from unauthorized removal.

(4) The registrant shall use devices or administrative procedures to prevent unauthorized use of registered radiation machines.

R313-15-901. Caution Signs.

(1) Standard Radiation Symbol. Unless otherwise authorized by the Director, the symbol prescribed by 10 CFR 20.1901, (2010), which is incorporated by reference, shall use the colors magenta, or purple, or black on yellow background. The symbol prescribed is the three-bladed design as follows:

(a) Cross-hatched area is to be magenta, or purple, or black, and

(b) The background is to be yellow.

(2) Exception to Color Requirements for Standard Radiation Symbol. Notwithstanding the requirements of 10 CFR 20.1901(a), (2010), which is incorporated by reference, licensees or registrants are authorized to label sources, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(3) Additional Information on Signs and Labels. In addition to the contents of signs and labels prescribed in Rule R313-15, the licensee or registrant shall provide, on or near the required signs and labels, additional information, as appropriate,

to make individuals aware of potential radiation exposures and to minimize the exposures.

R313-15-902. Posting Requirements.

(1) Posting of Radiation Areas. The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(2) Posting of High Radiation Areas. The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(3) Posting of Very High Radiation Areas. The licensee or registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA."

(4) Posting of Airborne Radioactivity Areas. The licensee or registrant shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(5) Posting of Areas or Rooms in which Licensed or Registered Material is Used or Stored. The licensee or registrant shall post each area or room in which there is used or stored an amount of licensed or registered material exceeding ten times the quantity of such material specified in Appendix C of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL."

R313-15-903. Exceptions to Posting Requirements.

(1) A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight hours, if each of the following conditions is met:

(a) The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in Rule R313-15; and

(b) The area or room is subject to the licensee's or registrant's control.

(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to Section R313-15-902 provided that the patient could be released from licensee control pursuant to Rule R313-32.

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.05 mSv (0.005 rem) per hour.

(4) A room or area is not required to be posted with a caution sign because of the presence of radiation machines used solely for diagnosis in the healing arts.

(5) Rooms in hospitals or clinics that are used for teletherapy are exempt from the requirement to post caution signs under Section R313-15-902 if:

(a) Access to the room is controlled pursuant to Section R313-32; and

(b) Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in Rule R313-15.

R313-15-904. Labeling Containers and Radiation Machines.

(1) The licensee or registrant shall ensure that each

container of licensed or registered material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) Each licensee or registrant shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(3) Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner which cautions individuals that radiation is produced when it is energized.

R313-15-905. Exemptions to Labeling Requirements.

A licensee or registrant is not required to label:

(1) Containers holding licensed or registered material in quantities less than the quantities listed in Appendix C of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; or

(2) Containers holding licensed or registered material in concentrations less than those specified in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; or

(3) Containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by Rule R313-15; or

(4) Containers when they are in transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation; or

(5) Containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells. The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) Installed manufacturing or process equipment, such as piping and tanks.

R313-15-906. Procedures for Receiving and Opening Packages.

(1) Each licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference, shall make arrangements to receive:

(a) The package when the carrier offers it for delivery; or

(b) The notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(2) Each licensee or registrant shall:

(a) Monitor the external surfaces of a labeled package for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in Section R313-12-3; and

(b) Monitor the external surfaces of a labeled package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference; and

(c) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if

there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(3) The licensee or registrant shall perform the monitoring required by Subsection R313-15-906(2) as soon as practical after receipt of the package, but not later than three hours after the package is received at the licensee's or registrant's facility if it is received during the licensee's or registrant's normal working hours or if there is evidence of degradation of package integrity, such as a package that is crushed, wet, or damaged. If a package is received after working hours, and has no evidence of degradation of package integrity, the package shall be monitored no later than three hours from the beginning of the next working day.

(4) The licensee or registrant shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the Director when:

(a) Removable radioactive surface contamination exceeds the limits of Section R313-19-100 which incorporates 10 CFR 71.87(i) by reference; or

(b) External radiation levels exceed the limits of Section R313-19-100 which incorporates 10 CFR 71.47 by reference.

(5) Each licensee or registrant shall:

(a) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(b) Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(6) Licensees or registrants transferring special form sources in vehicles owned or operated by the licensee or registrant to and from a work site are exempt from the contamination monitoring requirements of Subsection R313-15-906(2), but are not exempt from the monitoring requirement in Subsection R313-15-906(2) for measuring radiation levels that ensures that the source is still properly lodged in its shield.

R313-15-1001. Waste Disposal - General Requirements.

(1) A licensee or registrant shall dispose of licensed or registered material only:

(a) By transfer to an authorized recipient as provided in Section R313-15-1006 or in Rules R313-21, R313-22, R313-24, or R313-25, or to the U.S. Department of Energy; or

(b) By decay in storage; or

(c) By release in effluents within the limits in Section R313-15-301; or

(d) As authorized pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1008.

(2) A person shall be specifically licensed or registered to receive waste containing licensed or registered material from other persons for:

(a) Treatment prior to disposal; or

(b) Treatment or disposal by incineration; or

(c) Decay in storage; or

(d) Disposal at a land disposal facility licensed pursuant to Rule R313-25; or

(e) Storage until transferred to a storage or disposal facility authorized to receive the waste.

R313-15-1002. Method for Obtaining Approval of Proposed Disposal Procedures.

A licensee or registrant or applicant for a license or registration may apply to the Director for approval of proposed procedures, not otherwise authorized in these rules, to dispose of licensed or registered material generated in the licensee's or registrant's operations. Each application shall include:

(1) A description of the waste containing licensed or registered material to be disposed of, including the physical and chemical properties that have an impact on risk evaluation, and

the proposed manner and conditions of waste disposal; and

(2) An analysis and evaluation of pertinent information on the nature of the environment; and

(3) The nature and location of other potentially affected facilities; and

(4) Analyses and procedures to ensure that doses are maintained ALARA and within the dose limits in Rule R313-15.

R313-15-1003. Disposal by Release into Sanitary Sewerage.

(1) A licensee or registrant may discharge licensed or registered material into sanitary sewerage if each of the following conditions is satisfied:

(a) The material is readily soluble, or is readily dispersible biological material, in water; and

(b) The quantity of licensed or registered radioactive material that the licensee or registrant releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee or registrant does not exceed the concentration listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; and

(c) If more than one radionuclide is released, the following conditions shall also be satisfied:

(i) The licensee or registrant shall determine the fraction of the limit in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee or registrant into the sewer by the concentration of that radionuclide listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference; and

(ii) The sum of the fractions for each radionuclide required by Subsection R313-15-1003(1)(c)(i) does not exceed unity; and

(d) The total quantity of licensed or registered radioactive material that the licensee or registrant releases into the sanitary sewerage system in a year does not exceed 185 GBq (five Ci) of hydrogen-3, 37 GBq (one Ci) of carbon-14, and 37 GBq (one Ci) of all other radioactive materials combined.

(2) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in Subsection R313-15-1003(1).

R313-15-1004. Treatment or Disposal by Incineration.

A licensee or registrant may treat or dispose of licensed or registered material by incineration only in the form and concentration specified in Section R313-15-1005 or as specifically approved by the Director pursuant to Section R313-15-1002.

R313-15-1005. Disposal of Specific Wastes.

(1) A licensee or registrant may dispose of the following licensed or registered material as if it were not radioactive:

(a) 1.85 kBq (0.05 uCi), or less, of hydrogen-3 or carbon-14 per gram of medium used for liquid scintillation counting; and

(b) 1.85 kBq (0.05 uCi) or less, of hydrogen-3 or carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.

(2) A licensee or registrant shall not dispose of tissue pursuant to Subsection R313-15-1005(1)(b) in a manner that would permit its use either as food for humans or as animal feed.

(3) The licensee or registrant shall maintain records in accordance with Section R313-15-1109.

R313-15-1006. Transfer for Disposal and Manifests.

(1) The requirements of Section R313-15-1006 and

Appendix G of 10 CFR 20.1001 to 20.2402, (2010), which are incorporated into these rules by reference, are designed to:

(a) control transfers of low-level radioactive waste by any waste generator, waste collector, or waste processor licensee, as defined in Appendix G in 10 CFR 20.1001 to 20.2402, (2010), who ships low-level waste either directly, or indirectly through a waste collector or waste processor, to a licensed low-level waste land disposal facility as defined in Section R313-25-2;

(b) establish a manifest tracking system; and

(c) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on the U.S. Nuclear Regulatory Commission's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with Appendix G to 10 CFR 20.1001 to 20.2402, (2010), which is incorporated into these rules by reference.

(3) Each shipment manifest shall include a certification by the waste generator as specified in Section II of Appendix G to 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(4) Each person involved in the transfer of waste for disposal or in the disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section III of Appendix G to 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference.

(5) A licensee shipping byproduct material as defined in paragraphs (c) and (d) of the Section R313-12-3 definition of byproduct material intended for ultimate disposal at a land disposal facility licensed under Rule R313-25 must document the information required on the NRC's Uniform Low-Level Radioactive Waste Manifest and transfer the recorded manifest information to the intended consignee in accordance with Appendix G to 10 CFR Part 20 (2010 edition).

R313-15-1007. Compliance with Environmental and Health Protection Rules.

Nothing in Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006 relieves the licensee or registrant from complying with other applicable Federal, State and local rules governing any other toxic or hazardous properties of materials that may be disposed of pursuant to Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006.

R313-15-1008. Disposal of Section R313-12-3 Byproduct Material Definition Paragraphs (c) and (d).

(1) Licensed material defined in Section R313-12-3, byproduct material definition, paragraphs (c) and (d), may be disposed in accordance with Rule R313-25, even though it is not defined as low-level radioactive waste. Therefore, licensed byproduct material being disposed of at a facility, or transferred for ultimate disposal at a facility licensed under Rule R313-25, must meet the requirements of Section R313-15-1006.

(2) A licensee may dispose of licensed material defined in Section R313-12-3, byproduct material definition, paragraphs (c) and (d), at a disposal facility authorized to dispose of such material in accordance with Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005.

R313-15-1009. Classification and Characteristics of Low-Level Radioactive Waste.

(1) Classification of Radioactive Waste for Land Disposal

(a) Considerations. Determination of the classification of radioactive waste involves two considerations. First,

consideration shall be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration shall be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(b) Classes of waste.

(i) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste shall meet the minimum requirements set forth in Subsection R313-15-1009(2)(a). If Class A waste also meets the stability requirements set forth in Subsection R313-15-1009(2)(b), it is not necessary to segregate the waste for disposal.

(ii) Class B waste is waste that shall meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1009(2).

(iii) Class C waste is waste that not only shall meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1009(2).

(c) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in Table I, classification shall be determined as follows:

(i) If the concentration does not exceed 0.1 times the value in Table I, the waste is Class A.

(ii) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in Table I, the waste is Class C.

(iii) If the concentration exceeds the value in Table I, the waste is not generally acceptable for land disposal.

(iv) For wastes containing mixtures of radionuclides listed in Table I, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1009(1)(g).

TABLE I

Radionuclide	Concentration	
	curie/cubic meter(1)	nanocurie/gram(2)
C-14	8	
C-14 in activated metal	80	
Ni-59 in activated metal	220	
Nb-94 in activated metal	0.2	
Tc-99	3	
I-129	0.08	
Alpha emitting transuranic radionuclides with half-life greater than five years		100
Pu-241		3,500
Cm-242		20,000
Ra-226		100

NOTE: (1) To convert the Ci/m³ values to gigabecquerel (GBq)/cubic meter, multiply the Ci/m³ value by 37.

(2) To convert the nCi/g values to becquerel (Bq)/gram, multiply the nCi/g value by 37.

(d) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in Table I, classification shall be determined based on the

concentrations shown in Table II. However, as specified in Subsection R313-15-1009(1)(f), if radioactive waste does not contain any nuclides listed in either Table I or II, it is Class A.

(i) If the concentration does not exceed the value in Column 1, the waste is Class A.

(ii) If the concentration exceeds the value in Column 1 but does not exceed the value in Column 2, the waste is Class B.

(iii) If the concentration exceeds the value in Column 2 but does not exceed the value in Column 3, the waste is Class C.

(iv) If the concentration exceeds the value in Column 3, the waste is not generally acceptable for near-surface disposal.

(v) For wastes containing mixtures of the radionuclides listed in Table II, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1009(1)(g).

TABLE II

Radionuclide	Concentration, curie/cubic meter(1)		
	Column 1	Column 2	Column 3
Total of all radionuclides with less than 5-year half-life	700	(2)	(2)
H-3	40	(2)	(2)
Co-60	700	(2)	(2)
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600

NOTE: (1) To convert the Ci/m³ value to gigabecquerel (GBq)/cubic meter, multiply the Ci/m³ value by 37.

(2) There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in Table II determine the waste to be Class C independent of these radionuclides.

(e) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in Table I and some of which are listed in Table II, classification shall be determined as follows:

(i) If the concentration of a radionuclide listed in Table I is less than 0.1 times the value listed in Table I, the class shall be that determined by the concentration of radionuclides listed in Table II.

(ii) If the concentration of a radionuclide listed in Table I exceeds 0.1 times the value listed in Table I, but does not exceed the value in Table I, the waste shall be Class C, provided the concentration of radionuclides listed in Table II does not exceed the value shown in Column 3 of Table II.

(f) Classification of wastes with radionuclides other than those listed in Tables I and II. If the waste does not contain any radionuclides listed in either Table I or II, it is Class A.

(g) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits shall all be taken from the same column of the same table. The sum of the fractions for the column shall be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 1.85 TBq/m³ (50 Ci/m³) and Cs-137 in a concentration of 814 GBq/m³ (22 Ci/m³). Since the concentrations both exceed the values in Column 1, Table II, they shall be compared to Column 2 values. For Sr-90 fraction, $50/150 = 0.33$, for Cs-137 fraction, $22/44 = 0.5$; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is

Class B.

(h) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as becquerel (nanocurie) per gram.

(2) Radioactive Waste Characteristics

(a) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(i) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of Rule R313-15, the site license conditions shall govern.

(ii) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(iii) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(iv) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume.

(v) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(vi) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with Subsection R313-15-1009(2)(a)(viii).

(vii) Waste shall not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(viii) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20 degrees celsius. Total activity shall not exceed 3.7 TBq (100 Ci) per container.

(ix) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practical the potential hazard from the non-radiological materials.

(b) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(i) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(ii) Notwithstanding the provisions in Subsections R313-15-1009(2)(a)(iii) and R313-15-1009(2)(a)(iv), liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume of the waste when the waste is in a

disposal container designed to ensure stability, or 0.5 percent of the volume of the waste for waste processed to a stable form.

(iii) Void spaces within the waste and between the waste and its package shall be reduced to the extent practical.

(3) Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with Subsection R313-15-1009(1).

R313-15-1101. Records - General Provisions.

(1) Each licensee or registrant shall use the SI units becquerel, gray, sievert and coulomb per kilogram, or the special units, curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by Rule R313-15.

(2) Notwithstanding the requirements of Subsection R313-15-1101(1), when recording information on shipment manifests, as required in Subsection R313-15-1006(2), information must be recorded in SI units or in SI units and the special units specified in Subsection R313-15-1101(1).

(3) The licensee or registrant shall make a clear distinction among the quantities entered on the records required by Rule R313-15, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, lens dose equivalent, deep dose equivalent, or committed effective dose equivalent.

R313-15-1102. Records of Radiation Protection Programs.

(1) Each licensee or registrant shall maintain records of the radiation protection program, including:

(a) The provisions of the program; and

(b) Audits and other reviews of program content and implementation.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(a) until the Director terminates each pertinent license or registration requiring the record. The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(b) for three years after the record is made.

R313-15-1103. Records of Surveys.

(1) Each licensee or registrant shall maintain records showing the results of surveys and calibrations required by Section R313-15-501 and Subsection R313-15-906(2). The licensee or registrant shall retain these records for three years after the record is made.

(2) The licensee or registrant shall retain each of the following records until the Director terminates each pertinent license or registration requiring the record:

(a) Records of the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(b) Records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(c) Records showing the results of air sampling, surveys, and bioassays required pursuant to Subsections R313-15-703(3)(a) and R313-15-703(3)(b); and

(d) Records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

R313-15-1105. Records of Prior Occupational Dose.

For each individual who is likely to receive in a year an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall retain the records of prior occupational dose and exposure history as specified in Section R313-15-205 on form DWMRC-05 or equivalent until the Director terminates each pertinent license requiring this record. The licensee or registrant shall retain records used in

preparing form DWMRC-05 or equivalent for three years after the record is made.

R313-15-1106. Records of Planned Special Exposures.

(1) For each use of the provisions of Section R313-15-206 for planned special exposures, the licensee or registrant shall maintain records that describe:

(a) The exceptional circumstances requiring the use of a planned special exposure; and

(b) The name of the management official who authorized the planned special exposure and a copy of the signed authorization; and

(c) What actions were necessary; and

(d) Why the actions were necessary; and

(e) What precautions were taken to assure that doses were maintained ALARA; and

(f) What individual and collective doses were expected to result; and

(g) The doses actually received in the planned special exposure.

(2) The licensee or registrant shall retain the records until the Director terminates each pertinent license or registration requiring these records.

R313-15-1107. Records of Individual Monitoring Results.

(1) Recordkeeping Requirement. Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to Section R313-15-502, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(a) The deep dose equivalent to the whole body, lens dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities; and

(b) The estimated intake of radionuclides, see Section R313-15-202; and

(c) The committed effective dose equivalent assigned to the intake of radionuclides; and

(d) The specific information used to calculate the committed effective dose equivalent pursuant to Subsections R313-15-204(1) and R313-15-204(3) and when required by Section R313-15-502; and

(e) The total effective dose equivalent when required by Section R313-15-202; and

(f) The total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose.

(2) Recordkeeping Frequency. The licensee or registrant shall make entries of the records specified in Subsection R313-15-1107(1) at intervals not to exceed one year.

(3) Recordkeeping Format. The licensee or registrant shall maintain the records specified in Subsection R313-15-1107(1) on form DWMRC-06, in accordance with the instructions for form DWMRC-06, or in clear and legible records containing all the information required by form DWMRC-06.

(4) The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

(5) The licensee or registrant shall retain each required form or record until the Director terminates each pertinent license or registration requiring the record.

R313-15-1108. Records of Dose to Individual Members of the Public.

(1) Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for

individual members of the public. See Section R313-15-301.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1108(1) until the Director terminates each pertinent license or registration requiring the record. Requirements for disposition of these records, prior to license termination, are located in Section R313-12-51 for activities licensed under these rules.

R313-15-1109. Records of Waste Disposal.

(1) Each licensee or registrant shall maintain records of the disposal of licensed or registered materials made pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, Rule R313-25, and disposal by burial in soil, including burials authorized before January 28, 1981.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1109(1) until the Director terminates each pertinent license or registration requiring the record.

R313-15-1110. Records of Testing Entry Control Devices for Very High Radiation Areas.

(1) Each licensee or registrant shall maintain records of tests made pursuant to Subsection R313-15-603(2)(i) on entry control devices for very high radiation areas. These records shall include the date, time, and results of each such test of function.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1110(1) for three years after the record is made.

R313-15-1111. Form of Records.

Each record required by Rule R313-15 shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

R313-15-1201. Reports of Stolen, Lost, or Missing Licensed or Registered Sources of Radiation.

(1) Telephone Reports. Each licensee or registrant shall report to the Director by telephone as follows:

(a) Immediately after its occurrence becomes known to the licensee or registrant, stolen, lost, or missing licensed or registered radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, under such circumstances that it appears to the licensee or registrant that an exposure could result to individuals in unrestricted areas;

(b) Within 30 days after its occurrence becomes known to the licensee or registrant, lost, stolen, or missing licensed or registered radioactive material in an aggregate quantity greater than ten times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, (2010), which is incorporated by reference, that is still missing.

(c) Immediately after its occurrence becomes known to the registrant, a stolen, lost, or missing radiation machine.

(2) Written Reports. Each licensee or registrant required to make a report pursuant to Subsection R313-15-1201(1) shall, within 30 days after making the telephone report, make a written report to the Director setting forth the following information:

(a) A description of the licensed or registered source of

radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model and serial number, type and maximum energy of radiation emitted;

(b) A description of the circumstances under which the loss or theft occurred; and

(c) A statement of disposition, or probable disposition, of the licensed or registered source of radiation involved; and

(d) Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and

(e) Actions that have been taken, or will be taken, to recover the source of radiation; and

(f) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

(3) Subsequent to filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within 30 days after the licensee or registrant learns of such information.

(4) The licensee or registrant shall prepare any report filed with the Director pursuant to Section R313-15-1201 so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

R313-15-1202. Notification of Incidents.

(1) Immediate Notification. Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause any of the following conditions:

(a) An individual to receive;

(i) A total effective dose equivalent of 0.25 Sv (25 rem) or more; or

(ii) A lens dose equivalent of 0.75 Sv (75 rem) or more; or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 2.5 Gy (250 rad) or more; or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(2) Twenty-Four Hour Notification. Each licensee or registrant shall, within 24 hours of discovery of the event, report to the Director each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:

(a) An individual to receive, in a period of 24 hours:

(i) A total effective dose equivalent exceeding 0.05 Sv (five rem); or

(ii) A lens dose equivalent exceeding 0.15 Sv (15 rem); or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 0.5 Sv (50 rem); or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(3) The licensee or registrant shall prepare each report filed with the Director pursuant to Section R313-15-1202 so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(4) Licensees or registrants shall make the reports required by Subsections R313-15-1202(1) and R313-15-1202(2) to the

Director by telephone, telegram, mailgram, or facsimile.

(5) The provisions of Section R313-15-1202 do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to Section R313-15-1204.

R313-15-1203. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits.

(1) Reportable Events. In addition to the notification required by Section R313-15-1202, each licensee or registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(a) Incidents for which notification is required by Section R313-15-1202; or

(b) Doses in excess of any of the following:

(i) The occupational dose limits for adults in Section R313-15-201; or

(ii) The occupational dose limits for a minor in Section R313-15-207; or

(iii) The limits for an embryo/fetus of a declared pregnant woman in Section R313-15-208; or

(iv) The limits for an individual member of the public in Section R313-15-301; or

(v) Any applicable limit in the license or registration; or

(vi) The ALARA constraints for air emissions established under Subsection R313-15-101(4); or

(c) Levels of radiation or concentrations of radioactive material in:

(i) A restricted area in excess of applicable limits in the license or registration; or

(ii) An unrestricted area in excess of ten times the applicable limit set forth in Rule R313-15 or in the license or registration, whether or not involving exposure of any individual in excess of the limits in Section R313-15-301; or

(d) For licensees subject to the provisions of U.S. Environmental Protection Agency's generally applicable environmental radiation standards in 40 CFR 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those standards.

(2) Contents of Reports.

(a) Each report required by Subsection R313-15-1203(1) shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(i) Estimates of each individual's dose; and

(ii) The levels of radiation and concentrations of radioactive material involved; and

(iii) The cause of the elevated exposures, dose rates, or concentrations; and

(iv) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license or registration conditions.

(b) Each report filed pursuant to Subsection R313-15-1203(1) shall include for each occupationally overexposed individual: the name, Social Security account number, and date of birth. With respect to the limit for the embryo/fetus in Section R313-15-208, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(3) All licensees or registrants who make reports pursuant to Subsection R313-15-1203(1) shall submit the report in writing to the Director.

R313-15-1204. Reports of Planned Special Exposures.

The licensee or registrant shall submit a written report to the Director within 30 days following any planned special

exposure conducted in accordance with Section R313-15-206, informing the Director that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by Section R313-15-1106.

R313-15-1205. Reports to Individuals of Exceeding Dose Limits.

When a licensee or registrant is required, pursuant to the provisions of Sections R313-15-1203 or R313-15-1204, to report to the Director any exposure of an identified occupationally exposed individual, or an identified member of the public, to sources of radiation, the licensee or registrant shall also provide the individual a written report on the exposure data included in the report to the Director. This report shall be transmitted at a time no later than the transmittal to the Director.

R313-15-1206. Reports of Transactions Involving Nationally Tracked Sources.

Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report as specified in paragraphs (1) through (5) of this section for each type of transaction.

(1) Each licensee who manufactures a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(a) The name, address, and license number of the reporting licensee;

(b) The name of the individual preparing the report;

(c) The manufacturer, model, and serial number of the source;

(d) The radioactive material in the source;

(e) The initial source strength in becquerels (curies) at the time of manufacture; and

(f) The manufacture date of the source.

(2) Each licensee that transfers a nationally tracked source to another person shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(a) The name, address, and license number of the reporting licensee;

(b) The name of the individual preparing the report;

(c) The name and license number of the recipient facility and the shipping address;

(d) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(e) The radioactive material in the source;

(f) The initial or current source strength in becquerels (curies);

(g) The date for which the source strength is reported;

(h) The shipping date;

(i) The estimated arrival date; and

(j) For nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification of the container with the nationally tracked source.

(3) Each licensee that receives a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(a) The name, address, and license number of the reporting licensee;

(b) The name of the individual preparing the report;

(c) The name, address, and license number of the person that provided the source;

(d) The manufacturer, model, and serial number of the

source or, if not available, other information to uniquely identify the source;

(e) The radioactive material in the source;
(f) The initial or current source strength in becquerels (curies);

(g) The date for which the source strength is reported;
(h) The date of receipt; and
(i) For material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(4) Each licensee that disassembles a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(a) The name, address, and license number of the reporting licensee;
(b) The name of the individual preparing the report;
(c) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(d) The radioactive material in the source;
(e) The initial or current source strength in becquerels (curies);

(f) The date for which the source strength is reported; and
(g) The disassemble date of the source.

(5) Each licensee who disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(a) The name, address, and license number of the reporting licensee;
(b) The name of the individual preparing the report;
(c) The waste manifest number;
(d) The container identification with the nationally tracked source.

(e) The date of disposal; and
(f) The method of disposal.

(6) The reports discussed in paragraphs (1) through (5) of this section must be submitted by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports must be submitted to the National Source Tracking System by using:

(a) The on-line National Source Tracking System;
(b) Electronically using a computer-readable format;
(c) By facsimile;
(d) By mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or
(e) By telephone with followup by facsimile or mail.

(7) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within 5 business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The reconciliation must be conducted during the month of January in each year. The reconciliation process must include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by paragraphs (1) through (5) of this section. By January 31 of each year, each licensee must submit to the National Source Tracking System confirmation that the data in the National Source Tracking System is correct.

(8) Each licensee that possesses Category 1 nationally tracked sources shall report its initial inventory of Category 1 nationally tracked sources to the National Source Tracking System by November 15, 2007. Each licensee that possesses Category 2 nationally tracked sources shall report its initial

inventory of Category 2 nationally tracked sources to the National Source Tracking System by November 30, 2007. The information may be submitted by using any of the methods identified by paragraph (6)(a) through (6)(d) of this section. The initial inventory report must include the following information:

(a) The name, address, and license number of the reporting licensee;

(b) The name of the individual preparing the report;
(c) The manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;

(d) The radioactive material in the sealed source;
(e) The initial or current source strength in becquerels (curies); and

(f) The date for which the source strength is reported.

R313-15-1207. Notifications and Reports to Individuals.

(1) Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in Rule R313-18.

(2) When a licensee or registrant is required pursuant to Section R313-15-1203 to report to the Director any exposure of an individual to radiation or radioactive material, the licensee or registrant shall also notify the individual. Such notice shall be transmitted at a time not later than the transmittal to the Director, and shall comply with the provisions of Rule R313-18.

R313-15-1301. Vacating Premises.

Each specific licensee or registrant shall, not less than 30 days before vacating or relinquishing possession or control of premises which may have been contaminated with radioactive material as a result of his activities, notify the Director in writing of intent to vacate. When deemed necessary by the Director, the licensee shall decontaminate the premises in such a manner that the annual total effective dose equivalent to any individual after the site is released for unrestricted use should not exceed 0.1 mSv (0.01 rem) above background and that the annual total effective dose equivalent from any specific environmental source during decommissioning activities should not exceed 0.1 mSv (0.01 rem) above background.

KEY: radioactive materials, contamination, waste disposal, safety

March 17, 2015

Notice of Continuation December 3, 2012

19-3-104

19-6-107

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.**R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.****R313-16-200. Purpose and Authority.**

(1) The purpose of this rule is to prescribe requirements governing the installation, registration, inspection, and use of sources of electronically produced ionizing radiation. This rule provides for the registration of individuals providing inspection services to a facility where one or more radiation machines are installed or located.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(9).

R313-16-215. Definitions.

"Qualified expert" means an individual having the knowledge and training to measure regulatory parameters on radiation machines, to evaluate radiation safety programs, to evaluate radiation levels, and to give advice on radiation protection needs while conducting inspections of radiation machine facilities registered with the Division. Qualified experts are not considered employees or representatives of the Division of Waste Management and Radiation Control or the State.

"Sorting Center" means a facility in which radiation machines are in storage until they are shipped out of state.

"Storage" means a condition in which a radiation machine is not being used for an extended period of time, and has been made inoperable.

R313-16-220. Exemptions.

(1) Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of Rule R313-16, providing the dose equivalent rate averaged over an area of ten square centimeters does not exceed 0.5 mrem (5.0 uSv) per hour at five centimeters from accessible surfaces of the equipment.

(2) Radiation machines while in transit are exempt from the requirements of Section R313-16-230. See Section R313-16-250 for other applicable requirements.

(3) Television receivers are exempt from the requirements of Rule R313-16.

(4) Radiation machines while in the possession of a manufacturer, assembler, or a sorting center are exempt from the requirements of Section R313-16-230.

(5) Radiation machines owned by an agency of the Federal Government are exempt from the requirements of Rule R313-16.

R313-16-225. Responsibility for Radiation Safety Program.

(1) The registrant shall be ultimately responsible for radiation safety, but may designate another person to implement the radiation safety program. When, in the Director's opinion, neither the registrant nor the registrant's designee is sufficiently qualified to insure safe use of the machine; the Director may order the registrant to designate another individual who has adequate qualifications.

(2) The registrant or the registrant's designee shall:

(a) develop a detailed program of radiation safety that assures compliance with the applicable requirements of these rules, including Section R313-15-101;

(b) have instructions given concerning radiation hazards and radiation safety practices to individuals who may be occupationally exposed;

(c) have surveys made and other procedures carried out as required by these rules; and

(d) keep a copy of all reports, records, and written policies and procedures required by these rules.

R313-16-230. Registration of Radiation Machines.

(1) Ionizing radiation producing machines not exempted by Section R313-16-220 shall be registered with the Director.

(2) Registration shall be required annually in accordance with a schedule established by the Director.

(3) Registration for the facility is achieved when the Director receives the following:

(a) a current and complete application form DWMRC-10 for registration of radiation machines; and

(b) annual registration fees.

(4) Registration for the current fiscal year shall be acknowledged by the Director through receipts for the remittance of the registration fee.

R313-16-231. Additional Requirements for the Issuance of a Registration for Particle Accelerators Excluding Therapeutic Radiation Machines (See Rule R313-30).

(1) In addition to the requirements of Section R313-16-230, a registrant who proposes to use a particle accelerator shall submit an application to the Director containing the following:

(a) information demonstrating that the applicant, by reason of training and experience, is qualified to use the accelerator in question for the purpose requested in a manner that will minimize danger to public health and safety or the environment;

(b) a discussion which demonstrates that the applicant's equipment, facilities, and operating and emergency procedures are adequate to protect health and minimize danger to public health and safety or the environment;

(c) the name and qualifications of the individual, appointed by the applicant, to serve as radiation safety officer pursuant to Section R313-35-140;

(d) a description of the applicant's or the staff's experience in the use of particle accelerators and radiation safety training; and

(e) a description of the radiation safety training the applicant will provide to particle accelerator operators.

R313-16-233. Notification of Intent to Provide Servicing and Services.

(1) Persons engaged in the business of installing or offering to install radiation machines or engaged in the business of furnishing or offering to furnish radiation machine servicing or services in this State shall notify the Director of the intent to provide these services within 30 days following the effective date of this rule or, thereafter, prior to furnishing or offering to furnish these services.

(2) The notification shall specify:

(a) that the applicable requirements of these rules have been read and understood;

(b) the services which will be provided;

(c) the training and experience that qualify for the discharge of the services; and

(d) the type of measurement instrument to be used, frequency of calibration, and source of calibration.

(3) For the purpose of Section R313-16-233, services may include but shall not be limited to:

(a) installation or servicing of radiation machines and associated radiation machine components; and

(b) calibration of radiation machines or radiation measurement instruments or devices.

(4) Individuals shall not perform the services listed in Subsection R313-16-233(3) unless they are specifically stated for that individual on the notification of intent required in Subsection R313-16-233(1) and the complete information required by Subsection R313-16-233(2) has been received by the Director.

R313-16-235. Designation of Registrant.

The owner or lessee of a radiation machine is the registrant.

The registrant shall be responsible for penalties imposed under the Director's escalated enforcement authority, see Rule R313-14.

R313-16-240. Reciprocal Recognition of Registration or License.

Radiation machines from jurisdictions other than the State of Utah may be operated in this state for a period of less than 30 days providing that the requirements of Section R313-16-280 have been met and providing they are properly registered or licensed with the State Agency having jurisdiction over the office directing the activities of the individuals operating the radiation machines. Radiation machines operating under reciprocity may be inspected pursuant to Section R313-16-290.

R313-16-250. Report of Changes.

The registrant shall send written notification within 14 working days to the Director when:

- (1) there are changes in location or ownership of a radiation machine;
- (2) radiation machines are retired from service;
- (3) radiation machines are put in storage or returned to service from storage; or
- (4) modifications in facility or equipment are made that might reasonably be expected to effect compliance under the terms of these rules.

R313-16-260. Approval Not Implied.

Registration does not constitute approval of activities performed under the registration and no person shall state or imply that activities under the registration have been approved by the Director.

R313-16-270. Transferor, Assembler, or Installer Obligation.

(1) Persons who sell, lease, transfer, lend, dispose, assemble, or install a radiation machine in this state shall notify the Director within 14 working days of the following:

- (a) the name and address of the person who received the machine and also the name and address of the new registrant of the machine if not the same;
- (b) the manufacturer, model, and serial number of the master control of the radiation machine and the number of x-ray tubes transferred; and
- (c) the date of transfer of the radiation machine.

(2) Radiation machine equipment or accessories shall not be installed if the equipment will not meet the requirements of these rules when installation is completed.

(3) Reporting Compliance. Assemblers who install one or more components into a radiation machine system or subsystem, shall certify that the equipment meets the standards of these rules. A copy of this certification shall be transmitted to the purchaser and to the Director within 14 working days following the completion of the installation.

(4) Certification can be accomplished by providing the following in conjunction with the information required by Section R313-16-250 and Subsection R313-16-270(1):

- (a) the full name and address of the assembler and the date of assembly or installation;
- (b) a statement as to whether the equipment is a replacement for other equipment, in addition to other equipment, or new equipment in a new facility;
- (c) an affirmation that the applicable rules have been met;
- (d) a statement of the type and intended use of the radiation machine system or subsystem, for example "radiographic-stationary general purpose x-ray;" and
- (e) a list of the components which were assembled or installed into the radiation machine system or subsystem, identifying the components by type, manufacturer, model

number, and serial number.

R313-16-275. Obligation of Equipment Registrant or Recipient of New Equipment.

The registrant of a radiation machine shall not allow the equipment to be put into operation until it has been determined that the facility in which it is installed meets the shielding and design requirements of Rule R313-28; see Sections R313-28-32, R313-28-200 and R313-28-450.

R313-16-280. Out-of-State Radiation Machines.

(1) Whenever a radiation machine is to be brought into the state, for either temporary or extended use, the person proposing to bring the machine into the state shall give written notice to the Director at least three working days before the machine is to be used in the state. The notice shall include the type of radiation machine; the manufacturer model and serial number of the master control; the nature, duration, and scope of use; and the exact location where the radiation machine is to be used. If, for a specific case, the three working-day period would impose an undue hardship, the person may, upon application to the Director, obtain permission to proceed sooner.

- (2) In addition, the out-of-state person shall:
 - (a) comply with the applicable portions of these rules;
 - (b) supply the Director other information as the Director requests.

R313-16-290. Inspection of Radiation Machines and Facilities.

(1) Registrants shall assure that radiation machines registered pursuant to Section R313-16-230 are compliant with these rules. Radiation machines, facilities, and radiation safety programs are subject to inspection to assure compliance with these rules and to assist in lowering radiation exposure to as low as reasonably achievable levels, see Section R313-15-101. Inspections may be performed by representatives of the Director or by independent qualified experts.

(2) Inspections may, at the Director's discretion, be done after the installation of equipment, or after a change in the facility or equipment which might cause a significant change in radiation output or hazards. Inspections may be completed in accordance with the schedule as defined in Table I.

TABLE I

FACILITY TYPE	MAXIMUM TIME BETWEEN INSPECTIONS
Hospital or Radiation Therapy Facility	one year
Medical Facility using Fluoroscopic or Computed Tomography (CT) Units	one year
Medical Facility Using General Radiographic Devices	two years
Chiropractic	two years
Dental	five years
Podiatry	five years
Veterinary	five years
Industrial Facility with High or Very High Radiation Areas Accessible to Individuals	one year
Industrial Facility Using Cabinet X-Ray Units or Units Designed for Other Industrial Purposes	five years
Other	one to five years

(3) The registrant, in a timely manner, shall pay the appropriate inspection fee after completion of the inspection.

(4) Ionizing radiation producing machines which have been officially placed in storage are exempt from inspection fees but are subject to visual verification of their status by representatives of the Director.

R313-16-291. Inspection Services.

Registrants shall only utilize qualified experts who have been registered by the Director in accordance with Section

R313-16-293. Registrants may also utilize inspectors from the Division of Waste Management and Radiation Control in lieu of registered qualified experts.

R313-16-292. Minimum Qualifications for Registration of Inspection Services.

A qualified expert who is engaged in the business of furnishing or offering to furnish inspection services at facilities shall meet the training and experience criteria developed by the Director. At a minimum, the training and experience shall include:

(1) Bachelor's degree in health physics, chemistry, biology, physical or environmental science plus one year full-time paid professional related experience, such as performing radiation safety evaluations in a hospital.

(a) An advanced degree in a related field may be substituted for one year of required experience; or

(2) Five years full-time paid professional, directly related work experience.

R313-16-293. Application for Registration of Inspection Services.

(1) Each qualified expert who is providing or offering to provide inspection services at facilities registered with the Director shall complete an application for registration on a form prescribed by the Director and shall submit all information required by the Director as indicated on the form. A qualified expert must complete the registration process prior to providing services.

(2) Individuals applying for registration under Section R313-16-293 shall personally sign and submit to the Director an attestation statement:

(a) that they have read and understand the requirements of these rules; and

(b) that they will document inspection items defined by the Director on a form prescribed by the Director; and

(c) that they will follow guidelines for the evaluation of x-ray equipment defined by the Director; and

(d) that, except for those facilities where a registered qualified expert is a full-time employee, they will limit inspections to facilities with which they have no direct conflict of interest; and

(e) that radiation exposure measurements and peak tube potential measurements will be made with instruments which have been calibrated biennially by the manufacturer of the instrument or by a calibration laboratory accredited in x-ray calibration procedures by the American Association of Physicians in Medicine, American Association for Laboratory Accreditation, Conference of Radiation Control Program Directors, Health Physics Society or the National Voluntary Laboratory Accreditation Program; and

(f) that the calibration of radiation exposure measuring and peak tube potential measuring instruments used to evaluate compliance of x-ray systems with the requirements of these rules will include at least secondary level traceability to a National Institute of Standards and Technology, or similar international agency, transfer standard instrument or transfer standard source; and

(g) that they will make available to representatives of the Director documents concerning the calibration of any radiation exposure measuring or peak tube potential measuring instrument used to evaluate compliance of x-ray systems; and

(h) that they or the registrant will submit to the Director, within 30 calendar days after completion of an inspection, a written report of compliance or noncompliance; and

(i) that reports of items of noncompliance will include:

(i) the name of the facility inspected, and

(ii) the date of the inspection, and

(iii) the manufacturer, model number, and serial number

or Utah identification number of the control unit for the radiation machine, and

(iv) the requirements of the rule where compliance was not achieved, and

(v) the manner in which the facility or radiation machine failed to meet the requirements, and

(vi) a signed commitment from the registrant of the radiation machine facility that the problem will be fixed within 30 days of the date the written report of noncompliance is submitted to the Director; and

(vii) that all reports of compliance or noncompliance will contain a statement signed by the qualified expert acknowledging under penalties of law that all information contained in the report is truthful, accurate, and complete; and

(viii) that they acknowledge that they are subject to the provisions of Section R313-16-300.

(3) Individuals applying for registration under Section R313-16-293 shall attach to their application a copy of two inspection reports that demonstrate their work product follows the evaluation guidelines defined by the Director pursuant to Subsection R313-16-293(2)(c). The inspection reports shall pertain to inspections performed within the last two years.

R313-16-294. Issuance of Registration Certificate for Inspection Services.

Upon a determination that an applicant meets the requirements of these rules, the Director shall issue a registration certificate for inspection services.

R313-16-295. Expiration of Registration Certificates for Inspection Services.

A registration certificate for inspection services shall expire at the end of the day on the date stated therein.

R313-16-296. Renewal of Registration Certificate for Inspection Services.

(1) Timely renewal of a registration certificate for inspection services is possible when:

(a) the qualified expert files an application for renewal of a registration certificate for inspection services 30 days in advance of the registration certificate expiration date and in accordance with Section R313-16-293, and

(b) the qualified expert attaches to the application documentation that they performed a minimum of two inspections in Utah under these rules each year the previous registration certificate was in effect. An applicant who did not complete the minimum number of inspections in Utah may, as an alternative, attach to the application documentation that they performed four inspections at facilities in other states. These four inspections shall demonstrate their work product follows the evaluation guidelines defined by the Director pursuant to Subsection R313-16-293(2)(c).

(2) A registered qualified expert who allows a registration certificate to expire is no longer a qualified expert and may not perform inspection services that will be accepted by the Director. Reapplication may be accomplished pursuant to Section R313-16-293.

R313-16-297. Revocation of Registration Certificate for Inspection Services.

A registration certificate for inspection services may be revoked by the Director for any matter of deliberate misconduct pursuant to Section R313-16-300 or for misfeasance, malfeasance or nonfeasance.

R313-16-300. Deliberate Misconduct.

(1) Any registrant, applicant for registration, employee of a registrant or applicant; or any contractor, including a supplier or consultant, subcontractor, employee of a contractor or

subcontractor of any registrant or applicant for registration, who knowingly provides to any registrant, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a registrant'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 registrant or applicant to be in violation of any rule or order; or any term, condition, or limitation of any registration issued by the Director; or

(b) Deliberately submit to the Director, a registrant, an applicant, or a registrant'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 R313-16-300(1)(a) or (b) may be subject to enforcement action in accordance with Rule R313-14.

(3) For the purposes of Subsection R313-16-300(1)(a), deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) Would cause a registrant or applicant to be in violation of any rule or order; or any term, condition, or limitation, of any registration issued by the Director; or

(b) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a registrant, applicant, contractor, or subcontractor.

KEY: x-rays, inspections

September 14, 2007

Notice of Continuation July 7, 2011

19-3-104

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-18. Notices, Instructions and Reports to Workers by Licensees or Registrants--Inspections.

R313-18-1. Purpose and Authority.

(1) The purpose of this rule is to establish requirements for notices, instructions and reports by licensees or registrants to individuals engaged in work under a license or registration and options available to such individuals in connection with inspections of licensees or registrants.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(4) and 19-3-104(7).

R313-18-2. General.

The rules of R313-18 shall apply to all persons who receive, possess, use, own or transfer a source of radiation licensed by or registered with the Director pursuant to the rules in R313-16, R313-19 or R313-22.

R313-18-11. Posting of Notices to Workers.

(1) Licensees or registrants shall post current copies of the following documents:

(a) the rules in R313-15 and R313-18;

(b) the license, certificate of registration, conditions or documents incorporated into the license by reference and amendments thereto;

(c) the operating procedures applicable to work under the license or registration; and

(d) a notice of violation involving radiological working conditions, proposed imposition of civil penalty, order issued pursuant to R313-14, or any response from the licensee or registrant.

(2) If posting of a document specified in R313-18-11(1)(a), (b), or (c) is not practicable, the licensee or registrant may post a notice which describes the document and states where it may be examined.

(3) DWMRC-04 "Notice to Employees," shall be posted by licensees or registrants wherever individuals work in or frequent a portion of a restricted area.

(4) Documents from the Director which are posted pursuant to R313-18-11(1)(d) shall be posted within five working days after receipt of the documents from the Director; the licensee's or registrant's response, if there is one, shall be posted for a minimum of five working days after dispatch from the licensee or registrant. The documents shall remain posted for a minimum of five working days or until action correcting the violation has been completed, whichever is later.

(5) Documents, notices or forms posted pursuant to R313-18-11 shall appear in a sufficient number of places to permit individuals engaged in work under the license or registration to observe them on the way to or from any particular work location to which the document applies, shall be conspicuous, and shall be replaced if defaced or altered.

R313-18-12. Instructions to Workers.

(1) All individuals who in the course of employment are likely to receive in a year an occupational dose in excess of 1.0 mSv (100 mrem):

(a) shall be kept informed of the storage, transfer, or use of sources of radiation in the licensee's or registrant's workplace;

(b) shall be instructed in the health protection considerations associated with exposure to radiation or radioactive material to the individual and potential offspring, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;

(c) shall be instructed in, and instructed to observe, to the extent within the worker's control, the applicable provisions of these rules and licenses for the protection of personnel from exposure to radiation or radioactive material;

(d) shall be instructed as to their responsibility to report promptly to the licensee or registrant a condition which may constitute, lead to, or cause a violation of the Act, these rules, or a condition of the licensee's license or unnecessary exposure to radiation or radioactive material;

(e) shall be instructed in the appropriate response to warnings made in the event of an unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(f) shall be advised as to the radiation exposure reports which workers shall be furnished pursuant to R313-18-13.

(2) In determining those individuals subject to the requirements of R313-18-12(1), licensees must take into consideration assigned activities during normal and abnormal situations involving exposure to radiation or radioactive material which can reasonably be expected to occur during the life of a licensed facility. The extent of these instructions shall be commensurate with potential radiological health protection considerations for the workplace.

R313-18-13. Notifications and Reports to Individuals.

(1) Radiation exposure data for an individual and the results of measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as specified in R313-18-13. The information reported shall include data and results obtained pursuant to these rules, orders, or license conditions, as shown in records maintained by the licensee or registrant pursuant to R313-15-1107. Notifications and reports shall:

(a) be in writing;

(b) include appropriate identifying data such as the name of the licensee or registrant, the name of the individual, and the individual's identification number, preferably social security number;

(c) include the individual's exposure information; and

(d) contain the following statement:

"This report is furnished to you under the provisions of the Utah Administrative Code Section R313-18-13. You should preserve this report for further reference."

(2) Licensees or registrants shall make dose information available to workers as shown in records maintained by the licensee or registrant pursuant to R313-15-1107. The licensee shall provide an annual report to each individual monitored under R313-15-502 of the dose received in that monitoring year if:

(a) The individual's occupational dose exceeds 1 mSv (100 mrem) TEDE or 1 mSv (100 mrem) to any individual organ or tissue; or

(b) The individual requests his or her annual dose report.

(3) Licensees or registrants shall furnish a written report of the worker's exposure to sources of radiation at the request of a worker formerly engaged in activities controlled by the licensee or registrant. The report shall include the dose record for each year the worker was required to be monitored pursuant to R313-15-502. The report shall be furnished within 30 days from the date of the request, or within 30 days after the dose of the individual has been determined by the licensee or registrant, whichever is later. The report shall cover the period of time that the worker's activities involved exposure to sources of radiation and shall include the dates and locations of work under the license or registration in which the worker participated during this period.

(4) When a licensee or registrant is required pursuant to R313-15-1202, R313-15-1203, or R313-15-1204 to report to the Director an exposure of an individual to sources of radiation, the licensee or registrant shall also provide the individual a written report on the exposure data included in the report to the Director. This report shall be transmitted at a time

no later than the transmittal to the Director.

(5) At the request of a worker who is terminating employment with the licensee or registrant in work involving exposure to radiation or radioactive material, during the current year, the licensee or registrant shall provide at termination to the worker, or to the worker's designee, a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year or fraction thereof. If the most recent individual monitoring results are not available at that time, a written estimate of the dose shall be provided together with a clear indication that this is an estimate.

R313-18-14. Presence of Representatives of Licensees or Registrants and Workers During Inspection.

(1) Licensees or registrants shall afford representatives of the Director, at reasonable times, the opportunity to inspect materials, machines, activities, facilities, premises, and records pursuant to these rules.

(2) During an inspection, representatives of the Director may consult privately with workers as specified in R313-18-15. The licensee or registrant may accompany representatives during other phases of an inspection.

(3) If, at the time of inspection, an individual has been authorized by the workers to represent them during inspections, the licensee or registrant shall notify the representatives of the Director of the authorization and shall give the workers' representative an opportunity to accompany the representatives during the inspection of physical working conditions.

(4) The workers' representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in R313-18-12.

(5) Different representatives of licensees or registrants and workers may accompany the representatives of the Director during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one workers' representative at a time may accompany the representatives of the Director.

(6) With the approval of the licensee or registrant and the workers' representative, an individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant or to the workers' representative, shall be afforded the opportunity to accompany representatives of the Director during the inspection of physical working conditions.

(7) Notwithstanding the other provisions of R313-18-14, representatives of the Director are authorized to refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection. With regard to areas containing information classified by an Agency of the U.S. Government in the interest of national security, an individual who accompanies an inspector may have access to such information only if authorized to do so. With regard to areas containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee or registrant to enter that area.

R313-18-15. Consultation with Workers During Inspections.

(1) Representatives of the Director may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of these rules and licenses to the extent the representatives deem necessary for the conduct of an effective and thorough inspection.

(2) During the course of an inspection, workers may bring privately to the attention of the representatives of the Director, either orally or in writing, a past or present condition which the worker has reason to believe may have contributed to or caused a violation of the Act, these rules, or license condition, or an unnecessary exposure of an individual to sources of radiation

under the licensee's or registrant's control. A notice in writing shall comply with the requirements of R313-18-16(1).

(3) The provisions of R313-18-15(2) shall not be interpreted as authorization to disregard instructions pursuant to R313-18-12.

R313-18-16. Request by Workers for Inspections.

(1) A worker or representative of workers believing that a violation of the Act, these rules, or license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Director. The notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by representatives of the Director no later than at the time of inspection except that, upon the request of the worker giving the notice, his name and the name of individuals referred to therein shall not appear in a copy or on a record published, released, or made available by the Director except for good cause shown.

(2) If, upon receipt of the notice, representatives of the Director determine that the complaint meets the requirements set forth in R313-18-16(1), and that there are reasonable grounds to believe that the alleged violation exists or has occurred, an inspection shall be made as soon as practicable to determine if the alleged violation exists or has occurred. Inspections pursuant to R313-18-16 need not be limited to matters referred to in the complaint.

(3) A licensee, registrant or contractor or subcontractor of a licensee or registrant shall not discharge or discriminate against a worker because that worker has filed a complaint or instituted or caused to be instituted a proceeding under these rules or has testified or is about to testify in a proceeding or because of the exercise by the worker on behalf of the worker or others of an option afforded by R313-18.

R313-18-17. Inspections Not Warranted -- Informal Review.

(1)(a) If the Director determines, with respect to a complaint under Section R313-18-16, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the Director shall notify the complainant in writing of that determination. The complainant may obtain review of the determination by submitting a written statement of position with the Director. The Director will provide the licensee or registrant with a copy of the statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the Director. The Director will provide the complainant with a copy of the statement by certified mail.

(b) Upon the request of the complainant, the Director may hold an informal conference in which the complainant and the licensee or registrant may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant will be made only following receipt of written authorization from the complainant. After considering written and oral views presented, the Director shall affirm, modify, or reverse the determination of the representatives of the Director and furnish the complainant and the licensee or registrant a written notification of the decision and the reason therefor.

(2) If the Director determines that an inspection is not warranted because the requirements of R313-18-16(1) have not been met, the complainant shall be notified in writing of the determination. The determination shall be without prejudice to the filing of a new complaint meeting the requirements of R313-18-16(1).

KEY: radioactive materials, inspections, radiation safety,
licensing
March 19, 2013 19-3-104
Notice of Continuation July 7, 2011 19-6-107

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

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 DWMRC-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 DWMRC-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 DWMRC-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 DWMRC-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 DWMRC-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, including 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 DWMRC-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 DWMRC-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

August 26, 2015

19-3-104

Notice of Continuation October 4, 2013

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

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(7).

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 Emission 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

<p>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:</p>	<p>\$1,125,000</p>
<p>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:</p>	<p>\$225,000</p>
<p>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:</p>	<p>\$113,000</p>

(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 DWMRC-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 Director'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 DWMRC-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 DWMRC-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.

RADIOACTIVE MATERIAL	TABLE	
	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 **19-6-107**

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.**R313-32. Medical Use of Radioactive Material.****R313-32-1. Purpose and Authority.**

(1) The purpose of this rule is to prescribe requirements and provisions for the medical use of radioactive material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the protection of the public health and safety. The requirements and provisions of Rule R313-32 are in addition to, and not in substitution for, other sections of Title R313.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

R313-32-2. Clarifications or Exceptions.

For the purposes of Rule R313-32, 10 CFR 35.2 through 35.7; 35.10(d) through 35.10(f); 35.11(a) through 35.11(b); 35.12; and 35.13(b) through 35.3067 (2010) are incorporated by reference with the following clarifications or exceptions:

- (1) The exclusion of the following:
 - (a) In 10 CFR 35.2, exclude definitions for "Address of Use," "Agreement State," "Area of Use," "Dentist," "Pharmacist," "Physician," "Podiatrist," and "Sealed Source"; and
 - (b) In 10 CFR 35.3067, exclude "with a copy to the Director, Office of Nuclear Material Safety and Safeguards."
- (2) The substitution of the following date references:
 - (a) "May 13, 2005" for "October 24, 2002"; and
 - (b) "May 10, 2006" for "April 29, 2005."
- (3) The substitution of the following rule references:
 - (a) "Rule R313-15" for reference to "10 CFR Part 20" or for reference to "Part 20 of this chapter";
 - (b) "Rule R313-19" for reference to "Part 30 of this chapter" or for reference to "10 CFR Part 30" except for the reference to "Part 30 of this chapter" found in 10 CFR 35.65(d);
 - (c) "10 CFR 30" for reference to "Part 30 of this chapter" found in 10 CFR 35.65(d);
 - (d) "Rules R313-15 and R313-19" for reference to "parts 20 and 30 of this chapter";
 - (e) "Section R313-12-110" for reference to "Sec. 30.6 of this chapter" or for reference to "Sec. 30.6(a)" or for reference to "Sec. 30.6(a) of this chapter";
 - (f) "Section R313-15-101" for reference to "Sec. 20.1101 of this chapter";
 - (g) "Subsection R313-15-301(1)(a)" for reference to "Sec. 20.1301(a)(1) of this chapter";
 - (h) "Subsection R313-15-301(1)(c)" for reference to "Sec. 20.1301(c) of this chapter";
 - (i) "Section R313-15-501" for reference to "Sec. 20.1501 of this chapter";
 - (j) "Section R313-18-12" for reference to "Sec. 19.12 of this chapter";
 - (k) "Subsection R313-22-75(10) or equivalent U.S. Nuclear Regulatory Commission or Agreement State regulations" for reference to "Sec. 32.74 of this chapter," found in 10 CFR 35.65(b);
 - (l) "Subsection R313-22-75(10)" for reference to "10 CFR 32.74 of this chapter," or for reference to "Sec. 32.74 of this chapter" except for the reference to "Sec. 32.74 of this chapter" found in 10 CFR 35.65(b);
 - (m) "Rule R313-70" for reference to "Part 170 of this chapter";
 - (n) "Section R313-19-34(2)" for reference to "Sec. 30.34(b) of this chapter";
 - (o) "Rule R313-22" for reference to "Part 33 of this chapter";
 - (p) "Subsection R313-22-50(2)" for reference to "Sec. 33.13 of this chapter";
 - (q) "Subsection R313-22-75(9)(b)(iv)" for reference to

"Sec. 32.72(b)(4)";

(r) "Subsection R313-22-75(9), 10 CFR 32.72, " for reference to "Sec. 32.72 of this chapter";

(s) "Subsection R313-22-75(9)(b)(v)" for reference to "Sec. 32.72(b)(5)"

(t) "(c)(1) or (c)(2)" for reference to "(c)(1)" in 10 CFR 35.50(d);

(u) "35.600 or 35.1000" for reference to "35.600" in 10 CFR 35.41(b)(1); and

(v) "Subsection R313-22-32(9), 10 CFR 30.32(j)," for reference to "30.32(j) of this chapter".

(4) The substitution of the following terms:

(a) "radioactive material" for reference to "byproduct material";

(b) "original" for "original and one copy";

(c) "(801) 536-4250 or after hours, (801) 536-4123" for "(301) 951-0550";

(d) "Form DWMRC-01, 'Radioactive Material License Application'" for reference to "NRC Form 313, 'Application for Material License'";

(e) "State of Utah radioactive materials" for reference to "NRC" in 10 CFR 35.6(c);

(f) "the Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for reference to "the Commission or Agreement State" or for reference to "the Commission or an Agreement State";

(g) "an Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for reference to "a Commission or Agreement State";

(h) "Equivalent U.S. Nuclear Regulatory Commission or Agreement State" for reference to "equivalent Agreement State" as found in 10 CFR 35.63(b)(2)(i), 10 CFR 35.63(c)(3), 10 CFR 35.65(a), 10 CFR 35.100(a), 10 CFR 35.200(a), and 10 CFR 35.300(a);

(i) "Director" for reference to "NRC Operations Center" in 10 CFR 35.3045(c) and 10 CFR 35.3047(c);

(j) "Utah Division of Waste Management and Radiation Control" for reference to "NRC Operations Center" in Footnote 3 to 10 CFR 35.3045;

(k) "Director" for reference to "appropriate NRC Regional Office listed in Sec. 30.6 of this chapter";

(l) "Utah Waste Management and Radiation Control Board" for reference to "Commission" in 10 CFR 35.18(a)(3)(second instance) and 10 CFR 35.19;

(m) "Director" for reference to "Commission" in 10 CFR 35.10(b), 10 CFR 35.12(d)(2), 10 CFR 35.14(a)(first instance), 10 CFR 35.14(b), 10 CFR 35.18(a), 10 CFR 35.18(a)(3)(first instance), 10 CFR 35.18(b), 10 CFR 35.24(a)(1), 10 CFR 35.24(c), 10 CFR 35.26(a), and 10 CFR 35.1000(b);

(n) "the Director" for reference to "NRC" in 10 CFR 35.13(b)(4)(i), 10 CFR 35.3045(g)(1), and 10 CFR 35.3047(f)(1);

(o) "the U.S. Nuclear Regulatory Commission or an Agreement State" for reference to "an Agreement State" in 10 CFR 35.49(a) and 10 CFR 35.49(c);

(p) "Director, a U.S. Nuclear Regulatory Commission, or Agreement State" for reference to "NRC or Agreement State" in 10 CFR 35.63(b)(2)(ii), 10 CFR 35.100(c), 10 CFR 35.200(c), and 10 CFR 35.300(c); and

(q) In 10 CFR 35.75(a) "Footnote 1", substitute "The current version of NUREG-1556, Vol. 9" for "NUREG-1556 Vol. 9,";

KEY: radioactive materials, radiopharmaceutical, brachytherapy, nuclear medicine

October 13, 2010

Notice of Continuation September 23, 2011

19-3-104

19-6-107

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-70. Payments, Categories and Types of Fees.

R313-70-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe the requirements to assess fees of registrants and licensees possessing sources of radiation.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsection 19-3-104(6).

R313-70-2. Scope.

The requirements of Rule R313-70 apply to persons who receive, possess, or use sources of radiation provided: however, that nothing in these rules shall apply to the extent a person is subject to regulation by the U.S. Nuclear Regulatory Commission.

R313-70-3. Communications.

Communications concerning Rule R313-70 should be addressed to the Director, and may be sent to the Division of Waste Management and Radiation Control, Department of Environmental Quality. Communications may be delivered in person at the Division of Waste Management and Radiation Control offices.

R313-70-5. Payment of Fees.

(1) New Application Fee: Applications for radiation machine registration or radioactive material licensing for which a fee is prescribed, shall be accompanied by a remittance in the full amount of the fee. Applications will not be accepted for filing or processing prior to payment of the full amount specified. Applications for which no remittance is received will be returned to the applicant. Application fees will be charged irrespective of the Director's disposition of the application or a withdrawal of the application.

(2) Annual Fee: Persons and individuals who are subject to licensing or registration of radioactive material or radiation machine registration with the Director under provisions of the Utah Radiation Control Rules, are assessed an annual fee in accordance with categories of Sections R313-70-7 and R313-70-8. The appropriate fee shall be filed annually with the Director, by the due date the Director specifies for registrants or by the anniversary date for licensees. The account of a licensee or registrant that is delinquent on or after 61 days may be transferred to the Office of State Debt Collection in accordance with Section R21-1-5.

(3) Inspection Fee: Persons and entities who, under provisions of the Utah Radiation Control Rules, are subject to radiation machine registration with the Director are assessed an inspection fee in accordance with Section R313-70-8. Fees for inspection of a radiation machine are due within 30 days of receipt of an invoice from the Agency. The inspection account of a registrant that is delinquent on or after 61 days may be transferred to the Office of State Debt Collection in accordance with Section R21-1-5.

(4) Failure to pay the prescribed fee: the Director will not process applications and may suspend or revoke licenses or registrations or may issue an order with respect to the activities as the Director determines to be appropriate or necessary in order to carry out the provisions of this part of Rule R313-70, and of the Act.

(a) General license certificates of registration and new specific licenses issued pursuant to the provisions in Rules R313-21 or R313-22, will be valid for a period of five years unless failure to submit appropriate fee occurs. Specific license renewals issued pursuant to the provisions in Rule R313-22 may be valid for a period of ten years or less in accordance with Subsections R313-22-34(1)(b) and (1)(c). Machine registrations will be valid for one year during the schedule established by the

Director in accordance with Section R313-16-230. Failure to submit appropriate fees will render the license, certificate or registration invalid, at which time a new application with appropriate fees shall be submitted.

(b) Renewal applications shall be filed in a timely manner in accordance with Sections R313-22-37 or R313-16-230. The radioactive material license will expire on the date specified on the license. A general license certificate of registration will expire on the date specified on the certificate of registration. A radiation machine registration will expire as outlined in Section R313-16-230. The Director may renew an expired license if the licensee provides information that explains why the renewal application was not submitted pursuant to the provisions in Subsection R313-22-36(1) and other information the Director may request to determine that issuance of the license will not be inimical to the health and safety of the public.

(5) Method of Payment: Fees shall be made payable to: Division of Waste Management and Radiation Control, Department of Environmental Quality.

R313-70-7. License Categories and Types of Fees for Radioactive Materials Licenses.

Fees shall be established in accordance with Section 63j-1-504. Copies of established fee schedules may be obtained from the Director.

TABLE

LICENSE CATEGORY	TYPE OF FEE
(1) Special Nuclear Material	
(a) Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers and neutron generators.	New License or Renewal Annual Fee
(b) Licenses for possession and use of less than 15 g special nuclear material in unsealed form for research and development.	New License or Renewal Annual Fee
(c) All other special nuclear material licenses.	New License or Renewal Annual Fee
(d) Special nuclear material to be used as calibration and reference sources.	New License or Renewal Annual Fee
(2) Source Material.	
(a) Licenses for concentrations of uranium from other areas like copper or phosphates for the production of moist, solid, uranium yellow cake.	New License or Renewal Annual Fee Review Fees
(b) Licenses for possession and use of source material in extraction facilities such as conventional milling, in-situ leaching, heap leaching, and other processes including licenses authorizing the possession of	Monthly fee for active or inactive mill Review Fees

<p>byproduct material (tailings and other wastes) from source material extraction facilities, as well as licenses authorizing the possession and maintenance of a facility in a standby mode, and licenses that authorize the receipt of byproduct material, as defined in Section 19-3-102, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations.</p>	<p>radiography operations.</p>	<p>New License or Renewal Annual Fee</p>
<p>(c) Licenses that authorize the receipt of byproduct material, as defined in Section 19-3-102, from other persons for possession and disposal.</p>	<p>(e) Licenses for possession and use of sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).</p>	<p>New License or Renewal Annual Fee</p>
<p>(d) Licenses for possession and use of source material for shielding.</p>	<p>(f)(i) Licenses for possession and use of less than 10,000 curies of radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes.</p>	<p>New License or Renewal Annual Fee</p>
<p>(e) All other source material licenses.</p>	<p>(f)(ii) Licenses for possession and use of 10,000 curies or more of radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes.</p>	<p>New License or Renewal Annual Fee</p>
<p>(3) Radioactive Material Other than Source Material and Special Nuclear Material.</p>	<p>(g) Licenses to distribute items containing radioactive material that require device review to persons exempt from the licensing requirements of Rule R313-19, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Rule R313-19.</p>	<p>New License or Renewal Annual Fee</p>
<p>(a)(i) Licenses of broad scope for possession and use of radioactive material for processing or manufacturing of items containing radioactive material for commercial distribution.</p>	<p>(h) Licenses to distribute items containing radioactive material or quantities of radioactive material that do not require device evaluation to persons exempt from the licensing requirements of Rule R313-19, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Rule R313-19.</p>	<p>New License or Renewal Annual Fee</p>
<p>(a)(ii) Other licenses for possession and use of radioactive material for processing or manufacturing of items containing radioactive material for commercial distribution.</p>	<p>(i) Licenses to distribute items containing radioactive material that require sealed source or device review to persons generally licensed</p>	<p>New License or Renewal Annual Fee</p>
<p>(b) Licenses authorizing the processing or manufacturing and distribution or redistribution of radio-pharmaceuticals, generators, reagent kits, or sources or devices containing radioactive material.</p>		
<p>(c) Licenses authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, or sources or devices not involving processing of radioactive material.</p>		
<p>(d) Licenses for possession and use of radioactive material for industrial</p>		

<p>under Rule R313-21, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Rule R313-21.</p>	<p>New License or Renewal Annual Fee</p>	<p>repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.</p>	<p>New License or Renewal Annual Fee</p>
<p>(j) Licenses to distribute items containing radioactive material or quantities of radioactive material that do not require sealed source or device review to persons generally licensed under Rule R313-21, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Rule R313-21.</p>	<p>New License or Renewal Annual Fee</p>	<p>(c) Licenses specifically authorizing the receipt of prepackaged waste radioactive material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.</p>	<p>New License or Renewal Annual Fee</p>
<p>(k) Licenses for possession and use of radioactive material for research and development, which do not authorize commercial distribution.</p>	<p>New License or Renewal Annual Fee</p>	<p>(d) Licenses authorizing packaging of radioactive waste for shipment to waste disposal site where licensee does not take possession of waste material.</p>	<p>New License or Renewal Annual Fee</p>
<p>(l) All other specific radioactive material licenses.</p>	<p>New License or Renewal Annual Fee</p>	<p>(5) Well logging, well surveys and tracer studies.</p>	<p>New License or Renewal Annual Fee</p>
<p>(m) Licenses of broad scope for possession and use of radioactive material for research and development which do not authorize commercial distribution.</p>	<p>New License or Renewal Annual Fee</p>	<p>(a) Licenses for possession and use of radioactive material for well logging, well surveys and tracer studies other than field flooding tracer studies.</p>	<p>New License or Renewal Annual Fee</p>
<p>(n) Licenses that authorize services for other licensees, except licenses that authorize leak testing or waste disposal services which are subject to the fees specified for the listed services.</p>	<p>New License or Renewal Annual Fee</p>	<p>(b) Licenses for possession and use of radioactive material for field flooding tracer studies.</p>	<p>New License or Renewal Annual Fee</p>
<p>(o) Licenses that authorize services for leak testing only.</p>	<p>New License or Renewal Annual Fee</p>	<p>(6) Nuclear laundries.</p>	<p>New License or Renewal Annual Fee</p>
<p>(4) Radioactive Waste Disposal:</p>	<p>Application Fee New License or Renewal Siting Review Fee</p>	<p>(a) Licenses for commercial collection and laundry of items contaminated with radioactive material.</p>	<p>New License or Renewal Annual Fee</p>
<p>(a) Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of commercial disposal by land by the licensee.</p>	<p>New License or Renewal Annual Fee</p>	<p>(7) Human use of radioactive material.</p>	<p>New License or Renewal Annual Fee</p>
<p>(b) Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of packaging or</p>	<p>New License or Renewal Annual Fee</p>	<p>(a) Licenses for human use of radioactive material in sealed sources contained in teletherapy devices.</p>	<p>New License or Renewal Annual Fee</p>
		<p>(b) Other licenses issued for human use of radioactive material, except licenses for use of radioactive material contained in teletherapy devices.</p>	<p>New License or Renewal Annual Fee</p>
		<p>(c) Licenses of broad scope issued to medical institutions or two or more physicians authorizing research</p>	

and development, including human use of radioactive material, except licenses for radioactive material in sealed sources contained in teletherapy devices. (8) Civil Defense. (a) Licenses for possession and use of radioactive material for civil defense activities. (9) Power Source. (a) Licenses for the manufacture and distribution of encapsulated radioactive material wherein the decay energy of the material is used as a source for power. (10) General License. (a) Measuring, gauging and control devices as described in Subsection R313-21-22(4), other than hydrogen-3 (tritium) devices and polonium-210 devices containing no more than 10 millicuries used for producing light or an ionized atmosphere. (b) In Vitro testing (c) Depleted uranium (d) Reciprocal recognition, as provided for in Section R313-19-30, of a license issued by the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State.	New License or Renewal Annual Fee	Veterinary	State Inspection Registration	additional tube connected to a control unit. Per tube. Annual per control unit and first tube plus annual per each additional tube connected to a control unit. Per tube.	
	New License or Renewal Annual Fee	Chiropractic	State Inspection Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit. Per tube.	
	New License or Renewal Annual Fee	Dental	State Inspection Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit. Per tube.	
	Fee per device	Industrial Facility with High or Very High Radiation Areas Accessible to Individuals	Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit. Per tube.	
	Fee per registration certificate	Industrial Facility with Cabinet X-ray or Units Designed for Other Industrial Purposes	State Inspection Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit. Per tube.	
	Fee per registration certificate	Other	State Inspection Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit. Per tube.	
	Annual fee for license category listed in R313-70-7(1) through (10), per 180 days in one calendar year			State Inspection Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit. Per tube.
				State Inspection	Per tube reviewed.
					Acceptance of work, performed by a person meeting the qualifications in Section R313-16-292, that demonstrates compliance with these rules.

R313-70-8. Registration and Inspection Categories and Types of Fees for Registration of Radiation Machines.

(1) For machines registered under Section R313-16-230, registrants will pay an annual registration fee and an inspection fee that shall be established in accordance with Section 63j-1-504. Copies of established fee schedules may be obtained from the Director.

TABLE

FACILITY TYPE	TYPE OF FEE	
Hospital/Therapy	Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit. Per tube.
Medical	State Inspection Registration	Annual per control unit and first tube plus annual per each additional tube connected to a control unit. Per tube.
Podiatry	State Inspection Registration	Annual per control unit and first tube plus annual per each

R313-70-9. Other Fees for Services.

TABLE

(1) Expedited application review. Applicable when, by mutual consent of the applicant and affected staff, an application request is taken out of date order and processed by staff during non-work hours.	Hourly
(2) Review of plans for decommissioning, decontamination, reclamation, or site restoration activities.	Plan Review Plus Hourly

(3) Management and oversight of impounded radioactive material. Actual Cost

(4) License amendment, for greater than three applications in a calendar year. Amendment Fee

KEY: radioactive materials, x-rays, registration, fees
October 21, 2014 19-3-104(6)
Notice of Continuation September 23, 2011

R331. Financial Institutions, Administration.**R331-26. Ownership of Real Estate Other Than Property Used for Institution Business or Held as an Investment by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions.****R331-26-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Sections 7-1-301, 7-3-18, 7-8-13, and 7-9-5.

(2) This rule applies to all depository institutions chartered by the State of Utah.

(3) The purpose of this rule is to protect the safety and soundness of state-chartered depository institutions by prescribing requirements and restrictions for the prudent management of real estate held for purposes other than conducting the depository institution's business.

R331-26-2. Definitions.

For the purposes of this rule:

(1) A "covered transaction" is a sale of a parcel of other real estate held by a depository institution where less than 10% of the total sales price is in cash; where the depository institution finances all or a portion of the sales price on terms more favorable than those customarily offered by the depository institution at that point in time when acting solely as lender; or where the transaction does not transfer from the depository institution to the buyer substantially all of the usual risks and benefits of ownership. A transaction ceases to be covered when all of the aforementioned conditions no longer apply. It will be deemed that 10% of the sales price has been paid in cash when the cash received by the depository institution as a down payment together with that portion of the sales price guaranteed to the depository institution by private mortgage insurance or an equivalent guarantee equals or exceeds 10% of the total sales price, or when the unpaid principal balance of any debt to the depository institution resulting from a covered transaction, less the amount of any private mortgage insurance or equivalent guarantee, falls below 90% of the total sales price.

(2) "Depository institution" means depository institution as defined in Section 7-1-103.

(3) "Fair value" is the cash price that might reasonably be anticipated in a current sale under all conditions requisite to a fair sale. A fair sale means that buyer and seller are each acting prudently, knowledgeably and under no necessity to buy or sell. Any related appraisal should estimate the cash price that might be received upon exposure to the open market for a reasonable time, considering the property type and local market conditions. When it is unlikely that the sale can be completed within 12 months, the appraisal must discount all cash flows generated by the property to obtain the estimate of fair values. These cash flows include those arising from ownership, development, operation, and sale of the property. The discount applied shall reflect the appraiser's judgment of what a prudent, knowledgeable purchaser under no necessity to buy would be willing to pay to purchase the property in a current sale.

(4) "Other real estate" means all real property held by a depository institution except premises and real property acquired and held as a permitted investment.

(5) "Premises" means real property recorded as an asset on a depository institution's books or otherwise held by a depository institution which is used in the conduct of the depository institution's business, including leasehold improvements and capital leases of real property. It also includes real property acquired and held for future use where the minutes of the board of directors show the depository institution in good faith intends to utilize such property in the conduct of the depository institution's business within three years.

(6) The "recorded investment in the debt satisfied" is the unpaid balance of the debt, accrued and uncollected interest, any legal fees or direct costs of acquiring title to the property,

unamortized premium and loan acquisition costs, if any, less any prior direct writedowns, unamortized discount, and finance charges.

(7) "Supervisor" means the appropriate supervisor within the Department of Financial Institutions.

R331-26-3. Purchasing, Holding, and Conveying Other Real Estate.

A state chartered depository institution may purchase, hold, and convey other real estate which is:

(1) taken to satisfy, in whole or part, a debt previously contracted;

(2) purchased at a sale to foreclose a lien or other security interest claimed by the depository institution in the property;

(3) former premises or property originally acquired for use by the depository institution but no longer used or intended to be used as such within the next three years; or

(4) real property sold by a depository institution in a covered transaction after the effective date of this rule.

R331-26-4. Limitations on the Holding of Other Real Estate.

(1) A depository institution may not hold any parcel of other real estate for a period longer than five years from the date title is transferred to the institution without the prior written approval of the appropriate supervisor.

(2) A depository institution may expend funds for the development and improvement of other real estate if the board of directors of the depository institution has determined there is a reasonable likelihood that the expenditure will increase the depository institution's recovery from sale or other disposition of the property in an amount greater than the total amounts to be expended, and the depository institution's interest in the property is otherwise sufficient to justify the expenditure. These requirements shall not apply to expenditures for routine repair and maintenance of the property nor to expenditures not exceeding \$100,000 or 5% of the gross value of the property, whichever is less.

(3) A depository institution may assume or pay superior liens on other real estate if the depository institution's interest in the property is sufficient to justify such expenditure.

(4) A depository institution must diligently pursue all reasonable means to dispose of each parcel of other real estate and shall maintain a current record of all such efforts.

(5) Each parcel of other real estate will be accounted for at the lower of the recorded investment in the debt satisfied or its fair value on the date the property was transferred to other real estate. Any excess of the recorded investment in the debt satisfied over the fair value of the property must be charged against the reserve for loan losses.

(6) Real estate no longer used for depository institution business will be accounted for at the lower of its net book value or its fair value at the date of transfer to other real estate owned. Any excess of net book value over fair value shall be charged to expense for the current period.

(7) For each parcel of other real estate where the recorded investment in the loan satisfied is in excess of 5% of the equity capital or net worth of the depository institution or \$250,000, whichever is less:

(a) prior to transfer to other real estate, fair value must be established by an appraisal prepared by an independent, qualified appraiser, and

(b) the depository institution must obtain annually from an independent qualified appraiser an appraisal, an updated appraisal, or an evaluation of the current fair value of each parcel of other real estate.

R331-26-5. Covered Transactions Authorized by Commissioner.

The commissioner authorizes any covered transaction to be

booked as a receivable in accordance with Financial Accounting Standards Board Accounting Standards Codification 360.20, Real Estate Sales, which is incorporated by reference.

KEY: financial institutions, real estate, real estate investing
February 1, 2011 7-1-301
Notice of Continuation January 15, 2016 7-3-18
7-8-13
7-9-5

R380. Health, Administration.**R380-60. Local Health Department Emergency Protocols.****R380-60-1. Authority and Purpose.**

(1) These emergency protocols are adopted by the Department under authority of Utah Code Annotated Title 26-23b and Title 26A1-114 and as outlined in the Utah Code Annotated Title 58-1-307(6), (7), (8), and (9).

(2) These protocols shall only be in effect during a public health emergency, as defined in Utah Code Annotated Title 26-23b-102(6).

R380-60-2. Definitions.

(1) Administer - means the direct application of a drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human by another person.

(2) Controlled Substance - as defined in Utah Code Annotated Title 58-37-2.

(3) Closed Point of Dispensing (Closed POD) - A closed POD is a private location where medications are dispensed to a specific group of people.

(4) Declaration of Emergency - means the declaration of a national, state (Utah Code Annotated Title 53-2a-206), local (Utah Code Annotated Title 53-2a-208) or public health emergency (Utah Code Annotated Title 26-23b-102(6)).

(5) Department - means the Utah Department of Health.

(6) Dispense - means the interpretation, evaluation, and implementation of a prescription drug order or device or nonprescription drug or device under a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration or use.

(7) Distribute - means to deliver a drug or device other than by administering or dispensing.

(8) Emergency Use Authorization (EUA) - means the authority of the US Food and Drug Administration (FDA) to approve the emergency use of drugs, devices, and medical products (including diagnostics) that were not previously approved, cleared, or licensed by FDA (hereafter, "unapproved") or the off-label use of approved products in certain well-defined emergency situations.

(9) Local Health Department - means a county or multicounty local health department established under Utah Code Title 26A.

(10) Receiving Facility - means a facility that is designated by the local health department to receive medications or supplies.

(11) Strategic National Stockpile - means a national repository of antibiotics, chemical antidotes, antitoxins, life-support medications, IV administration, airway maintenance supplies, and medical/surgical items.

(12) Triage - for purposes of this rule means the sorting of and allocation of treatment to patients according to priorities designed to maximize the number of survivors and optimize the use of available resources.

R380-60-3. Distribution of Medication (Non-controlled substances).

(1) Upon the declaration of an emergency as defined in R380-60-2, the Department shall coordinate the distribution of vaccine, antiviral, antibiotic or other prescription medication that is not a controlled substance received from the Strategic National Stockpile or another emergency stockpile and delivered to local health departments for further distribution, dispensing and administration.

(2) The local health department may distribute the medication received from the Department to emergency personnel and other receiving facilities as designated herein and within the local health department's jurisdiction. These receiving facilities may include the following:

(a) pharmacy (including back filling of inventory);

(b) prescribing practitioner;

(c) licensed health care facility;

(d) federally qualified community health clinic; or

(e) governmental entity for use by a community more than 50 miles from any facility listed in (a) to (d);

(f) federally recognized American Indian tribal entities;

(g) other organizations that have a written agreement with the Department or local health department, such as a closed POD.

(3) The receiving facility shall be responsible for record keeping as provided for in R380-60-7 and for the tracking, storage and the proper return, disposal or destruction of any unused medication.

R380-60-4. Distribution of Medication (Controlled Substances).

(1) A receiving facility as provided in R380-60-3(2) shall follow applicable state or Federal law governing dispensing and administration of the medications.

R380-60-5. Dispensing of Medication.

(1) After receiving medication distributed by the Department, the medical director or other person with authority to prescribe working in a local health department, may supervise or direct the dispensing of a vaccine, antiviral, antibiotic or other prescription medication that is not a controlled substance, under:

(a) a prescription or other lawful order by a person with authority to prescribe,

(b) the prescription procedure described in Section 58-17b-620(4),

(c) other procedures described in a written protocol approved by the medical director of the Department, or

(d) other conditions justifying the dispensing of the medication without a prescription, including the terms of an Emergency Use Authorization to:

(i) the contacts of a patient (contact of a patient with a physician patient relationship);

(ii) an individual working in a triage situation;

(iii) an individual receiving preventative or medical treatment in a triage situation;

(iv) an individual who does not have coverage for the prescription in the individual's health insurance plan;

(v) an individual involved in the delivery of medical or other emergency services; or

(vi) an individual who otherwise may have a direct impact on public health.

(2) If the person dispensing the vaccine, antiviral, antibiotic or other prescription medication is not a licensed pharmacist authorized to dispense medications under Title 58 Chapter 17b, the dispensing shall be conducted according to a written protocol approved by the medical director of the Department or the local health department.

(3) If the person dispensing the vaccine, antiviral, antibiotic or other prescription medication is not licensed to dispense, they shall follow procedures described in a written protocol approved by the medical director of the Department or the local health department.

R380-60-6. Administration of Medication.

(1) After receiving medication distributed by the Department, the medical director or other person licensed to administer (scope of practice) working in a local health department, may supervise or direct the administration of a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance under:

(a) a prescription or other lawful order by a person with authority to prescribe,

(b) the prescription procedure described in Section 58-

17b-620(4),

(c) other procedures described in a written protocol approved by the medical director of the Department, or

(d) conditions for administration consistent with the terms of an Emergency Use Authorization to:

(i) the contacts of a patient;

(ii) an individual working in a triage situation;

(iii) an individual receiving preventative or medical treatment in a triage situation;

(iv) an individual who does not have prescription coverage;

(v) an individual involved in the delivery of medical or other emergency services; or

(vi) an individual who otherwise may have a direct impact on public health.

(2) If the person administering the vaccine, antiviral, antibiotic, or other prescription medication is not licensed to administer, the administration shall follow procedures described in a written protocol approved by the medical director of the Department or the local health department.

R380-60-7. Record Keeping.

(1) Records regarding the inventory (lot number, expiration date, etc.), distribution, dispensing and administration (patient data collection) of a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance shall be consistent with the terms of any Emergency Use Authorization or specific Strategic National Stockpile instructions.

(2) The Department, local health department or receiving facility described in Section R380-60-3 that dispenses or administers a vaccine, antiviral, antibiotic or other prescription medication under the authorization of this Rule shall comply with the conditions of any Emergency Use Authorization and shall keep an inventory record describing the drug and the name and contact information for each individual that received the drug.

(3) If the circumstances of the emergency make it impossible to keep these inventory records, the Executive Director of the Department may grant an exception to this requirement limiting the record keeping requirement to such records as are appropriate and possible in the circumstances of the emergency.

(4) If no exception is made by the Executive Director of the Department as described in R380-60-7(3), all record keeping shall be in effect as required by Utah Administrative Rule R156-37-602.

**KEY: public health emergency
January 20, 2016**

58-1-307(6)

58-1-307(7)

58-1-307(8)

58-1-307(9)

R381. Health, Child Care Center Licensing Committee.**R381-60. Hourly Child Care Centers.****R381-60-1. Authority and Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes standards for the operation and maintenance of hourly child care centers and requirements to protect the health and safety of children in child care centers.

R381-60-2. Definitions.

(1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Body fluids" means blood, urine, feces, vomit, mucous, and saliva.

(4) "Caregiver" means an employee or volunteer who provides direct care to children.

(5) "CPSC" means the Consumer Product Safety Commission.

(6) "Department" means the Utah Department of Health.

(7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could stand, walk, sit, or climb on, and is at least 2" by 2" in size.

(8) "Director" means a person who meets the director qualifications of this rule, and who assumes the day-to-day responsibilities for the facility to be in compliance with Child Care Licensing rules.

(9) "Direct Supervision" for infants, toddlers, and preschoolers means the caregiver can see and hear all of the children in his or her assigned group, and is near enough to intervene when necessary. "Direct Supervision" for school age children means the caregiver must be able to hear school age children and must be near enough to intervene when necessary.

(10) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(11) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.

(12) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(13) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child cannot get to.

(14) "Infant" means a child aged birth through 11 months of age.

(15) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(16) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.

(17) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies and vitamin or mineral supplements.

(18) "Parent" means the parent or legal guardian of a child in care.

(19) "Person" means an individual or a business entity.

(20) "Physical Abuse" means causing nonaccidental physical harm to a child.

(21) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(22) "Protective cushioning" means cushioning material that has been tested to and meets American Society for Testing and Materials (ASTM) Specification F 1292, such as unitary surfaces, wood chips, engineered wood fiber, and shredded

rubber mulch. Protective cushioning may also include pea gravel or sand as allowed by the Consumer Product Safety Commission (CPSC).

(23) "Provider" means the licensee or a staff member to whom the licensee has delegated a duty under this rule.

(24) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.

(25) "School Age" means kindergarten and older age children.

(26) "Sexual Abuse" means abuse as defined in Utah Code, Section 76-5-404.1.(2).

(27) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5b-103(10).

(28) "Sleeping Equipment" means a cot, mat, crib, bassinets, porta-crib, or play pen.

(29) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(30) "Toddler" means a child aged 12 months but less than 24 months.

(31) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(32) "Volunteer" means a person who provides care to a child but does not receive direct or indirect compensation for doing so.

R381-60-3. License Required.

(1) A person must be licensed as an hourly child care center if he or she:

(a) provides care in the absence of the child's parent;

(b) provides care in a place other than the provider's home or the child's home;

(c) provides care for five or more children for four or more hours per day, but not on a regular schedule;

(d) provides care for each individual child for less than 24 hours per day;

(e) provides care that is open to children on an ongoing basis for four or more weeks in a year; and

(f) provides care for direct or indirect compensation.

(2) If five or more children attend the center for four or more hours a day on a regularly scheduled ongoing basis, the center must be licensed under R381-100.

R381-60-4. Facility.

(1) The licensee shall ensure that any building or playground structure constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the removal of the lead based paint.

(2) For preschool and younger children, there shall be one working toilet and one working sink for every fifteen children in the center, excluding diapered children. For school age children, there shall be one working toilet and one working sink for every 25 children in the center.

(3) School age children shall have privacy when using the bathroom.

(4) All rooms and occupied areas in the building shall be

ventilated by windows that open and have screens or by mechanical ventilation.

(5) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(6) The provider shall maintain adequate light intensity for the safety of children and the type of activity being conducted by keeping lighting equipment in good working condition.

(7) There shall be at least 35 square feet of indoor space for each child, including the licensee's and employees' children who are not counted in the caregiver to child ratios.

(8) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

- (a) by children;
- (b) for the care of children; or
- (c) to store classroom materials.

(9) Bathrooms, closets, staff lockers, hallways, corridors, lobbies, kitchens, or staff offices are not included when calculating indoor space for children's use.

R381-60-5. Cleaning and Maintenance.

(1) The provider shall maintain a clean and sanitary environment.

(2) The provider shall clean and sanitize bathroom surfaces daily, including toilets, sinks, faucets, and counters.

(3) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(4) The provider shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(5) The provider shall maintain entrances, exits, steps and outside walkways in a safe condition, and free of ice, snow, and other hazards.

R381-60-6. Outdoor Environment.

If the center has an outdoor play area used by children in care, the following rules apply:

(1) The outdoor play area shall be safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the playground at the same time as other children.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high. When children play outdoors, they must play in the enclosed play area except during off-site activities described in Section R381-60-20(2).

(4) There shall be no gaps in fences greater than 5 inches at any point, nor shall gaps between the bottom of the fence and the ground be more than 5 inches.

(5) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.

(6) When in use, the outdoor play area shall be free of animal excrement, harmful plants, objects, or substances, and standing water.

(7) The outdoor play area shall have a shaded area to protect children from excessive sun and heat whenever there are children in the outdoor play area.

(8) An outdoor source of drinking water, such as a drinking fountain, individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to children whenever the outside temperature is 75 degrees or higher.

(9) All outdoor play equipment and areas shall comply with the following safety standards:

(a) All stationary play equipment used by infants and toddlers shall meet the following requirements:

(i) There shall be no designated play surface that exceeds 3 feet in height.

(ii) If the height of a designated play surface or climbing bar on a piece of equipment is greater than 18 inches, it shall have use zones that extend a minimum of 3 feet in all directions from the perimeter of each piece of equipment.

(b) All stationary play equipment used by preschoolers or school age children shall meet the following requirements for use zones:

(i) If the height of a designated play surface or climbing bar on a piece of equipment is greater than 20 inches, it shall have use zones that extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.

(c) Two-year-olds may play on infant and toddler play equipment.

(d) Protective cushioning is required in all use zones.

(e) If loose material is used as protective cushioning, the depth of the material shall be at least 9 inches. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

(f) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:

(i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall maintain documentation from the manufacturer that the material meets these specifications.

(ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(g) Stationary play equipment that has a designated play surface less than the height specified in Table 1, and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

TABLE 1

Heights of Designated Play Surfaces That May Be Placed on Grass

Infants and Toddlers Less than 18"	Preschoolers Less than 20"	School Age Less than 30"
---------------------------------------	-------------------------------	-----------------------------

(10) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(11) There shall be no strangulation hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(12) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(13) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(14) The provider shall maintain playgrounds and playground equipment to protect children's safety.

R381-60-7. Personnel.

(1) The center must have a director who is at least 21 years of age, who has completed the Center Director Training class offered by the Department, and who has one of the following:

(a) an associates, bachelors, or graduate degree in child development, early childhood education, elementary education, or recreation from an accredited college;

(b) a college degree in a related field with documented

four courses of higher education completed in child development;

(c) valid proof of a level 8, 9, or 10 Utah Early Childhood Career Ladder certification issued by the Utah Office of Child Care or the Utah Child Care Professional Development Institute;

(d) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or

(e) a currently valid National Administrator Credential (NAC) issued by the National Child Care Association, plus one of the following:

(i) valid proof of successful completion of 12 semester credit hours of early childhood development courses from an accredited college; or

(ii) valid proof of completion of the following six Utah Early Childhood Career Ladder courses, or their equivalent, as approved by the Utah Child Care Professional Development Institute: Child Development Ages and Stages, Learning in the Early Years, A Great Place for Kids, Strong and Smart, Learning to Get Along, and Advanced Child Development.

(f) two years experience in child care, elementary education, or a related field.

(2) Any new Center director must complete the Department's Center Director Training Class no later than 60 working days after assuming director duties.

(3) All caregivers included in the required caregiver to child ratios shall be at least 18 years of age.

(4) A volunteer may be included in the provider to child ratio only if the volunteer meets all of the caregiver requirements of this rule.

(5) Each new director, assistant director, caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the caregiver's file and shall include the following topics:

(a) specific job responsibilities;

(b) the center's emergency and disaster plan;

(c) the current child care licensing rules found in Sections R381-60-11 through 24;

(d) procedure for releasing children to authorized individuals only;

(e) proper cleanup of body fluids;

(f) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(g) obtaining assistance in emergencies, as specified in the center's emergency and disaster plan.

(h) If the center provides infant or toddler care, new caregiver orientation training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

(6) The following individuals shall complete a minimum of 10 hours of child care training each year, based on the center's license date:

(a) the director;

(b) all caregivers;

(c) all substitutes who work an average of 10 hours a week or more, as averaged over any three month period; and

(d) all volunteers that the provider includes in the provider to child ratio.

(7) Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(8) Caregivers who begin employment partway through the license year shall complete a proportionate number of training

hours based on the number of months worked prior to the center's relicensure date.

(9) Annual training hours shall include the following topics:

(a) the current child care licensing rules found in Sections R381-60-11 through 24;

(b) a review of the center's policies and procedures and emergency and disaster plans, including any updates;

(c) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(d) principles of child growth and development, including development of the brain; and

(e) positive guidance.

(10) If the center provides infant or toddler care, annual training topics for the center director and all infant and toddler caregivers shall also include:

(a) preventing shaken baby syndrome and coping with crying babies; and

(b) preventing sudden infant death syndrome.

(11) A minimum of 5 hours of the required annual in-service training shall be face-to-face instruction.

R381-60-8. Administration.

(1) The licensee is responsible for all aspects of the operation and management of the center.

(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care center.

(3) The provider shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The provider shall take all reasonable measures to protect the safety of children in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers children in care.

(5) Either the center director or a designee with authority to act on behalf of the center director shall be present at the facility whenever the center is open for care.

(6) Director designees shall be at least 21 years of age, and shall have completed their orientation training.

(7) There shall be a working telephone at the facility, and the center director shall inform the Department of any changes to the center's telephone number within 48 hours of the change.

(8) The provider shall report to the Child Care Licensing Program within the next Department business day any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless that medical service was part of the child's medical treatment plan identified by the parent. The provider shall also submit a written report to Child Care Licensing within five working days of the incident.

(9) The center director shall train and supervise all staff to:

(a) ensure their compliance with this rule;

(b) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

(10) The provider shall establish and follow written policies and procedures for the health and safety of the children in care. The written policies and procedures shall address at least the following areas:

(a) direct supervision and protection of children at all times, including when they are sleeping, using the bathroom, in a mixed group activity, on the playground, and during off-site activities;

(b) maintaining required caregiver to child ratios when the center has more than the expected number of children, or fewer than the scheduled number of caregivers;

(c) procedures to account for each child's attendance and whereabouts;

(d) procedures to ensure that the center releases children to authorized individuals only;

(e) confidentiality and release of information;

(f) the use of movies and video or computer games, including what industry ratings the center allows;

(g) recognizing early signs of illness and determining when there is a need for exclusion from the center;

(h) discipline of children, including behavioral expectations of children and discipline methods used; and

(i) how long a child will cry before the parent is contacted.

(11) The provider shall ensure that the written policies and procedures are available for review by staff and the Department during business hours.

R381-60-9. Records.

(1) The provider shall maintain the following general records on-site for review by the Department:

(a) documentation of the previous 12 months of fire and disaster drills as specified in R381-60-10(9) and (11);

(b) current animal vaccination records as required in R381-60-22(2);

(c) a six week record of child attendance, including sign-in and sign-out records;

(d) a current local health department inspection;

(e) a current local fire department inspection;

(f) copy of all covered individuals' background screening cards issued by the Department.

(2) The provider shall maintain the following records for each currently enrolled child on-site for review by the Department:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent; and

(vi) medical conditions, including a certification that all immunizations are current.

(b) a transportation permission form, if the center provides transportation services;

(c) a six week record of medication permission forms, and a six week record of medications actually administered; and

(d) a six week record of incident, accident, and injury reports.

(3) The provider shall ensure that information in children's files is not released without written parental permission.

(4) The provider shall maintain the following records for each staff member on-site for review by the Department:

(a) date of initial employment;

(b) copy of the current background screening card issued by the Department;

(c) a six week record of days worked, and the times worked each day;

(d) orientation training documentation for caregivers, and for volunteers who work at the center at least once each month;

(e) annual training documentation for all providers and substitutes who work an average of 10 hours or more a week, as averaged over any three month period; and

(f) current first aid and CPR certification, if applicable as required in R381-60-10(2), R381-60-20(2)(d), and R381-60-21(2).

R381-60-10. Emergency Preparedness.

(1) The provider shall post the center's street address and

emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the center.

(2) At least one person at the facility at all times when children are in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The licensee shall maintain first-aid supplies in the center, including at least antiseptic, band-aids, and tweezers.

(4) The provider shall have a written emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) an emergency relocation site where children may be housed if the center is uninhabitable;

(e) a means of posting the relocation site address in a conspicuous location that can be seen even if the center is closed;

(f) the transportation route and means of getting staff and children to the emergency relocation site;

(g) a means of accounting for each child's presence in route to and at the relocation site;

(h) a means of accessing children's emergency contact information and emergency releases;

(i) provisions for emergency supplies, including at least food, water, a first aid kit, diapers if the center cares for diapered children, and a cell phone;

(j) procedures for ensuring adequate supervision of children during emergency situations, including while at the center's emergency relocation site; and

(k) staff assignments for specific tasks during an emergency.

(5) The provider shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(6) The provider shall review the emergency and disaster plan annually, and update it as needed. The provider shall note the date of reviews and updates to the plan on the plan.

(7) The emergency and disaster plan shall be available for immediate review by staff and the Department during business hours.

(8) The provider shall conduct fire evacuation drills monthly. Drills shall include complete exit of all children and staff from the building.

(9) The provider shall document all fire drills, including:

(a) the date and time of the drill;

(b) the number of children participating;

(c) the name of the person supervising the drill;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(10) The provider shall conduct drills for disasters other than fires at least once every six months.

(11) The provider shall document all disaster drills, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the name of the person supervising the drill; and

(e) any problems encountered.

(12) The center shall vary the days and times on which fire and other disaster drills are held.

R381-60-11. Supervision and Ratios.

(1) The provider shall ensure that caregivers provide and maintain direct supervision of all children at all times.

(2) Caregivers shall actively supervise children on the playground to minimize the risk of injury to a child.

(3) The licensee must maintain minimum care giver to child ratios as provided in Table 2.

TABLE 2

Caregiver to Child Ratios

Caregivers	Children	Limits for Mixed Ages
1	12	No children under age 2
1	8	2 children under age 2
1	6	3 children under age 2

(4) Regardless of the number of other children and the minimum ratios in Table 2, if only two care givers are present, the facility may not care for more than four children under the age of two.

(5) For no more than 20 minutes, the minimum ratios in Table 2 may not exceed one care giver to 16 children if none of the children are younger than 24 months old, to allow for an additional care giver to arrive at the program.

(6) An hourly program that exceeds the ratio in Table 2, must be able to document having care givers, who, as a condition of their employment, are on call to come to the program as needed and arrive at the program within 20 minutes after receiving notification to report.

(7) Whenever the total number of children present to be cared for at a hourly program is more than 20, children younger than 24 months must be cared for in an area that is physically separated from older children. All children 24 months old and older may be cared for in the same group in the same area.

(8) The children of the licensee or any employee, age four or older, are not counted in the caregiver to child ratios when the parent of the child is working at the center.

R381-60-12. Injury Prevention.

(1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.

(3) The following items shall be inaccessible to children:
 (a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, e-cigarettes, e-juice, e-liquids, alcohol, illegal substances, and sexually explicit material;

(c) when in use, portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, and chains long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(4) The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.

(5) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(6) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(7) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(8) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children under age 3 shall not have a designated play surface that exceeds 3 feet in height.

(a) If such equipment has an elevated designated play surface less than 18 inches in height, it shall not be placed on a hard surface, such as wood, tile, linoleum, or concrete, and shall have a three foot use zone.

(b) If such equipment has an elevated designated play surface that is 18 inches to 3 feet in height, it shall be surrounded by mats at least 2 inches thick, or cushioning that meets ASTM Standard F1292, in a three foot use zone.

(9) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children age 3 and older shall not have a designated play surface that exceeds 5-1/2 feet in height.

(a) If such equipment has an elevated designated play surface less than 3 feet in height, it shall be surrounded by protective cushioning material, such as mats at least 1 inch thick, in a six foot use zone.

(b) If such equipment has an elevated designated play surface that is 3 feet to 5-1/2 feet in height, it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.

(10) There shall be no trampolines on the premises that are accessible to any child in care.

(11) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;

(b) the provider shall maintain the pool in a safe manner;

(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and

(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.

(12) If wading pools are used:

(a) a caregiver must be at the pool supervising children whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants while in the pool; and

(c) the pool shall be emptied and sanitized after each use by a separate group of children.

R381-60-13. Parent Notification and Child Security.

(1) The provider shall post a copy of the Department's child care guide in the center for parents' review during business hours.

(2) Parents shall have access to the center and their child's classroom at all times their child is in care.

(3) The provider shall ensure the following procedures are followed when children arrive at the center or leave the center:

(a) Each child must be signed in and out of the center by the person dropping the child off and picking the child up, including the date and time the child arrives or leaves.

(b) Persons signing children into the center shall use identifiers, such as a signature, initials, or electronic code.

(c) Persons signing children out of the center shall use identifiers, such as a signature, initials, or electronic code, and

shall have photo identification if they are unknown to the provider.

(d) Only parents or persons with written authorization from the parent may take any child from the center. In an emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(e) School age children may sign themselves in and out of the program with written permission from their parent.

(4) The provider shall give parents a written report of every incident, accident, or injury involving their child on the day of occurrence. The caregivers involved, the center director, and the person picking the child up shall sign the report on the day of occurrence. If a school age child signs him or herself out of the program, a copy of the report shall be sent to the parent, or given to the parent the next day the child attends the program.

(5) If a child is injured and the injury appears serious but not life threatening, the provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

(6) In the case of a life threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb, the provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, the provider shall attempt to contact the child's emergency contact person.

R381-60-14. Child Health.

(1) The licensee shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All staff shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of tobacco, alcohol, illegal substances, or sexually explicit material on the premises or in center vehicles is prohibited any time that children are in care.

R381-60-15. Child Nutrition.

(1) If food service is provided:

(a) The provider shall ensure that the center's meal service complies with local health department food service regulations.

(b) The provider shall offer meals or snacks at least once every three hours that a child is in care.

(c) The provider shall serve children's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the children's hands. The provider shall not place food on a bare table.

(2) If the parent of a child in care has informed the provider that his or her child has a food allergy or sensitivity, the provider shall ensure that the child is not given that food or drink.

(3) The provider shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name, and refrigerated if needed. The provider shall ensure that a child in care does not consume a food or beverages that was brought in for another child.

R381-60-16. Infection Control.

(1) Staff shall wash their hands thoroughly with liquid soap and warm running water at the following times:

- (a) before handling or preparing food or bottles;
- (b) before and after eating meals and snacks or feeding children;
- (c) before and after diapering a child;
- (d) after using the toilet or helping a child use the toilet;
- (e) before administering medication;
- (f) after coming into contact with body fluids;
- (g) after playing with or handling animals;

- (h) when coming in from outdoors; and
- (h) after cleaning or taking out garbage.

(2) The provider shall ensure that children wash their hands thoroughly with liquid soap and warm running water at the following times:

- (a) before and after eating meals and snacks;
- (b) after using the toilet;
- (c) after coming into contact with body fluids;
- (d) after playing with animals; and
- (e) when coming in from outdoors.

(3) Only single use towels from a covered dispenser or an electric hand-drying device may be used to dry hands.

(4) The provider shall ensure that toilet paper is accessible to children, and that it is kept on a dispenser.

(5) The provider shall clean and sanitize all washable toys and materials weekly, or more often if necessary.

(6) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The provider shall wash stuffed animals, cloth dolls, dress-up clothes, and pillows or covers weekly.

(7) If water play tables or tubs are used, they shall be washed and sanitized daily, and children shall wash their hands prior to engaging in the activity.

(8) Persons with contagious TB shall not work or volunteer in the center.

(9) Children's clothing which is wet or soiled from body fluids:

- (a) shall not be rinsed or washed at the center; and
- (b) shall be placed in a leakproof container, labeled with the child's name, and returned to the parent.

(10) If the center uses a potty chair, the provider shall clean and sanitize the chair after each use.

(11) The center shall have a portable body fluid clean up kit.

(a) All staff shall know the location of the kit and how to use it.

(b) The provider shall use the kit to clean up spills of body fluids.

(c) The provider shall restock the kit as needed.

(12) The provider shall notify the local health department, on the day of discovery, of any reportable infectious diseases among children or caregivers, or any sudden or extraordinary occurrence of a serious or unusual illness, as required by the local health department.

(13) The provider shall post a parent notice at the center when any staff or child has an infectious disease or parasite.

(a) The provider shall post the notice in a conspicuous location where it can be seen by all parents.

(b) The provider shall post and date the notice the same day the disease or parasite is discovered, and the notice shall remain posted for at least 5 days.

R381-60-17. Medications.

(1) If medications are given, they shall be administered to children only by a provider trained in the administration of medications as specified in subsections (7) and (8) below.

(2) All over-the-counter and prescription medications shall:

- (a) be labeled with the child's full name;
- (b) be kept in the original or pharmacy container;
- (c) have the original label; and,
- (d) have child-safety caps.

(3) All non-refrigerated medications shall be inaccessible to children and stored in a container or area that is locked, such as a locked room, cupboard, drawer, or a lockbox. The provider shall store all refrigerated medications in a leakproof container.

(4) The provider shall have a written medication permission form completed and signed by the parent prior to

administering any over-the-counter or prescription medication to a child. The permission form must include:

- (a) the child's name;
- (b) the name of the medication;
- (c) written instructions for administration; including:
 - (i) the dosage;
 - (ii) the method of administration;
 - (iii) the times and dates to be administered; and
 - (iv) the disease or condition being treated; and
- (d) the parent signature and the date signed.

(5) If the provider keeps over-the-counter medication at the center that is not brought in by a parent for their child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

- (a) prior written consent; or
- (b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent or person picking up the child signs upon picking up the child.

(6) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication prior to the time the medication needs to be given.

(7) When administering medication, the provider administering the medication shall:

- (a) wash their hands;
- (b) check the medication label to confirm the child's name;
- (c) compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;
- (d) administer the medication; and
- (e) immediately record the following information:
 - (i) the date, time, and dosage of the medication given;
 - (ii) the signature or initials of the provider who administered the medication; and,
 - (iii) any errors in administration or adverse reactions.

(8) The provider shall report any adverse reaction to a medication or error in administration to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

R381-60-18. Napping.

If the center uses sleeping equipment for rest time, the following rules apply:

- (1) The provider shall maintain sleeping equipment in good repair.
- (2) A separate crib, cot, mat, or other sleeping equipment shall be used for each child during nap times.
- (3) If sleeping equipment is clearly assigned to and used by an individual child, the provider must clean and sanitize it as needed, but at least weekly.
- (4) If sleeping equipment is not clearly assigned to and used by an individual child, the provider must clean and sanitize it prior to each use.
- (5) The provider must either store sleeping equipment so that the surfaces children sleep on do not touch each other, or else clean and sanitize sleeping equipment prior to each use.
- (6) The provider shall space cribs, cots, and mats a minimum of 2 feet apart when in use, to allow for adequate ventilation, easy access, and ease of exiting.
- (7) Cots and mats may not block exits.

R381-60-19. Child Discipline.

(1) The provider shall inform caregivers and children of the center's behavioral expectations for children.

(2) The provider may discipline children using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(3) Caregivers may use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others or from destroying property.

(4) Discipline measures shall not include any of the following:

- (a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;
- (b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above.
- (c) shouting at children;
- (d) any form of emotional abuse;
- (e) forcing or withholding of food, rest, or toileting; and,
- (f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R381-60-20. Activities.

(1) The provider shall offer a variety of activities and materials that are appropriate to the age and development of the children accepted for care.

(2) If off-site activities are offered:

- (a) the provider shall obtain written parental consent for each activity in advance;
- (b) caregivers shall take written emergency information and releases with them for each child in the group, which shall include:
 - (i) the child's name;
 - (ii) the parent's name and phone number;
 - (iii) the name and phone number of a person to notify in the event of an emergency if the parent cannot be contacted;
 - (iv) the names of people authorized by the parents to pick up the child; and

(c) the provider shall maintain required caregiver to child ratios and direct supervision during the activity;

(d) at least one caregiver present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification;

(3) If swimming activities are offered, caregivers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the caregiver to child ratio.

R381-60-21. Transportation.

(1) Any vehicle used for transporting children shall:

- (a) be enclosed;
- (b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;
- (c) have a current vehicle registration and safety inspection;
- (d) be maintained in a safe and clean condition;
- (e) maintain temperatures between 60-90 degrees Fahrenheit when in use;
- (f) contain a first aid kit; and
- (g) contain a body fluid clean up kit.

(2) At least one adult in each vehicle transporting children shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification.

(3) The adult transporting children shall:

(a) have and carry with them a current valid Utah driver's license, for the type of vehicle being driven, whenever they are transporting children;

(b) have with them written emergency contact information for all of the children being transported;

(c) ensure that each child being transported is wearing an appropriate individual safety restraint;

(d) ensure that no child is left unattended by an adult in the vehicle;

(e) ensure that all children remain seated while the vehicle is in motion;

(f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and,

(g) ensure that the vehicle is locked during transport.

R381-60-22. Animals.

(1) All animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.

(2) All animals at the facility shall have current immunizations for all vaccine preventable diseases that are transmissible to humans. The center shall have documentation of the vaccinations.

(3) There shall be no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(4) Children younger than school age shall not assist with the cleaning of animals or animal cages, pens, or equipment.

(5) If a school age child assists in the cleaning of animals or animal cages, the child shall wash his or her hands immediately after handling the animal or animal equipment.

(6) There shall be no animals or animal equipment in food preparation or eating areas.

(7) Children shall not handle reptiles or amphibians.

R381-60-23. Diapering.

If the center diapers children, the following applies:

(1) Caregivers shall change children's diapers at a diaper changing station. Diapers shall not be changed on surfaces used for any other purpose.

(2) Each diapering station shall be equipped with railings to prevent a child from falling when being diapered.

(3) Caregivers shall not leave children unattended on the diapering surface.

(4) The diapering surface shall be smooth, waterproof, and in good repair.

(5) The provider shall post diapering procedures at each diapering station and ensure that they are followed.

(6) There shall be a handwashing sink used exclusively for diapering and handwashing after diapering.

(7) Caregivers shall clean and sanitize the diapering surface after each diaper change.

(8) Caregivers shall wash their hands before and after each diaper change.

(9) Caregivers shall place soiled disposable diapers in a container that has a plastic lining and a tightly fitting lid.

(10) The provider shall daily clean and sanitize containers where soiled diapers are placed.

(11) If cloth diapers are used:

(a) they shall not be rinsed at the center; and

(b) after a diaper change, the caregiver shall place the cloth diaper directly into a leakproof container that is inaccessible to children and labeled with the child's name, or a leakproof diaper service container.

(12) Caregivers shall change children's diapers promptly when they are wet or soiled, and shall check diapers at least once every two hours.

R381-60-24. Infant and Toddler Care.

If the center cares for infants or toddlers, the following applies:

(1) If an infant is not able to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) The provider shall clean and sanitize high chair trays prior to each use.

(3) The provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. The provider shall

cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) Baby food, formula, and breast milk for infants that is brought from home for an individual child's use must be:

(a) labeled with the child's name;

(b) labeled with the date and time of preparation or opening of the container, such as a jar of baby food;

(c) kept refrigerated if needed; and

(d) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(5) Formula and milk, including breast milk, shall be discarded after feeding, or within two hours of initiating a feeding.

(6) To prevent burns, heated bottles shall be shaken and tested for temperature before being fed to children.

(7) Pacifiers, bottles, and non-disposable drinking cups shall be labeled with each child's name, and shall not be shared.

(8) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.

(9) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. Infants shall not be placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment.

(10) Cribs used by a child in care must:

(a) have tight fitting mattresses;

(b) have slats spaced no more than 2-3/8 inches apart;

(c) have at least 20 inches from the top of the mattress to the top of the crib rail;

(d) not have strings, cords, ropes, or other entanglement hazards strung across the crib rails; and

(e) meet CPSC crib standards.

(11) Infants shall not be placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(12) Walkers with wheels are prohibited.

(13) Infants and toddlers shall not have access to objects made of styrofoam.

(14) Caregivers shall respond as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(15) Awake infants and toddlers shall receive positive physical stimulation and positive verbal interaction with a caregiver at least once every 20 minutes.

(16) Awake infants and toddlers shall not be confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(17) Mobile infants and toddlers shall have freedom of movement in a safe area.

(18) All toys used by infants and toddlers shall be cleaned and sanitized:

(a) weekly;

(b) after being put in a child's mouth before another child plays with it; and

(c) after being contaminated by body fluids.

KEY: child care facilities, hourly child care centers

January 31, 2016

26-39-203(1)(a)

R381. Health, Child Care Center Licensing Committee.**R381-70. Out of School Time Child Care Programs.****R381-70-1. Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes standards for the operation and maintenance of out of school time programs and requirements to protect the health and safety of children in these programs.

R381-70-2. Definitions.

(1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Body Fluids" means blood, urine, feces, vomit, mucous, and saliva.

(4) "Caregiver" means an employee or volunteer who provides direct care to children.

(5) "CPSC" means the Consumer Product Safety Commission.

(6) "Department" means the Utah Department of Health.

(7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could stand, walk, sit, or climb on, and that is at least 2" by 2" in size.

(8) "Director" means a person who meets the director qualifications of this rule, and who assumes the day-to-day responsibilities for the facility to be in compliance with Child Care Licensing rules.

(9) "Direct Supervision" means the caregiver must be able to hear all of the children and must be near enough to intervene when necessary.

(10) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(11) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.

(12) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(13) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child cannot get to.

(14) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(15) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.

(16) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies.

(17) "Parent" means the parent or legal guardian of a child in care.

(18) "Person" means an individual or a business entity.

(19) "Physical Abuse" means causing non-accidental physical harm to a child.

(20) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one user to stand on, and upon which the users can move freely.

(21) "Protective Barrier" means an enclosing structure such as bars, lattice, or a solid panel, around an elevated play equipment platform that is intended to prevent a child from either accidentally or deliberately passing through the barrier.

(22) "Protective cushioning" means cushioning material that is approved by the American Society for Testing and Materials. For example, sand, pea gravel, engineered wood fibers, shredded tires, or unitary cushioning material, such as rubber mats or poured rubber-like material.

(23) "Provider" means the licensee or a staff member to whom the licensee has delegated a duty under this rule.

(24) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.

(25) "Sexual Abuse" means abuse as defined in Utah Code, Section 76-5-404.1(2).

(26) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(27) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(28) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(29) "Volunteer" means a person who provides care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio, unless the volunteer meets all of the caregiver requirements of this rule.

R381-70-3. License Required.

(1) A person or persons must be licensed to provide child care if:

(a) they provide care in the absence of the child's parent;

(b) they provide care for five or more children;

(c) they provide care in a place other than the provider's home or the child's home;

(d) the program is open to children on an ongoing basis, on three or more days a week and for 30 or more days in a calendar year; and

(e) they provide care for direct or indirect compensation.

(2) A person or persons may be licensed as an out of school time program under this rule if:

(a) they either provide care for two or more hours per day on days when school is in session for the child in care, and four or more hours per day on days when school is not in session for the child in care; or they provide care for four or more hours per day on days when school is not in session; and

(b) all of the children who attend the program are at least five years of age.

R381-70-4. Facility.

(1) The licensee shall ensure that any building or playground structure constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the removal of the lead based paint.

(2) There shall be at least two working toilets and two working sinks accessible to the children in care.

(3) If there are more than 50 children in attendance, there shall be one additional working sink and one additional working toilet for each additional group of 1 to 25 children.

(4) Children shall have privacy when using the bathroom.

(5) For buildings newly licensed under this rule after 30 June 2010, there shall be a working hand washing sink in each classroom.

(6) In gymnasiums, and in classrooms in buildings licensed before 30 June 2010, hand sanitizer must be available

to children in care if there is not a handwashing sink in the room.

(7) All rooms and occupied areas in the building shall be ventilated by mechanical ventilation or by windows that open and have screens.

(8) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(9) The provider shall maintain adequate light intensity for the safety of children and the type of activity being conducted by keeping lighting equipment in good working condition.

(10) Windows and glass doors within 36 inches from the floor or ground shall be made of safety glass, or have a protective guard.

(11) There shall be at least 35 square feet of indoor space for each child, including the licensee's and employees' children who are not counted in the caregiver to child ratios.

(12) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

- (a) by children;
- (b) for the care of children; or
- (c) to store classroom materials.

(13) Bathrooms, closets, staff lockers, hallways, corridors, lobbies, kitchens, or staff offices are not included when calculating indoor space for children's use.

R381-70-5. Cleaning and Maintenance.

(1) The provider shall maintain a clean and sanitary environment.

(2) The provider shall clean and sanitize bathroom surfaces daily, including toilets, sinks, faucets, and counters.

(3) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(4) The provider shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(5) The provider shall maintain entrances, exits, steps and outside walkways in a safe condition, and free of ice, snow, and other hazards.

R381-70-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the playground at the same time.

(3) The outdoor play area shall accommodate at least 33 percent of the licensed capacity at one time or shall be at least 1600 square feet.

(4) The outdoor play area used by children shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(5) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.

(6) When in use, the outdoor play area shall be free of animal excrement, harmful plants, harmful objects, harmful substances, and standing water.

(7) The outdoor play area shall have a shaded area to protect children from excessive sun and heat whenever there are children in the outdoor play area.

(8) Children shall have unrestricted access to drinking water whenever the outside temperature is 75 degrees or higher.

(9) All outdoor play equipment and areas shall comply with the following safety standards by the dates specified in Subsection (10) below.

(a) All stationary play equipment used by children shall meet the following requirements for use zones:

- (i) If the height of a designated play surface or climbing

bar on a piece of equipment, excluding swings, is greater than 30 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.

(B) The use zones of two pieces of equipment that are positioned adjacent to one another may overlap if the designated play surfaces of each structure are no more than 30 inches above the protective surfacing underneath the equipment. In such cases, there shall be a minimum of 6 feet between the adjacent pieces of equipment.

(C) There shall be a minimum use zone of 9 feet between adjacent pieces of equipment if the designated play surface of one or both pieces of equipment is more than 30 inches above the protective surfacing underneath the equipment.

(ii) The use zone in the front and rear of a single-axis swing shall extend a minimum distance of twice the height of the pivot point of the swing, and may not overlap the use zone of any other piece of equipment.

(iii) The use zone for the sides of a single-axis swing shall extend a minimum of 6 feet from the perimeter of the structure, and may overlap the use zone of a separate piece of equipment.

(iv) The use zone of a multi-axis swing shall extend a minimum distance of 6 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(v) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vi) The use zone for spring rockers shall extend a minimum of 6 feet from the at-rest perimeter of the equipment.

(b) Protective cushioning is required in all use zones.

(c) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 1. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the depth listed in Table 1. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 1

Depths of Protective Cushioning Required for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Sand		Gravel		Shredded Tires
	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	
4' high or less	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"
Over 5' up to 6'	12"	12"	6"	12"	6"
Over 6' up to 7'	12"	Not Allowed	9"	Not Allowed	6"
Over 7' up to 8'	12"	Not Allowed	12"	Not Allowed	6"
Over 8' up to 9'	12"	Not Allowed	12"	Not Allowed	6"
Over 9' up to 10'	Not Allowed	Not Allowed	12"	Not Allowed	6"
Over 10' up to 11'	Not Allowed	Not Allowed	Not Allowed	Not Allowed	6"
Over 11' up to 12'	Not Allowed	Not Allowed	Not Allowed	Not Allowed	6"

(d) If shredded wood products are used as protective cushioning, the depth of the shredded wood shall meet the CPSC guidelines in Table 2.

TABLE 2

Depths of Protective Cushioning Required for Shredded Wood Products

Highest Designated Play Surface,

Climbing Bar, or Swing Pivot Point	Engineered	Double Shredded	
	Wood Fibers	Wood Chips	Bark Mulch
4' high or less	6"	6"	6"
Over 4' up to 5'	6"	6"	6"
Over 5' up to 6'	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 8'	12"	9"	9"
Over 8' up to 9'	12"	9"	9"
Over 9' up to 10'	12"	9"	9"
Over 10' up to 11'	12"	12"	12"
Over 11'	12"	Not Allowed	Not Allowed

(e) If wood products are used as cushioning material:
 (i) the providers shall maintain documentation from the manufacturer verifying that the material meets ASTM Specification F 1292, which is adopted by reference; and
 (ii) there shall be adequate drainage under the material.
 (f) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:
 (i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall maintain documentation from the manufacturer that the material meets these specifications.

(ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(g) Stationary play equipment that has a designated play surface less than 30 inches and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

(h) Stationary play equipment shall have protective barriers on all play equipment platforms that are over 48 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 38 inches above the surface of the platform.

(i) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(j) There shall be no protrusion or strangulation hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(k) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(l) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(10) The outdoor play equipment rules specified in Subsection (9) above must be in compliance by the following dates:

(a) by December 31, 2009: R381-70-6(9)(b-f). There is protective cushioning in all existing use zones that meets the requirements for depth and ASTM Standards.

(b) by December 31, 2010:

(i) R381-70-6(9)(g). Stationary play equipment that has a designated play surface less than 30 inches, and that does not have moving parts children sit or stand on, is not placed on concrete, asphalt, dirt, or any other hard surface, unless equipment is installed in concrete or asphalt footings.

(ii) R381-70-6(9)(j). There are no protrusion or strangulation hazards in or adjacent to the use zone of any piece of stationary play equipment.

(c) By December 31, 2011: R381-70-6(9)(g). Stationary play equipment that has a designated play surface less than 30 inches, and that does not have moving parts children sit or stand on, is not placed on concrete, asphalt, dirt, or any other hard

surface.

(d) By December 31, 2012:

(i) R381-70-6(9)(h). Protective barriers are installed on all stationary play equipment that requires them, and the barriers meet the required specifications.

(ii) R381-70-6(9)(i). There are no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(iii) R381-70-6(9)(k). There are no crush, shearing, or sharp edge hazards in or adjacent to the use zone of any piece of stationary play equipment.

(e) By December 31, 2013:

(i) R381-70-6(9)(a)(i-vi). All stationary play equipment has use zones that meet the required measurements.

(ii) R381-70-6(9)(l). There are no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(11) The provider shall maintain playgrounds and playground equipment to protect children's safety.

R381-70-7. Personnel.

(1) The program must have a director who is at least 21 years of age, who has completed the Center Director Training class offered by the Department, and who has one of the following educational credentials:

(a) an associates, bachelors, or graduate degree from an accredited college and successful completion of at least 12 semester credit hours of coursework in childhood development, elementary education, or a related field;

(b) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or

(c) a currently valid National Administrator Credential (NAC) issued by the National Child Care Association, plus one of the following:

(i) valid proof of successful completion of 12 semester credit hours of coursework in childhood development, elementary education, or a related field; or

(ii) valid proof of completion of the following six Utah Career Ladder courses, or their equivalent, as approved by the Utah Child Care Professional Development Institute: Child Development: Ages and Stages; Advanced Child Development; School Age Course 1; School Age Course 2; School Age Course 3; and School Age Course 4.

(2) Any new Center director must complete the Department's Center Director Training Class no later than 60 working days after assuming director duties.

(3) All caregivers shall be at least 18 years of age.

(4) All assistant caregivers shall be at least 16 years of age, and shall work under the immediate supervision of a caregiver who is at least 18 years of age.

(5) Assistant caregivers may be included in caregiver to child ratios, but shall not be left unsupervised with children.

(6) Assistant caregivers shall meet all of the caregiver requirements under this rule, except the caregiver age requirement of 18 years.

(7) Whenever there are children at the program, there shall be at least one caregiver present who can demonstrate the English literacy skills needed to care for children and respond to emergencies.

(8) Each new director, assistant director, caregiver, assistant caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented and shall include the following topics:

- (a) job description and duties;
- (b) the program's written policies and procedures;
- (c) the program's emergency and disaster plan;
- (d) the current child care licensing rules found in Sections R381-70-11 through 22;
- (e) introduction and orientation to the children assigned to the caregiver;
- (f) a review of the information in the health assessment for each child in their assigned group;
- (g) procedure for releasing children to authorized individuals only;
- (h) proper cleanup of body fluids;
- (i) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- (j) obtaining assistance in emergencies, as specified in the program's emergency and disaster plan.

(9) The program director, assistant director, all caregivers, and substitutes who work an average of 10 hours a week or more, as averaged over any three month period, shall complete a minimum of 2 hours of training for each month during which they are employed, or 20 hours of training each year, based on the program's license date.

(a) Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(b) Annual training hours shall include the following topics:

- (i) a review of the current child care licensing rules found in Sections R381-70-11 through 22;
- (ii) a review of the program's written policies and procedures and emergency and disaster plans, including any updates;
- (iii) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- (iv) principles of child growth and development, including development of the brain; and
- (v) positive guidance.

(10) A minimum of 10 hours of the required annual in-service training shall be face-to-face instruction.

R381-70-8. Administration.

(1) The licensee is responsible for all aspects of the operation and management of the program.

(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care program.

(3) The provider shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The provider shall take all reasonable measures to protect the safety of children in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers children in care.

(5) Either the program director or a designee with authority to act on behalf of the program director shall be present at the facility whenever the program is open for care.

(6) Director designees shall be at least 21 years of age, and shall have completed their orientation training.

(7) Each week, the program director shall be on-site at the program during operating hours for at least 50% of the time the program is open to children, in order to fulfill the duties specified in this rule, and to ensure compliance with this rule.

(8) The program director must have sufficient freedom from other responsibilities to manage the program and respond to emergencies.

(9) There shall be a working telephone at the facility, and

the program director shall inform each child's parent and the Department of any changes to the program's telephone number within 48 hours of the change.

(10) The provider shall report to the Child Care Licensing Program within the next Department business day any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless that medical service was part of the child's medical treatment plan identified by the parent. The provider shall also submit a written report to Child Care Licensing within five working days of the incident.

(11) The duties and responsibilities of the program director include the following:

(a) appoint one or more individuals who meet the background screening and training requirements of this rule to be a director designee, with authority to act on behalf of the program director in his or her absence;

(b) train and supervise staff to:

- (i) ensure their compliance with this rule;
- (ii) ensure they meet the needs of the children in care as specified in this rule; and
- (iii) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

(12) The provider shall establish and follow written policies and procedures for the health and safety of the children in care. The written policies and procedures shall address at least the following areas:

(a) supervision and protection of children at all times, including when they are using the bathroom, on the playground, and during off-site activities;

(b) maintaining required caregiver to child ratios when the program has more than the expected number of children, or fewer than the scheduled number of caregivers;

(c) procedures to account for each child's attendance and whereabouts;

(d) procedures to ensure that the program releases children to authorized individuals only;

(e) confidentiality and release of information;

(f) the use of movies and video or computer games, including what industry ratings the program allows;

(g) recognizing early signs of illness and determining when there is a need for exclusion from the program;

(h) discipline of children, including behavioral expectations of children and discipline methods used;

(i) transportation to and from off-site activities, or to and from home, if the program offers these services; and

(j) if the program offers transportation to or from school, policies addressing:

(i) how long children will be unattended before and after school;

(ii) what steps will be taken if children fail to meet the vehicle;

(iii) how and when parents will be notified of delays or problems with transportation to and from school; and

(iv) the use of size-appropriate safety restraints.

(k) if the program has a computer that is connected to the internet and that is accessible to any child in care:

(i) written policies for parents explaining how children's computer use is monitored; and

(ii) a signed parent permission form for each child who is allowed to use the computer.

(13) The provider shall ensure that the written policies and procedures are available for review by parents, staff, and the Department during business hours.

R381-70-9. Records.

(1) The provider shall maintain the following general records on-site for review by the Department:

(a) documentation of the previous 12 months of fire and

disaster drills as specified in R381-70-10(9) and R381-70-10(11);

(b) current animal vaccination records as required in R381-70-22(3);

(c) a six week record of child attendance, including sign-in and sign-out records;

(d) a current local health department inspection;

(e) a current local fire department inspection;

(f) copy of all covered individuals' background screening cards issued by the Department.

(2) The provider shall maintain the following records for each currently enrolled child on-site for review by the Department:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent;

(vi) if available, the name, address, and phone number of an out of area/state emergency contact person for the child; and

(vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) a current annual health assessment form as required in R381-70-14(5);

(c) a transportation permission form, if the program provides transportation services;

(d) a six week record of medication permission forms, and a six week record of medications actually administered; and

(e) a six week record of incident, accident, and injury reports.

(3) The provider shall ensure that information in children's files is not released without written parental permission.

(4) The provider shall maintain the following records for each staff member on-site for review by the Department:

(a) date of initial employment;

(b) copy of the current background screening card issued by the Department;

(c) a six week record of days and hours worked;

(d) orientation training documentation for caregivers, and for volunteers who work at the program at least once each month;

(e) annual training documentation for all providers and substitutes who work an average of 10 hours a week or more, as averaged over any three month period; and

(f) current first aid and CPR certification, if applicable as required in R381-70-10(2), R381-70-20(5)(d), and R381-70-21(2).

R381-70-10. Emergency Preparedness.

(1) The provider shall post the program's street address and emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the facility.

(2) At least one person at the facility at all times when children are in care shall have a current Red Cross, American Heart Association, or equivalent first aid and CPR certification.

(3) The program shall maintain first aid supplies in the center, including at least antiseptic, band-aids, and tweezers.

(4) The provider shall have a written emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) an emergency relocation site where children may be housed if the facility is uninhabitable;

(e) a means of posting the relocation site address in a conspicuous location that can be seen even if the facility is closed;

(f) the transportation route and means of getting staff and children to the emergency relocation site;

(g) a means of accounting for each child's presence in route to and at the relocation site;

(h) a means of accessing children's emergency contact information and emergency releases; including contact information for an out of area/state emergency contact person for the child, if available;

(i) provisions for emergency supplies, including at least food, water, a first aid kit, and a cell phone;

(j) procedures for ensuring adequate supervision of children during emergency situations, including while at the program's emergency relocation site; and

(k) staff assignments for specific tasks during an emergency.

(5) The provider shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(6) The provider shall review the emergency and disaster plan annually, and update it as needed. The provider shall note the date of reviews and updates to the plan on the plan.

(7) The emergency and disaster plan shall be available for immediate review by staff, parents, and the Department during business hours.

(8) The provider shall conduct fire evacuation drills monthly during each month that the program is open. Drills shall include complete exit of all children and staff from the building.

(9) The provider shall document all fire drills, including:

(a) the date and time of the drill;

(b) the number of children participating;

(c) the name of the person supervising the drill;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(10) The provider shall conduct drills for disasters other than fires at least once every six months that the program is open.

(11) The provider shall document all disaster drills, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the name of the person supervising the drill; and

(e) any problems encountered.

(12) The program shall vary the days and times on which fire and other disaster drills are held.

R381-70-11. Supervision and Ratios.

(1) The provider shall ensure that caregivers provide and maintain direct supervision of all children at all times.

(2) Caregivers shall actively supervise children on the playground to minimize the risk of injury to a child.

(3) There shall be at least two caregivers with the children at all times when there are more than 8 children present.

(4) The licensee shall maintain a minimum caregiver to child ratio of one caregiver for every 20 children.

(5) The licensee shall maintain a maximum group size of 40 children per group.

(6) The children of the licensee or any employee are not counted in the caregiver to child ratios when the parent of the child is working at the program, but are counted in the maximum group size.

R381-70-12. Injury Prevention.

(1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The provider shall ensure that walkways are free of tripping hazards such as unsecured flooring or cords.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.

(4) The following items shall be inaccessible to children:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, e-cigarettes, e-juice, e-liquids, alcohol, illegal substances, and sexually explicit material;

(c) when in use, portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames; and

(h) razors or similarly sharp blades.

(5) The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.

(6) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(7) Indoor stationary gross motor play equipment, such as slides and climbers, shall not have a designated play surface that exceeds 5-1/2 feet in height. If such equipment has an elevated designated play surface that is 3 feet or higher it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.

(8) There shall be no trampolines on the premises that are accessible to children in care.

(9) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;

(b) the provider shall maintain the pool in a safe manner;

(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and

(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.

R381-70-13. Parent Notification and Child Security.

(1) The provider shall post a copy of the Department's child care guide in the facility for parents' review during business hours.

(2) Parents shall have access to the facility and their child's classroom at all times their child is in care.

(3) The provider shall ensure the following procedures are followed when children arrive at the facility or leave the facility:

(a) Each child must be signed in and out of the facility, including the date and time the child arrives or leaves.

(b) Children may sign themselves in and out of the program only with written permission from the parent.

(c) Persons signing children into the facility shall use identifiers, such as a signature, initials, or electronic code.

(d) Persons signing children out of the facility shall use identifiers, such as a signature, initials, or electronic code, and shall have photo identification if they are unknown to the

provider.

(e) Only parents or persons with written authorization from the parent may take any child from the facility. In an emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(4) The provider shall give parents a written report of every incident, accident, or injury involving their child on the day of occurrence. The caregivers involved, the program director or director designee, and the person picking the child up shall sign the report on the day of occurrence. If the child signs him or herself out of the program, a copy of the report shall be sent to the parent.

(5) If a child is injured and the injury appears serious but not life threatening, the provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

(6) In the case of a life threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb, the provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, the provider shall attempt to contact the child's emergency contact person.

R381-70-14. Child Health.

(1) The licensee shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All staff shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of tobacco, alcohol, illegal substances, or sexually explicit material on the premises or in program vehicles is prohibited any time that children are in care.

(4) The provider shall not admit any child to the program without a signed health assessment completed by the parent which shall include:

(a) allergies;

(b) food sensitivities;

(c) acute and chronic medical conditions;

(d) instructions for special or non-routine daily health care;

(e) current medications; and,

(f) any other special health instructions for the caregiver.

(5) The provider shall ensure that each child's health assessment is reviewed, updated, and signed or initialed by the parent at least annually.

R381-70-15. Child Nutrition.

(1) If food service is provided:

(a) The provider shall ensure that the program's meal service complies with local health department food service regulations.

(b) Foods served by programs not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, menus provided by the CACFP, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.

(c) Programs not currently participating and in good standing with the CACFP shall keep a six week record of foods served at each meal or snack.

(d) The provider shall make available the current week's menu for parent review.

(2) On days when care is provided for three or more hours, the provider shall offer each child in care a meal or snack at least once every three hours.

(3) The provider shall serve children's food on dishes or

napkins, except for individual serving size items, such as crackers, if they are placed directly in the children's hands. The provider shall not place food on a bare table.

(4) If any child in care has a food allergy, the provider shall ensure that all caregivers who serve food to children are aware of the allergy, and that children are not served the food or drink they have an allergy or sensitivity to.

(5) The provider shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name, and refrigerated if needed, and shall ensure that the food or drink is only consumed by that child.

R381-70-16. Infection Control.

(1) All staff shall wash their hands thoroughly with liquid soap and warm running water at the following times:

- (a) before handling or preparing food;
- (b) before eating meals and snacks or feeding children;
- (c) after using the toilet;
- (d) before administering medication;
- (e) after coming into contact with body fluids;
- (f) after playing with or handling animals; and
- (g) after cleaning or taking out garbage.

(2) The provider shall ensure that children wash their hands thoroughly with liquid soap and warm running water at the following times:

- (a) before eating meals and snacks;
- (b) after using the toilet;
- (c) after coming into contact with body fluids; and
- (d) after playing with animals.

(3) Only single use towels from a covered dispenser or an electric hand-drying device may be used to dry hands.

(4) The provider shall ensure that toilet paper is accessible to children, and that it is kept on a dispenser.

(5) The provider shall post handwashing procedures in each bathroom, and they shall be followed.

(6) Caregivers shall teach children proper hand washing techniques and shall oversee hand washing whenever possible.

(7) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by staff on more than one child, and shall be stored so that they do not touch each other.

(8) The provider shall clean and sanitize all washable toys and materials weekly, or more often if necessary.

(9) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The provider shall wash stuffed animals, cloth dolls, dress-up clothes, and pillows or covers weekly.

(10) If water play tables or tubs are used, they shall be washed and sanitized daily, and children shall wash their hands prior to engaging in the activity.

(11) Persons with contagious TB shall not work or volunteer in the program.

(12) Children's clothing shall be changed promptly if they have a toileting accident.

(13) Children's clothing which is wet or soiled from body fluids:

- (a) shall not be rinsed or washed at the facility; and
- (b) shall be placed in a leakproof container, labeled with the child's name, and returned to the parent.

(14) The facility shall have a portable body fluid clean up kit.

(a) All staff shall know the location of the kit and how to use it.

(b) The provider shall use the kit to clean up spills of body fluids.

- (c) The provider shall restock the kit as needed.

(15) The program shall not care for children who are ill with a suspected infectious disease, except when a child shows

signs of illness after arriving at the facility.

(16) The provider shall separate children who develop signs of a suspected infectious disease after arriving at the facility from the other children in a safe, supervised location.

(17) The provider shall contact the parents of children who are ill with a suspected infectious disease and ask them to immediately pick up their child. If the provider cannot reach the parent, the provider shall contact the individuals listed as emergency contacts for the child and ask them to pick up the child.

(18) The provider shall notify the local health department, on the day of discovery, of any reportable infectious diseases among children or caregivers, or any sudden or extraordinary occurrence of a serious or unusual illness, as required by the local health department.

(19) The provider shall post a parent notice at the facility when any staff or child has an infectious disease or parasite.

(a) The provider shall post the notice in a conspicuous location where it can be seen by all parents.

(b) The provider shall post and date the notice the same day the disease or parasite is discovered, and the notice shall remain posted for at least 5 days.

R381-70-17. Medications.

(1) If medications are given, they shall be administered to children only by a provider trained in the administration of medications.

(2) All over-the-counter and prescription medications shall:

- (a) be labeled with the child's full name;
- (b) be kept in the original or pharmacy container;
- (c) have the original label; and,
- (d) have child-safety caps.

(3) All non-refrigerated medications shall be inaccessible to children and stored in a container or area that is locked, such as a locked room, cupboard, drawer, or a lockbox. The provider shall store all refrigerated medications in a leakproof container.

(4) The provider shall have a written medication permission form completed and signed by the parent prior to administering any over-the-counter or prescription medication to a child. The permission form must include:

- (a) the name of the child;
- (b) the name of the medication;
- (c) written instructions for administration; including:
 - (i) the dosage;
 - (ii) the method of administration;
 - (iii) the times and dates to be administered; and
 - (iv) the disease or condition being treated; and
- (d) the parent signature and the date signed.

(5) If the provider keeps over-the-counter medication at the facility that is not brought in by a parent for their child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

- (a) prior written consent; or
- (b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent signs upon picking up the child.

(6) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication prior to the time the medication needs to be given.

(7) When administering medication, the provider administering the medication shall:

- (a) wash their hands;
- (b) check the medication label to confirm the child's name;
- (c) compare the instructions on the parent release form with the directions on the prescription label or product package

to ensure that a child is not given a dosage larger than that

recommended by the health care provider or the manufacturer;

- (d) administer the medication; and
- (e) immediately record the following information:
 - (i) the date, time, and dosage of the medication given;
 - (ii) the signature or initials of the provider who administered the medication; and,
 - (iii) any errors in administration or adverse reactions.

(8) The provider shall report any adverse reaction to a medication or error in administration to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

R381-70-18. Napping.

If the program offers children the opportunity for rest:

- (1) The provider shall maintain sleeping equipment in good repair.
- (2) If sleeping equipment is clearly assigned to and used by an individual child, the provider must clean and sanitize it as needed, but at least weekly.
- (3) If sleeping equipment is not clearly assigned to and used by an individual child, the provider must clean and sanitize it prior to each use.
- (4) Sleeping equipment may not block exits at any time.

R381-70-19. Child Discipline.

- (1) The provider shall inform caregivers, parents, and children of the program's behavioral expectations for children.
- (2) The provider may discipline children using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.
- (3) Caregivers may use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others or from destroying property.
- (4) Discipline measures shall not include any of the following:
 - (a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;
 - (b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above.
 - (c) shouting at children;
 - (d) any form of emotional abuse;
 - (e) forcing or withholding of food, rest, or toileting; and,
 - (f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R381-70-20. Activities.

- (1) The provider shall post a daily schedule of activities. The daily schedule shall include, at a minimum, meal, snack, and outdoor play times.
- (2) On days when children are in care for four or more hours, daily activities shall include outdoor play if weather permits.
- (3) The provider shall offer activities to support each child's healthy physical, social-emotional, and cognitive-language development. The provider shall post a current activity plan for parent review listing these activities.
- (4) The provider shall make the toys and equipment needed to carry out the activity plan accessible to children.
- (5) If off-site activities are offered:
 - (a) the provider shall obtain written parental consent for each activity in advance;
 - (b) caregivers shall take written emergency information and releases with them for each child in the group, which shall include:
 - (i) the child's name;
 - (ii) the parent's name and phone number;
 - (iii) the name and phone number of a person to notify in

the event of an emergency if the parent cannot be contacted;

- (iv) the names of people authorized by the parents to pick up the child; and
- (v) current emergency medical treatment and emergency medical transportation releases;
- (c) the provider shall maintain required caregiver to child ratios and direct supervision during the activity;
- (d) at least one caregiver present shall have a current Red Cross, American Heart Association, or equivalent first aid and CPR certification;
- (e) caregivers shall take a first aid kit with them;
- (f) children shall wear or carry with them the name and phone number of the program, but children's names shall not be used on name tags, t-shirts, or other identifiers; and
- (g) caregivers shall provide a way for children to wash their hands as specified in R381-70-16(2). If there is no source of running water, caregivers and children may clean their hands with wet wipes and hand sanitizer.
- (6) If swimming activities are offered, caregivers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the caregiver to child ratio.

R381-70-21. Transportation.

- (1) Any vehicle that is used for transporting children in care, except public bus or train, shall:
 - (a) be enclosed;
 - (b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;
 - (c) have a current vehicle registration and safety inspection;
 - (d) be maintained in a safe and clean condition;
 - (e) maintain temperatures between 60-90 degrees Fahrenheit when in use;
 - (f) contain a first aid kit; and
 - (g) contain a body fluid clean up kit.
- (2) At least one adult in each vehicle transporting children shall have a current Red Cross, American Heart Association, or equivalent first aid and CPR certification.
- (3) The adult transporting children shall:
 - (a) have and carry with them a current valid Utah driver's license, for the type of vehicle being driven, whenever they are transporting children;
 - (b) have with them written emergency contact information for all of the children being transported;
 - (c) ensure that each child being transported is wearing an appropriate individual safety restraint as required by Utah law;
 - (d) ensure that no child is left unattended by an adult in the vehicle;
 - (e) ensure that all children remain seated while the vehicle is in motion;
 - (f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and,
 - (g) ensure that the vehicle is locked during transport.

R381-70-22. Animals.

- (1) The provider shall inform parents of the types of animals permitted at the facility.
- (2) All animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.
- (3) All animals at the facility shall have current immunizations for all vaccine preventable diseases that are transmissible to humans. The program shall have documentation of the vaccinations.
- (4) There shall be no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(5) There shall be no animals or animal equipment in food preparation or eating areas.

(6) Children shall not handle reptiles or amphibians.

**KEY: child care facilities, child care, child care centers, out of school time child care programs
January 31, 2016 26-39-203(1)(a)**

R381. Health, Child Care Center Licensing Committee.**R381-100. Child Care Centers.****R381-100-1. Authority and Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes standards for the operation and maintenance of child care centers and requirements to protect the health and safety of children in child care centers.

R381-100-2. Definitions.

(1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Body fluids" means blood, urine, feces, vomit, mucous, and saliva.

(4) "Caregiver" means an employee or volunteer who provides direct care to children.

(5) "CPSC" means the Consumer Product Safety Commission.

(6) "Department" means the Utah Department of Health.

(7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could stand, walk, sit, or climb on, and is at least 2" by 2" in size.

(8) "Director" means a person who meets the director qualifications of this rule, and who assumes the day-to-day responsibilities for the facility to be in compliance with Child Care Licensing rules.

(9) "Direct Supervision" for infants, toddlers, and preschoolers means the caregiver can see and hear all of the children in his or her assigned group, and is near enough to intervene when necessary. "Direct Supervision" for school age children means the caregiver must be able to hear school age children and must be near enough to intervene when necessary.

(10) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(11) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.

(12) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(13) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child cannot get to.

(14) "Infant" means a child aged birth through 11 months of age.

(15) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(16) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.

(17) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies and vitamin and mineral supplements.

(18) "Parent" means the parent or legal guardian of a child in care.

(19) "Person" means an individual or a business entity.

(20) "Physical Abuse" means causing non-accidental physical harm to a child.

(21) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one user to stand on, and upon which the users can move freely.

(22) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(23) "Protective Barrier" means an enclosing structure

such as bars, lattice, or a solid panel, around an elevated play equipment platform that is intended to prevent a child from either accidentally or deliberately passing through the barrier.

(24) "Protective cushioning" means cushioning material that has been tested to and meets American Society for Testing and Materials Specification F 1292, such as unitary surfaces, wood chips, engineered wood fiber, and shredded rubber mulch. Protective cushioning may also include pea gravel or sand as allowed by the Consumer Product Safety Commission (CPSC).

(25) "Provider" means the licensee or a staff member to whom the licensee has delegated a duty under this rule.

(26) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.

(27) "School Age" means children ages five through twelve.

(28) "Sexual Abuse" means abuse as defined in Utah Code, Section 76-5-404.1.(1)(2).

(29) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(30) "Sleeping Equipment" means a cot, mat, crib, bassinets, porta-crib, or play pen.

(31) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(32) "Toddler" means a child aged 12 months but less than 24 months.

(33) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(34) "Volunteer" means a person who provides care to a child but does not receive direct or indirect compensation for doing so.

R381-100-3. License Required.

A person or persons must be licensed as a child care center under this rule if:

(1) they provide care in the absence of the child's parent;

(2) they provide care in a place other than the provider's home or the child's home;

(3) they provide care for five or more children, for four or more hours per day;

(4) they provide care for each individual child for less than 24 hours per day;

(5) the program is open to children on an ongoing basis for four or more weeks in a year; and

(6) they provide care for direct or indirect compensation.

R381-100-4. Facility.

(1) The licensee shall ensure that any building or playground structure constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the remediation of the lead based paint.

(2) For preschoolers and toddlers who are toilet trained, there shall be one working toilet and one working sink for every fifteen children in the center, excluding diapered children. For school age children, there shall be one working toilet and one working sink for every 25 children in the center.

(3) School age children shall have privacy when using the bathroom.

(4) For buildings constructed after 1 July 1997 there shall be a working hand washing sink in each classroom.

(5) Each area where infants or toddlers are cared for shall meet one of the following criteria:

(a) There shall be two working sinks in the room. One sink shall be used exclusively for the preparation of food and bottles and hand washing prior to food preparation, and the other sink shall be used exclusively for hand washing after diapering and non-food activities.

(b) There shall be one working sink in the room which is used exclusively for hand washing, and all bottle and food preparation shall be done in the kitchen and brought to the infant and toddler area by a non-diapering staff member.

(6) Infant and toddler areas shall not be used as access to other areas or rooms.

(7) All rooms and occupied areas in the building shall be ventilated by windows that open and have screens or by mechanical ventilation.

(8) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(9) The provider shall maintain adequate light intensity for the safety of children and the type of activity being conducted by keeping lighting equipment in good working condition.

(10) Windows and glass doors within 36 inches from the floor or ground shall be made of safety glass, or have a protective guard.

(11) There shall be at least 35 square feet of indoor space for each child, including the licensee's and employees' children who are not counted in the caregiver to child ratios.

(12) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

- (a) by children;
- (b) for the care of children; or
- (c) to store classroom materials.

(13) Bathrooms, closets, staff lockers, hallways, corridors, lobbies, kitchens, or staff offices are not included when calculating indoor space for children's use.

R381-100-5. Cleaning and Maintenance.

(1) The provider shall maintain a clean and sanitary environment.

(2) The provider shall clean and sanitize bathroom surfaces daily, including toilets, sinks, faucets, and counters.

(3) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(4) The provider shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(5) The provider shall maintain entrances, exits, steps and outside walkways in a safe condition, and free of ice, snow, and other hazards.

R381-100-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the playground at the same time as other children.

(3) The outdoor play area shall accommodate at least 33 percent of the licensed capacity at one time or shall be at least 1600 square feet.

(4) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high. When children play outdoors, they must play in the enclosed play area except during off-site activities described in

Section R381-100-20(5).

(5) There shall be no gaps in fences greater than 5 inches at any point, nor shall gaps between the bottom of the fence and the ground be more than 5 inches.

(6) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.

(7) When in use, the outdoor play area shall be free of animal excrement, harmful plants, objects, or substances, and standing water.

(8) The outdoor play area shall have a shaded area to protect children from excessive sun and heat whenever there are children in the outdoor play area.

(9) An outdoor source of drinking water, such as a drinking fountain, individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to children whenever the outside temperature is 75 degrees or higher.

(10) All outdoor play equipment and areas shall comply with the following safety standards:

(a) All stationary play equipment used by infants and toddlers shall meet the following requirements:

(i) There shall be no designated play surface that exceeds 3 feet in height.

(ii) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 18 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 3 feet in all directions from the perimeter of each piece of equipment.

(B) Use zones may overlap if two pieces of equipment are positioned adjacent to one another, with a minimum of 3 feet between the perimeters of the two pieces of equipment.

(C) The use zone in front of a slide may not overlap the use zone of any other piece of equipment.

(iii) The use zone in the front and rear of all swings shall extend a minimum distance of twice the height from the swing seat to the pivot point of the swing, and shall not overlap the use zone of any other piece of equipment.

(iv) The use zone for the sides of a single-axis swing shall extend a minimum of 3 feet from the perimeter of the structure, and may overlap the use zone of a separate adjacent piece of equipment.

(v) The use zone of a multi-axis swing shall extend a minimum distance of 3 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(vi) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vii) The use zone for spring rockers shall extend a minimum of 3 feet from the at-rest perimeter of the equipment.

(viii) Swings shall have enclosed seats.

(b) All stationary play equipment used by preschoolers or school age children shall meet the following requirements for use zones:

(i) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 20 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.

(B) The use zones of two pieces of equipment that are positioned adjacent to one another may overlap if the designated play surfaces of each structure are no more than 30 inches above the protective surfacing underneath the equipment. In such cases, there shall be a minimum of 6 feet between the adjacent pieces of equipment.

(C) There shall be a minimum use zone of 9 feet between adjacent pieces of equipment if the designated play surface of

one or both pieces of equipment is more than 30 inches above the protective surfacing underneath the equipment.

(ii) The use zone in the front and rear of a single-axis swing shall extend a minimum distance of twice the height of the pivot point of the swing, and may not overlap the use zone of any other piece of equipment.

(iii) The use zone for the sides of a single-axis swing shall extend a minimum of 6 feet from the perimeter of the structure, and may overlap the use zone of a separate piece of equipment.

(iv) The use zone of a multi-axis swing shall extend a minimum distance of 6 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(v) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vi) The use zone for spring rockers shall extend a minimum of 6 feet from the at-rest perimeter of the equipment.

(c) Two-year-olds may play on infant and toddler play equipment.

(d) Protective cushioning is required in all use zones.

(e) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 1. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the depth listed in Table 1. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 1
Depths of Protective Cushioning Required for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Fine Sand		Medium Gravel		Shredded Tires
	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	
4' high or less	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"
Over 5' up to 6'	12"	12"	6"	12"	6"
Over 6' up to 7'	12"	not allowed	9"	not allowed	6"
Over 7' up to 8'	12"	not allowed	12"	not allowed	6"
Over 8' up to 9'	12"	not allowed	12"	not allowed	6"
Over 9' up to 10'	not allowed	not allowed	12"	not allowed	6"
Over 10' up to 11'	not allowed	not allowed	not allowed	not allowed	6"
Over 11' up to 12'	not allowed	not allowed	not allowed	not allowed	6"

(f) If shredded wood products are used as protective cushioning, the depth of the shredded wood shall meet the CPSC guidelines in Table 2.

TABLE 2
Depths of Protective Cushioning Required for Shredded Wood Products

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood Fibers	Wood Chips	Double Shredded Bark Mulch
	4' high or less	6"	6"
Over 4' up to 5'	6"	6"	6"
Over 5' up to 6'	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 8'	12"	9"	9"
Over 8' up to 9'	12"	9"	9"
Over 9' up to 10'	12"	9"	9"
Over 10' up to 11'	12"	12"	12"
Over 11'	12"	not allowed	not allowed

(g) If wood products are used as cushioning material (i) the providers shall maintain documentation from the manufacturer verifying that the material meets ASTM Specification F 1292, which is adopted by reference; and (ii) there shall be adequate drainage under the material.

(h) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:

(i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall maintain documentation from the manufacturer that the material meets these specifications.

(ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(i) Stationary play equipment that has a designated play surface less than the height specified in Table 3, and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

TABLE 3
Heights of Designated Play Surfaces That May Be Placed on Grass

INFANTS and TODDLERS Less than 18"	PRESCHOOLERS Less than 20"	SCHOOL AGE Less than 30"
---------------------------------------	-------------------------------	-----------------------------

(j) On stationary play equipment used by infants and toddlers, protective barriers shall be provided on all play equipment platforms that are over 18 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 24 inches above the surface of the platform.

(k) On stationary play equipment used by preschoolers, protective barriers shall be provided on all play equipment platforms that are over 30 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 29 inches above the surface of the platform.

(l) On stationary play equipment used by school age children, protective barriers shall be provided on all play equipment platforms that are over 48 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 38 inches above the surface of the platform.

(m) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(n) There shall be no strangulation hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(o) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(p) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(11) The provider shall maintain playgrounds and playground equipment to protect children's safety.

R381-100-7. Personnel.

(1) The center must have a director who is at least 21 years of age, who has completed the Center Director Training class offered by the Department, and who has one of the following educational credentials:

(a) an associates, bachelors, or graduate degree from an accredited college and successful completion of at least 12 semester credit hours of early childhood development courses;

(b) valid proof of a level 8, 9, or 10 Utah Early Childhood Career Ladder certification issued by the Utah Office of Child Care or the Utah Child Care Professional Development Institute;

(c) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or

(d) a currently valid National Administrator Credential (NAC) issued by the National Child Care Association, plus one of the following:

(i) valid proof of successful completion of 12 semester credit hours of early childhood development courses from an accredited college; or

(ii) valid proof of completion of the following six Utah Early Childhood Career Ladder courses, or their equivalent, as approved by the Utah Child Care Professional Development Institute: Child Development Ages and Stages, Learning in the Early Years, A Great Place for Kids, Strong and Smart, Learning to Get Along, and Advanced Child Development.

(e) Any bachelors or higher college degree, and valid proof of completion of the following six Utah Early Childhood Career Ladder courses, or their equivalent, as approved by the Utah Child Care Professional Development Institute: Child Development Ages and Stages, Learning in the Early Years, A Great Place for Kids, Strong and Smart, Learning to Get Along, and Advanced Child Development.

(2) Any new Center director must complete the Department's Center Director Training Class no later than 60 working days after assuming director duties.

(3) All caregivers shall be at least 18 years of age.

(4) All assistant caregivers shall be at least 16 years of age, and shall work under the immediate supervision of a caregiver who is at least 18 years of age.

(5) Assistant caregivers may be included in caregiver to child ratios, but shall not be left unsupervised with any child in care.

(6) Assistant caregivers shall meet all of the caregiver requirements under this rule, except the caregiver age requirement of 18 years.

(7) A volunteer may be included in the provider to child ratio only if the volunteer meets all of the caregiver requirements of this rule.

(8) Whenever there are children at the center, there shall be at least one caregiver present who can demonstrate the English literacy skills needed to care for children and respond to emergencies.

(9) Each new director, assistant director, caregiver, assistant caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the caregiver's file and shall include the following topics:

(a) job description and duties;

(b) the center's written policies and procedures;

(c) the center's emergency and disaster plan;

(d) the current child care licensing rules found in Sections R381-100-11 through 24;

(e) introduction and orientation to the children assigned to the caregiver;

(f) a review of the information in the health assessment for each child in their assigned group;

(g) procedure for releasing children to authorized individuals only;

(h) proper cleanup of body fluids;

(i) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(j) obtaining assistance in emergencies, as specified in the center's emergency and disaster plan.

(k) If the center provides infant or toddler care, new caregiver orientation training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

(10) The following individuals shall complete a minimum of 20 hours of child care training each year, based on the center's license date:

(a) the director;

(b) the assistant director, if the center has one;

(c) all caregivers;

(d) all substitutes who work an average of 10 hours a week or more, as averaged over any three month period; and

(e) all volunteers that the provider includes in the provider to child ratio.

(11) Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(12) Caregivers who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the center's relicensure date.

(13) Annual training hours shall include the following topics:

(a) the current child care licensing rules found in Sections R381-100-11 through 24;

(b) a review of the center's written policies and procedures and emergency and disaster plans, including any updates;

(c) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(d) principles of child growth and development, including development of the brain; and

(e) positive guidance.

(14) If the center provides infant or toddler care, annual training topics for the center director and all infant and toddler caregivers shall also include:

(a) preventing shaken baby syndrome and coping with crying babies; and

(b) preventing sudden infant death syndrome.

(15) A minimum of 10 hours of the required annual in-service training shall be face-to-face instruction.

R381-100-8. Administration.

(1) The licensee is responsible for all aspects of the operation and management of the center.

(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care center.

(3) The provider shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The provider shall take all reasonable measures to protect the safety of children in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers children in care.

(5) Either the center director or a designee with authority to act on behalf of the center director shall be present at the facility whenever the center is open for care.

(6) Director designees shall be at least 21 years of age, and

shall have completed their orientation training.

(7) The center director shall be on-site at the center for at least 20 hours per week during operating hours in order to fulfill the duties specified in this rule, and to ensure compliance with this rule.

(8) The center director must have sufficient freedom from other responsibilities to manage the center and respond to emergencies.

(9) There shall be a working telephone at the facility, and the center director shall inform a parent and the Department of any changes to the center's telephone number within 48 hours of the change.

(10) The provider shall report to the Child Care Licensing Program within the next Department business day any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless that medical service was part of the child's medical treatment plan identified by the parent. The provider shall also submit a written report to Child Care Licensing within five working days of the incident.

(11) The duties and responsibilities of the center director include the following:

(a) appoint one or more individuals who meet the background screening and training requirements of this rule to be a director designee, with authority to act on behalf of the center director in his or her absence;

(b) train and supervise staff to:

(i) ensure their compliance with this rule;

(ii) ensure they meet the needs of the children in care as specified in this rule; and

(iii) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

(12) The provider shall establish and follow written policies and procedures for the health and safety of the children in care. The written policies and procedures shall address at least the following areas:

(a) direct supervision and protection of children at all times, including when they are sleeping, using the bathroom, in a mixed group activity, on the playground, and during off-site activities;

(b) maintaining required caregiver to child ratios when the center has more than the expected number of children, or fewer than the scheduled number of caregivers;

(c) procedures to account for each child's attendance and whereabouts;

(d) procedures to ensure that the center releases children to authorized individuals only;

(e) confidentiality and release of information;

(f) the use of movies and video or computer games, including what industry ratings the center allows;

(g) recognizing early signs of illness and determining when there is a need for exclusion from the center;

(h) ensuring that food preparation and diapering handwashing are not done in the same sink in infant and toddler areas;

(i) discipline of children, including behavioral expectations of children and discipline methods used;

(j) transportation to and from off-site activities, or to and from home, if the center offers these services; and

(k) if the program offers transportation to or from school, policies addressing:

(i) how long children will be unattended before and after school;

(ii) what steps will be taken if children fail to meet the vehicle;

(iii) how and when parents will be notified of delays or problems with transportation to and from school; and

(iv) the use of size-appropriate safety restraints.

(13) The provider shall ensure that the written policies and

procedures are available for review by parents, staff, and the Department during business hours.

R381-100-9. Records.

(1) The provider shall maintain the following general records on-site for review by the Department:

(a) documentation of the previous 12 months of fire and disaster drills as specified in R381-10(11)(12)(13)(14);

(b) current animal vaccination records as required in R381-100-22(3);

(c) a six week record of child attendance, including sign-in and sign-out records;

(d) a current local health department inspection;

(e) a current local fire department inspection;

(f) copy of all covered individuals' background screening cards issued by the Department.

(2) The provider shall maintain the following records for each currently enrolled child on-site for review by the Department:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent;

(vi) if available, the name, address, and phone number of an out of area/state emergency contact person for the child; and

(vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) a current annual health assessment form as required in R381-100-14(5);

(c) for each infant, toddler, and preschooler, current immunization records or documentation of a legally valid exemption, as specified in R381-100-14(4);

(d) a transportation permission form, if the center provides transportation services;

(e) a six week record of medication permission forms, and a six week record of medications actually administered; and

(f) a six week record of incident, accident, and injury reports; and

(g) a six week record of eating, sleeping, and diaper changes as required in R381-100-23(12) R381-100-24(15).

(3) The provider shall ensure that information in children's files is not released without written parental permission.

(4) The provider shall maintain the following records for each staff member on-site for review by the Department:

(a) date of initial employment;

(b) copy of the current background screening card issued by the Department;

(c) a six week record of days worked, and the times worked each day;

(d) orientation training documentation for caregivers, and for volunteers who work at the center at least once each month;

(e) annual training documentation for all providers and substitutes who work an average of 10 hours or more a week, as averaged over any three month period; and

(f) current first aid and CPR certification, if applicable as required in R381-100-10(2), R381-100-20(5)(d), and R381-100-21(2).

R381-100-10. Emergency Preparedness.

(1) The provider shall post the center's street address and emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the center.

(2) At least one person at the facility at all times when children are in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The licensee shall maintain first-aid supplies in the center, including at least antiseptic, band-aids, and tweezers.

(4) The provider shall have a written emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) an emergency relocation site where children may be housed if the center is uninhabitable;

(e) a means of posting the relocation site address in a conspicuous location that can be seen even if the center is closed;

(f) the transportation route and means of getting staff and children to the emergency relocation site;

(g) a means of accounting for each child's presence in route to and at the relocation site;

(h) a means of accessing children's emergency contact information and emergency releases; including contact information for an out of area/state emergency contact person for the child, if available;

(i) provisions for emergency supplies, including at least food, water, a first aid kit, diapers if the center cares for diapered children, and a cell phone;

(j) procedures for ensuring adequate supervision of children during emergency situations, including while at the center's emergency relocation site; and

(k) staff assignments for specific tasks during an emergency.

(5) The provider shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(6) The provider shall review the emergency and disaster plan annually, and update it as needed. The provider shall note the date of reviews and updates to the plan on the plan.

(7) The emergency and disaster plan shall be available for immediate review by staff, parents, and the Department during business hours.

(8) The provider shall conduct fire evacuation drills monthly. Drills shall include complete exit of all children and staff from the building.

(9) The provider shall document all fire drills, including:

(a) the date and time of the drill;

(b) the number of children participating;

(c) the name of the person supervising the drill;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(10) The provider shall conduct drills for disasters other than fires at least once every six months.

(11) The provider shall document all disaster drills, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the name of the person supervising the drill; and

(e) any problems encountered.

(12) The center shall vary the days and times on which fire and other disaster drills are held.

R381-100-11. Supervision and Ratios.

(1) The provider shall ensure that caregivers provide and maintain direct supervision of all children at all times.

(2) Caregivers shall actively supervise children on the playground to minimize the risk of injury to a child.

(3) There shall be at least two caregivers with the children at all times when there are more than 8 children or more than 2 infants present.

(4) The licensee shall maintain the minimum caregiver to child ratios and group sizes in Table 5 for single age groups of children.

TABLE 4

Minimum Caregiver to Child Ratios and Group Sizes

Ages of Children	# of Caregivers	# of Children	Maximum Group Size
birth - 23 months	1	4	8
2 years old	1	7	14
3 years old	1	12	24
4 years old	1	15	30
5 years old and school age	1	20	40

(5) A center constructed prior to 1 January 2004 which has been licensed and operated as a child care center continuously since 1 January 2004 is exempt from maximum group size requirements, if the required caregiver to child ratios are maintained, and the required square footage for each classroom is maintained.

(6) Mixed age groups shall meet the ratios and group sizes specified in Tables 5-15.

TABLE 5

Two-year-olds and Three-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	3	1-9
	Total children: up to 10	
2	2	1-13
	3	1-19
	Total children: up to 20	

TABLE 6

Two-year-olds and Four-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	4	1-10
	Total children: up to 11	
2	2	1-13
	4	1-21
	Total children: up to 22	

TABLE 7

Two-year-olds and Five-twelve Year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	5-12	1-13
	Total children: up to 14	
2	2	1-13
	5-12	1-27
	Total children: up to 28	

TABLE 8

Three-year-olds and Four-year-olds

# Caregivers Required	Age	# Children Present
1	3	1-11
	4	1-13
	Total children: up to 14	
2	3	1-23
	4	1-27
	Total children: up to 28	

TABLE 9

Three-year-olds and Five-twelve Year-olds

# Caregivers Required	Age	# Children Present
1	3	1-11
	5-12	1-15
	Total children: up to 16	
2	3	1-23
	5-12	1-31
	Total children: up to 32	

TABLE 10

Four-year-olds and Five-twelve Year-olds

# Caregivers Required	Age	# Children Present
1	4	1-14
	5-12	1-17
	Total children: up to 18	
2	4	1-29
	5-12	1-35
	Total children: up to 36	

TABLE 11

Two-year-olds, Three-year-olds, and Four-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	3	1-9
	4	1-9
	Total children: up to 11	
2	2	1-13
	3	1-20
	4	1-20
	Total children: up to 22	

TABLE 12

Two-year-olds, Three-year-olds, and Five-twelve Year Olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	3	1-11
	5-12	1-11
	Total children: up to 13	
2	2	1-13
	3	1-24
	5-12	1-24
	Total children: up to 26	

TABLE 13

Two-year-olds, Four-year-olds, and Five-twelve Year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	4	1-12
	5-12	1-12
	Total: up to 14	
2	2	1-13
	4	1-26
	5-12	1-26
	Total children: up to 28	

TABLE 14

Three-year-olds, Four-year-olds, and Five-twelve Year-olds

# Caregivers Required	Age	# Children Present
1	3	1-11
	4	1-14
	5-12	1-14
	Total: up to 16	
2	3	1-23
	4	1-30
	5-12	1-30
	Total children: up to 32	

TABLE 15

Two-year-olds, Three-year-olds, Four-year-olds, and Five-11-year-olds

# Caregivers Required	Age	# Children Present
1	2	1-6
	3	1-11
	4	1-11
	5-12	1-11
	Total children: up to 14	
2	2	1-13
	3	1-25
	4	1-25
	5-12	1-25
	Total children: up to 28	

(7) Infants and toddlers may be included in mixed age groups only when 8 or fewer children are present in the group.

(8) If more than 2 infants or toddlers are included in a mixed age group, there shall be at least 2 caregivers with the group.

(9) During nap time the caregiver to child ratio may double for not more than two hours for children age 18 months and older, if the children are in a restful or non-active state, and if a means of communication is maintained with another caregiver who is on-site. The caregiver supervising the napping children must be able to contact the other on-site caregiver without having to leave children unattended in the napping area.

(10) The children of the licensee or any employee, age four or older, are not counted in the caregiver to child ratios when the parent of the child is working at the center, but are counted in the maximum group size.

R381-100-12. Injury Prevention.

(1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The provider shall ensure that walkways are free of tripping hazards such as unsecured flooring or cords.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.

(4) The following items shall be inaccessible to children:
 (a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, e-cigarettes, e-juice, e-liquids, alcohol, illegal substances, and sexually explicit material;

(c) when in use, portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, wires and chains long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children under age 3 shall not have a designated play surface that exceeds 3 feet in height.

(a) If such equipment has an elevated designated play surface less than 18 inches in height, it shall not be placed on a hard surface, such as wood, tile, linoleum, or concrete, and shall have a three foot use zone.

(b) If such equipment has an elevated designated play surface that is 18 inches to 3 feet in height, it shall be surrounded by mats at least 2 inches thick, or cushioning that meets ASTM Standard F1292, in a three foot use zone.

(10) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children age 3 and older shall not have a designated play surface that exceeds 5-1/2 feet in height.

(a) If such equipment has an elevated designated play surface less than 3 feet in height, it shall be surrounded by protective cushioning material, such as mats at least 1 inch thick, in a six foot use zone.

(b) If such equipment has an elevated designated play surface that is 3 feet to 5-1/2 feet in height, it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.

(11) There shall be no trampolines on the premises that are accessible to any child in care.

(12) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;

(b) the provider shall maintain the pool in a safe manner;

(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and

(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.

(13) If wading pools are used:

(a) a caregiver must be at the pool supervising children whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants while in the pool; and

(c) the pool shall be emptied and sanitized after each use by a separate group of children.

R381-100-13. Parent Notification and Child Security.

(1) The provider shall post a copy of the Department's child care guide in the center for parents' review during business hours.

(2) Parents shall have access to the center and their child's classroom at all times their child is in care.

(3) The provider shall ensure the following procedures are followed when children arrive at the center or leave the center:

(a) Each child must be signed in and out of the center, including the date and time the child arrives or leaves.

(b) Persons signing children into the center shall use identifiers, such as a signature, initials, or electronic code.

(c) Persons signing children out of the center shall use identifiers, such as a signature, initials, or electronic code, and shall have photo identification if they are unknown to the provider.

(d) Only parents or persons with written authorization from the parent may take any child from the center. In an

emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(e) School age children may sign themselves in and out of the center with written permission from their parent.

(4) The provider shall give parents a written report of every incident, accident, or injury involving their child on the day of occurrence. The caregivers involved, the center director, and the person picking the child up shall sign the report on the day of occurrence. If a school age child signs himself or herself out of the center, a copy of the report shall be sent to the parent on the day following the occurrence.

(5) If a child is injured and the injury appears serious but not life threatening, the provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

(6) In the case of a life threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb, the provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, the provider shall attempt to contact the child's emergency contact person.

R381-100-14. Child Health.

(1) The licensee shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All staff shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of tobacco, alcohol, illegal substances, or sexually explicit material on the premises or in center vehicles is prohibited any time that children are in care.

(4) The provider shall not admit any infant, toddler, or preschooler to the center without documentation of:

(a) proof of current immunizations, as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

(5) The provider shall not admit any child to the center without a signed health assessment completed by the parent which shall include:

(a) allergies;

(b) food sensitivities;

(c) acute and chronic medical conditions;

(d) instructions for special or non-routine daily health care;

(e) current medications; and,

(f) any other special health instructions for the caregiver.

(6) The provider shall ensure that each child's health assessment is reviewed, updated, and signed or initialed by the parent at least annually.

R381-100-15. Child Nutrition.

(1) If food service is provided:

(a) The provider shall ensure that the center's meal service complies with local health department food service regulations.

(b) Foods served by centers not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, menus provided by the CACFP, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.

(c) Centers not currently participating and in good standing with the CACFP shall keep a six week record of foods

served at each meal or snack.

(d) The provider shall make available the current week's menu for parent review.

(2) The provider shall offer meals or snacks at least once every three hours.

(3) The provider shall serve children's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the children's hands. The provider shall not place food on a bare table.

(4) The provider shall ensure that caregivers who serve food to children are aware of food allergies and sensitivities for the children in their assigned group, and that children are not served the food or drink they have an allergy or sensitivity to.

(5) The provider shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name, and refrigerated if needed, and shall ensure that the food or drink is only consumed by that child.

R381-100-16. Infection Control.

(1) Staff shall wash their hands thoroughly with liquid soap and warm running water at the following times:

- (a) before handling or preparing food or bottles;
- (b) before and after eating meals and snacks or feeding children;
- (c) before and after diapering a child;
- (d) after using the toilet or helping a child use the toilet;
- (e) before administering medication;
- (f) after coming into contact with body fluids, including breast milk;
- (g) after playing with or handling animals;
- (h) when coming in from outdoors; and
- (i) after cleaning or taking out garbage.

(2) The provider shall ensure that children wash their hands thoroughly with liquid soap and warm running water at the following times:

- (a) before and after eating meals and snacks;
 - (b) after using the toilet;
 - (c) after coming into contact with body fluids;
 - (d) after playing with animals; and
 - (e) when coming in from outdoors.
- (3) Only single use towels from a covered dispenser or an electric hand-drying device may be used to dry hands.
- (4) The provider shall ensure that toilet paper is accessible to children, and that it is kept on a dispenser.

(5) The provider shall post handwashing procedures that are readily visible from each handwashing sink, and they shall be followed.

(6) Caregivers shall teach children proper hand washing techniques and shall oversee hand washing whenever possible.

(7) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by staff on more than one child, and shall be stored so that they do not touch each other.

(8) The provider shall clean and sanitize all washable toys and materials weekly, or more often if necessary.

(9) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The provider shall wash stuffed animals, cloth dolls, dress-up clothes, and pillows or covers weekly.

(10) If water play tables or tubs are used, they shall be washed and sanitized daily, and children shall wash their hands prior to engaging in the activity.

(11) Persons with contagious TB shall not work or volunteer in the center.

(12) Children's clothing shall be changed promptly if they have a toileting accident.

(13) Children's clothing which is wet or soiled from body

fluids:

(a) shall not be rinsed or washed at the center; and
 (b) shall be placed in a leakproof container, labeled with the child's name, and returned to the parent.

(14) If the center uses a potty chair, the provider shall clean and sanitize the chair after each use.

(15) Staff who prepare food in the kitchen shall not change diapers or assist in toileting children.

(16) The center shall have a portable body fluid clean up kit.

(a) All staff shall know the location of the kit and how to use it.

(b) The provider shall use the kit to clean up spills of body fluids.

(c) The provider shall restock the kit as needed.

(17) The center shall not care for children who are ill with an infectious disease, except when a child shows signs of illness after arriving at the center.

(18) The provider shall separate children who develop signs of an infectious disease after arriving at the center from the other children in a safe, supervised location.

(19) The provider shall contact the parents of children who are ill with an infectious disease and ask them to immediately pick up their child. If the provider cannot reach the parent, the provider shall contact the individuals listed as emergency contacts for the child and ask them to pick up the child.

(20) The provider shall notify the local health department, on the day of discovery, of any reportable infectious diseases among children or caregivers, or any sudden or extraordinary occurrence of a serious or unusual illness, as required by the local health department.

(21) The provider shall post a parent notice at the center when any staff or child has an infectious disease or parasite.

(a) The provider shall post the notice in a conspicuous location where it can be seen by all parents.

(b) The provider shall post and date the notice the same day the disease or parasite is discovered, and the notice shall remain posted for at least 5 days.

R381-100-17. Medications.

(1) If medications are given, they shall be administered to children only by a provider trained in the administration of medications as specified in this rule.

(2) All over-the-counter medications provided by parents and all prescription medications shall:

- (a) be labeled with the child's full name;
- (b) be kept in the original or pharmacy container;
- (c) have the original label; and,
- (d) have child-safety caps.

(3) All non-refrigerated medications shall be inaccessible to children and stored in a container or area that is locked, such as a locked room, cupboard, drawer, or a lockbox. The provider shall store all refrigerated medications in a leakproof container.

(4) The provider shall have a written medication permission form completed and signed by the parent prior to administering any over-the-counter or prescription medication to a child. The permission form must include:

- (a) the name of the child;
- (b) the name of the medication;
- (c) written instructions for administration; including:
 - (i) the dosage;
 - (ii) the method of administration;
 - (iii) the times and dates to be administered; and
 - (iv) the disease or condition being treated; and
- (d) the parent signature and the date signed.

(5) If the provider keeps over-the-counter medication at the center that is not brought in by a parent for their child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent

must be either:

- (a) prior written consent; or
- (b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent or person picking up the child signs upon picking up the child.
- (6) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication prior to the time the medication needs to be given.
- (7) When administering medication, the provider administering the medication shall:
 - (a) wash their hands;
 - (b) check the medication label to confirm the child's name;
 - (c) compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;
 - (d) administer the medication; and
 - (e) immediately record the following information:
 - (i) the date, time, and dosage of the medication given;
 - (ii) the signature or initials of the provider who administered the medication; and,
 - (iii) any errors in administration or adverse reactions.
- (8) The provider shall report any adverse reaction to a medication or error in administration to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

R381-100-18. Napping.

- (1) The center shall provide children with a daily opportunity for rest or sleep in an environment that provides subdued lighting, a low noise level, and freedom from distractions.
- (2) Scheduled nap times shall not exceed two hours daily.
- (3) A separate crib, cot, mat, or other sleeping equipment shall be used for each child during nap times.
- (4) Mats and mattresses used for napping shall have a smooth, waterproof surface.
- (5) The provider shall maintain sleeping equipment in good repair.
- (6) If sleeping equipment is clearly assigned to and used by an individual child, the provider must clean and sanitize it as needed, but at least weekly.
- (7) If sleeping equipment is not clearly assigned to and used by an individual child, the provider must clean and sanitize it prior to each use.
- (8) The provider must either store sleeping equipment so that the surfaces children sleep on do not touch each other, or else clean and sanitize sleeping equipment prior to each use.
- (9) A sheet and blanket or acceptable alternative shall be made available to each child during nap time. These items shall be:
 - (a) clearly assigned to one child;
 - (b) stored separately from other children's when not in use; and,
 - (c) laundered as needed, but at least once a week, and prior to use by another child.
- (10) The provider shall space cribs, cots, and mats a minimum of 2 feet apart when in use, to allow for adequate ventilation, easy access, and ease of exiting.
- (11) Cots and mats may not block exits.

R381-100-19. Child Discipline.

- (1) The provider shall inform caregivers, parents, and children of the center's behavioral expectations for children.
- (2) The provider may discipline children using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.
- (3) Caregivers may use gentle, passive restraint with

children only when it is needed to stop children from injuring themselves or others or from destroying property.

- (4) Discipline measures shall not include any of the following:
 - (a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;
 - (b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above.
 - (c) shouting at children;
 - (d) any form of emotional abuse;
 - (e) forcing or withholding of food, rest, or toileting; and,
 - (f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R381-100-20. Activities.

- (1) The provider shall post a daily schedule for preschool and school-age groups. The daily schedule shall include, at a minimum, meal, snack, nap/rest, and outdoor play times.
- (2) Daily activities shall include outdoor play if weather permits.
- (3) The provider shall offer activities to support each child's healthy physical, social-emotional, and cognitive-language development. The provider shall post a current activity plan for parent review listing these activities in preschool and school age groups.
- (4) The provider shall make the toys and equipment needed to carry out the activity plan accessible to children.
- (5) If off-site activities are offered:
 - (a) the provider shall obtain written parental consent for each activity in advance;
 - (b) caregivers shall take written emergency information and releases with them for each child in the group, which shall include:
 - (i) the child's name;
 - (ii) the parent's name and phone number;
 - (iii) the name and phone number of a person to notify in the event of an emergency if the parent cannot be contacted;
 - (iv) the names of people authorized by the parents to pick up the child; and
 - (v) current emergency medical treatment and emergency medical transportation releases;
 - (c) the provider shall maintain required caregiver to child ratios and direct supervision during the activity;
 - (d) at least one caregiver present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification;
 - (e) caregivers shall take a first aid kit with them;
 - (f) children shall wear or carry with them the name and phone number of the center, but children's names shall not be used on name tags, t-shirts, or other identifiers; and
 - (g) caregivers shall provide a way for children to wash their hands as specified in R381-100-16(2). If there is no source of running water, caregivers and children may clean their hands with wet wipes and hand sanitizer.
- (6) If swimming activities are offered, caregivers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the caregiver to child ratio.

R381-100-21. Transportation.

- (1) Any vehicle used for transporting children shall:
 - (a) be enclosed;
 - (b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;
 - (c) have a current vehicle registration and safety inspection;

- (d) be maintained in a safe and clean condition;
- (e) maintain temperatures between 60-90 degrees Fahrenheit when in use;
- (f) contain a first aid kit; and
- (g) contain a body fluid clean up kit.
- (2) At least one adult in each vehicle transporting children shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification.
- (3) The adult transporting children shall:
 - (a) have and carry with them a current valid Utah driver's license, for the type of vehicle being driven, whenever they are transporting children;
 - (b) have with them written emergency contact information for all of the children being transported;
 - (c) ensure that each child being transported is wearing an appropriate individual safety restraint;
 - (d) ensure that no child is left unattended by an adult in the vehicle;
 - (e) ensure that all children remain seated while the vehicle is in motion;
 - (f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and,
 - (g) ensure that the vehicle is locked during transport.

R381-100-22. Animals.

- (1) The provider shall inform parents of the types of animals permitted at the facility.
- (2) All animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.
- (3) All animals at the facility shall have current immunizations for all vaccine preventable diseases that are transmissible to humans. The center shall have documentation of the vaccinations.
- (4) There shall be no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.
- (5) Infants, toddlers, and preschoolers shall not assist with the cleaning of animals or animal cages, pens, or equipment.
- (6) If a school age child assists in the cleaning of animals or animal equipment, the child shall wash his or her hands immediately after cleaning the animal or equipment.
- (7) There shall be no animals or animal equipment in food preparation or eating areas.
- (8) Children shall not handle reptiles or amphibians.

R381-100-23. Diapering.

If the center diapers children, the following applies:

- (1) Caregivers shall change children's diapers at a diaper changing station. Diapers shall not be changed on surfaces used for any other purpose.
- (2) Each diapering station shall be equipped with railings to prevent a child from falling when being diapered.
- (3) Caregivers shall not leave children unattended on the diapering surface.
- (4) The diapering surface shall be smooth, waterproof, and in good repair.
- (5) The provider shall post diapering procedures at each diapering station and ensure that they are followed.
- (6) Caregivers shall clean and sanitize the diapering surface after each diaper change.
- (7) Caregivers shall wash their hands before and after each diaper change.
- (8) Caregivers shall place soiled disposable diapers in a container that has a plastic lining and a tightly fitting lid.
- (9) The provider shall daily clean and sanitize containers where wet and soiled diapers are placed.
- (10) If cloth diapers are used:
 - (a) they shall not be rinsed at the center; and

(b) after a diaper change, the caregiver shall place the cloth diaper directly into a leakproof container that is inaccessible to children and labeled with the child's name, or a leakproof diapering service container.

(11) Caregivers shall change children's diapers promptly when they are wet or soiled, and shall check diapers at least once every two hours.

(12) Caregivers shall keep a written record daily for each infant and toddler documenting their diaper changes. The record shall be completed within an hour of each diaper change, and shall include the child's name, the time of the diaper change, and whether the diaper was dry, wet, soiled, or both.

(13) Care givers whose designated responsibility includes the care of diapered children shall not prepare food for children or staff outside of the classroom area used by the diapered children.

R381-100-24. Infant and Toddler Care.

If the center cares for infants or toddlers, the following applies:

(1) The provider shall not mix infants and toddlers with older children, unless there are 8 or fewer children present in the group.

(2) Infants and toddlers shall not use outdoor play areas at the same time as older children unless there are 8 or fewer children present in the group.

(3) If an infant is not able to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(4) The provider shall clean and sanitize high chair trays prior to each use.

(5) The provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. The provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(6) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:

- (a) labeled with the child's name;
- (b) labeled with the date and time of preparation or opening of the container, such as a jar of baby food;
- (c) kept refrigerated if needed; and
- (d) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(7) Formula and milk, including breast milk, shall be discarded after feeding, or within two hours of initiating a feeding.

(8) To prevent burns, heated bottles shall be shaken and tested for temperature before being fed to children.

(9) Pacifiers, bottles, and non-disposable drinking cups shall be labeled with each child's name, and shall not be shared.

(10) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.

(11) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. Infants shall not be placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment.

- (12) Cribs must:
 - (a) have tight fitting mattresses;
 - (b) have slats spaced no more than 2-3/8 inches apart;
 - (c) have at least 20 inches from the top of the mattress to the top of the crib rail;
 - (d) not have strings, cords, ropes, or other entanglement hazards strung across the crib rails; and
 - (e) meet CPSC crib standards.

(13) Infants shall not be placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(14) Each infant and toddler shall follow their own pattern of sleeping and eating.

(15) Caregivers shall keep a written record daily for each infant documenting their eating and sleeping patterns. The record shall be completed within an hour of each feeding or nap, and shall include the child's name, the food and beverages eaten, and the times the child slept.

(16) Walkers with wheels are prohibited.

(17) Infants and toddlers shall not have access to objects made of styrofoam.

(18) Caregivers shall respond as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(19) Awake infants and toddlers shall receive positive physical stimulation and positive verbal interaction with a caregiver at least once every 20 minutes.

(20) Awake infants and toddlers shall not be confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(21) Mobile infants and toddlers shall have freedom of movement in a safe area.

(22) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. There shall be enough toys for each child in the group to be engaged in play with toys.

(23) All toys used by infants and toddlers shall be cleaned and sanitized:

- (a) weekly;
- (b) after being put in a child's mouth before another child plays with it; and
- (c) after being contaminated by body fluids.

R381-100-25. Penalty.

The Department may impose civil money penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter.

**KEY: child care facilities, child care, child care centers
January 31, 2016 26-39-203(1)(a)**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.****R414-320-1. Authority and Purpose.**

(1) This rule is authorized by Sections 26-1-5 and 26-18-3 and allowed under Section 1115(a) of the Social Security Act.

(2) This rule establishes the eligibility requirements for enrollment and the benefits enrollees receive under the Health Insurance Flexibility and Accountability Demonstration Waiver (HIFA), which is Utah's Premium Partnership for Health Insurance (UPP).

R414-320-2. Definitions.

The definitions in Section 26-40-102 and Rules R414-1 and R414-301 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "Adult" means an individual who is 19 years of age or older.

(2) "Avenue H" means Utah's Health Marketplace where Utah employers and their employees can find information about available employer-sponsored health insurance plans, select a plan, and enroll online.

(3) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(4) "Children's Health Insurance Program" or (CHIP) means the program for medical benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(5) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

(6) "Employer-sponsored health plan" means a health insurance plan offered by an employer either directly or through the Utah Health Exchange.

(7) "Enrollee" means an individual who applies for and is found eligible for the UPP program, and is receiving UPP benefits.

(8) "Open enrollment" means a period during which the eligibility agency accepts applications for the UPP program.

(9) "Primary Care Network" or (PCN) means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(10) "Public Institution" means an institution that is the responsibility of a governmental unit or is under the administrative control of a governmental unit.

(11) "Review month" means the last month of the certification period for an enrollee during which the eligibility agency redetermines the enrollee's eligibility for a new certification period.

(12) "UPP Qualified Health Plan" means a health plan that meets all of the following requirements:

(a) Health plan coverage includes:

(i) physician visits;

(ii) hospital inpatient services;

(iii) pharmacy services;

(iv) well child visits; and

(v) children's immunizations.

(b) Lifetime maximum benefits must be at least \$1,000,000.

(c) The deductible may not exceed \$2,500 per individual.

(d) The plan must pay at least 70% of an inpatient stay after the deductible.

(e) The employer contributes at least 50% of the cost of the employee's health insurance premium when the plan is offered directly through the employer. If the employer offers plans through the Utah Health Exchange, the employer must contribute at least 50% of the cost of the employee's health insurance premium for either the employer's default plan or the

plan the employee selects. If the plan is a Consolidated Omnibus Budget Reconciliation Act (COBRA) plan, the employer does not have to contribute to the premium.

(f) The plan does not cover any abortion services; or the plan only covers abortion services in the case where the life of the mother would be endangered if the fetus were carried to term or in the case of rape or incest.

(13) "Utah's Premium Partnership for Health Insurance" or (UPP) means a medical assistance program that provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan, including employer-sponsored health plans available under Avenue H, or COBRA coverage that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

R414-320-3. Applicant and Enrollee Rights and Responsibilities.

(1) The provisions of Section R414-301-4 apply to applicants and enrollees of the UPP program except that reportable changes for UPP applicants and enrollees are defined in Subsection R414-320-3(2).

(2) An applicant or enrollee must report certain changes to the eligibility agency within ten calendar days of learning of the change. The eligibility agency shall notify the applicant at the time of application of the changes that the individual must report. Reportable changes include:

(a) An enrollee stops paying for coverage under an employer-sponsored health plan or COBRA coverage;

(b) An enrollee changes health insurance plans;

(c) The amount of the premium that the enrollee pays for an employer-sponsored health insurance plan or COBRA coverage changes;

(d) An enrollee begins to receive coverage under, or begins to have access to Medicare or the Veteran's Administration Health Care System;

(e) An enrollee leaves the household or dies;

(f) An enrollee or the household moves out of state;

(g) Change of address of an enrollee or the household; or

(h) An enrollee enters a public institution or an institution for mental diseases.

(3) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-6 and R414-301-7.

(4) An enrollee must continue to pay premiums and remain enrolled in an employer-sponsored health plan or COBRA coverage to be eligible for benefits.

(5) An eligible child may choose to enroll in his parent's or guardian's employer-sponsored health insurance plan or COBRA coverage and receive UPP benefits, or may choose direct coverage through CHIP. A child under the age of 19 may enroll in an employer-sponsored health insurance plan offered by the child's employer or COBRA coverage and UPP, or may choose direct coverage through CHIP.

R414-320-4. General Eligibility Requirements.

(1) The provisions of Sections R414-302-3, R414-302-4, R414-302-7, and R414-302-8 concerning United States (U.S.) citizenship, alien status, state residency, use of social security numbers, and applying for other benefits, apply to adult applicants and enrollees of UPP.

(2) The provisions of Sections R382-10-6, R382-10-7, and R382-10-9 concerning U.S. citizenship, alien status, state residency and social security numbers apply to child applicants and enrollees.

(3) An individual who is not a U.S. citizen or national, or who does not meet the alien status requirements of Sections R414-302-3 or R382-10-6 is not eligible for any services or benefits under the UPP program.

(4) Health plans must meet the criteria of being an UPP qualified health plan.

(5) An individual must apply for the UPP program before he turns 65 years of age. Enrollment shall end effective the end of the month in which an individual turns 65 years of age.

(6) The eligibility agency only accepts applications during open enrollment periods. The eligibility agency may limit the number of individuals it enrolls.

(a) The eligibility agency may stop enrollment of new individuals at any time.

(b) The open enrollment period may be limited to:

(i) adults with children living in the home;

(ii) adults without children living in the home, or;

(iii) other groups designated in advance by the eligibility agency consistent with efficient administration of the program.

(c) The eligibility agency may not accept applications or maintain waiting lists during a period that it stops enrollment of new individuals.

(d) A child is not subject to the open enrollment requirement to enroll in UPP.

(7) Residents of public institutions are not eligible for UPP.

(a) A child under the age of 18 is not a resident of an institution if the child is living temporarily in the institution while arrangements are being made for other placement.

(b) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

(8) The eligibility agency may not require an applicant or enrollee for the UPP program to provide Duty of Support information. An adult whose eligibility for Medicaid has been denied or terminated for failure to cooperate with Duty of Support requirements may not enroll in the UPP program.

R414-320-5. Verification and Information Exchange.

(1) An applicant and enrollee must provide verification of eligibility factors as requested by the eligibility agency and in accordance with the provisions of Section R414-308-4.

(2) The Department shall enter into agreements with other government agencies as outlined in Section R414-301-3.

(3) The eligibility agency shall safeguard information about applicants and enrollees to comply with the provisions of Section R414-301-5.

R414-320-6. Creditable Health Coverage.

(1) The Department adopts and incorporates by reference 42 CFR 433.138(b), October 1, 2013 ed.

(2) An applicant who is covered under a group health plan or other creditable health insurance coverage, as defined in 29 CFR 2590.701-4, July 1, 2013 ed., is not eligible for enrollment.

(3) An applicant who is covered by COBRA coverage may be eligible for UPP enrollment.

(4) An individual is not eligible for UPP if the individual becomes eligible for Refugee Medical without a spenddown as defined in Section R414-303-10. An individual who is eligible for Refugee Medical with a spenddown may choose to enroll in either Refugee Medical or UPP.

(5) The following requirements apply to an individual who has access to but has not yet enrolled in employer-sponsored health insurance:

(a) If the individual's cost for the employer-sponsored coverage offered by the employer directly, or for the employer's default plan offered through Avenue H, is less than 5% of the countable MAGI-based income for the individual's household, the individual is not eligible for the UPP program.

(b) If the individual's cost for the employer-sponsored coverage offered by the employer directly, or for the employer's default plan offered through Avenue H, equals or exceeds 5% of the countable MAGI-based income for the individual's household, the individual may enroll in UPP.

(i) An eligible child may choose enrollment in either UPP or CHIP.

(ii) If the cost of coverage exceeds 15% for an adult, the individual may enroll in either UPP or PCN. To enroll in PCN, it must be an open enrollment period and the individual must meet the PCN criteria.

(c) The cost of coverage includes a deductible if the employer-sponsored plan has a deductible.

(d) The eligibility agency will include in the cost of coverage for the spouse or dependent child, the cost to enroll the employee if the employee must be enrolled to enroll the spouse or dependent child.

(6) An eligible individual who has access to or who is enrolled in a COBRA plan may choose to enroll in UPP and the COBRA plan if the individual's cost for the COBRA plan exceeds 5% of the countable MAGI-based income for the individual's household.

(7) An individual who could enroll in Medicare is not eligible for UPP enrollment, even if the individual must wait for a Medicare open enrollment period to apply.

(8) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for UPP enrollment.

(a) An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must apply for and take all necessary steps to enroll in the VA Health Care System.

(b) Eligibility for the UPP program ends once the individual's coverage in the VA Health Care System begins.

(9) An individual who voluntarily terminates health insurance coverage is ineligible to enroll in UPP for 90 days from the date the coverage ends.

(a) The eligibility agency may not apply a 90-day waiting period in the following situations:

(i) The premium paid by the individual or family for coverage of the individual or family member exceeded 5% of the MAGI-based household income.

(ii) The cost of the premium paid and deductible that includes the individual for the family coverage health plan exceeds 9.5% of the MAGI-based household income.

(iii) An employer stopped offering coverage under an ESI.

(iv) Loss of coverage due to a change in employment or involuntary separation.

(v) The individual has special health care needs as defined by the Department.

(vi) Loss of coverage due to the death or divorce of an UPP individual.

(vii) Voluntary termination of COBRA.

(viii) Voluntary termination of Utah Comprehensive Health Insurance Pool coverage.

(ix) Voluntary termination of coverage for an adult child from the parent's or guardian's ESI plan.

(x) Voluntary termination of coverage by a spouse who does not live in the same household as the UPP applicant.

(xi) Voluntary termination of coverage for a child from a non-custodial parent's ESI plan.

(xii) The individual is voluntarily terminated from insurance that does not provide coverage in Utah;

(xiii) The individual is voluntarily terminated from a limited health insurance plan;

(xiv) A child is terminated from a parent's insurance because ORS reverses the forced enrollment requirement due to the insurance being unaffordable.

(b) The eligibility agency will determine the individual's eligibility at the end of the waiting period without requiring a new application.

(i) The agency may request information about changes in

the individual's circumstances that may affect eligibility.

(ii) If eligible, enrollment in UPP can begin in the month in which the 90-day ineligibility period ends.

(10) An individual is eligible to enroll in UPP if the individual's prior health insurance coverage expires before the end of the calendar month that follows the month in which he applies for UPP, and the individual has access to another employer-sponsored health insurance plan that meets the criteria of an UPP qualified health plan. The UPP enrollment date must be after the prior health insurance coverage ends.

(11) An eligible individual with access to an employer-sponsored health plan who also has creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program.

R414-320-7. Household Composition and Income Provisions.

(1) The Department determines household composition and countable household income according to the provisions in R414-304-5.

(2) For an individual to be eligible to enroll, countable MAGI-based income for the individual's household must be equal to or less than 200% of the federal poverty guideline for the applicable household size.

R414-320-8. Budgeting.

(1) The Department shall apply the MAGI-based budgeting methodology defined at 42 CFR 435.603(c), (d), (e), (g) and (h), October 1, 2013 ed., which it adopts and incorporates by reference.

(2) The eligibility agency determines an individual's eligibility prospectively for the upcoming certification period at the time of application and at each review for continuing eligibility.

(a) The eligibility agency determines prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming certification period.

(b) The eligibility agency shall include in the best estimate, reasonably predictable income expected to be received during the review period, such as seasonal income, contract income, income received at irregular intervals, or income received less often than monthly. The income will be prorated over the review period to determine an average monthly income.

(3) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The eligibility agency may use a combination of methods to obtain the best estimate. The best estimate may be a monthly amount that the household expects to receive each month of the certification period, or an annual amount that is prorated over the certification period. The eligibility agency may use different methods for different types of income that a household receives.

(4) The eligibility agency determines farm and self-employment income by using the individual's most recent tax return forms or other verification the individual can provide. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the eligibility agency may request income information from the most recent period that the individual had farm or self-employment income. The eligibility agency shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses to determine net self-employment income, if those expenses are expected to occur in the future.

R414-320-9. Assets.

An asset test is not required for UPP eligibility.

R414-320-10. Application and Signature.

(1) The provisions of Section R414-308-3 apply to

applicants of the UPP program, except for paragraph (9), (10) and the three months of retroactive coverage.

(2) The eligibility agency shall reinstate an UPP case without requiring a new application if the case closes in error.

(3) An applicant may withdraw an application any time before the eligibility agency completes an eligibility decision on the application.

R414-320-11. Eligibility Decisions and Eligibility Reviews.

(1) The Department adopts and incorporates by reference 42 CFR 435.911 and 435.912, October 1, 2013 ed., regarding eligibility determinations.

(2) At application and review, the eligibility agency shall determine whether the individual applying for UPP enrollment is eligible for Medicaid or Refugee Medical.

(a) An individual who qualifies for Medicaid without paying a spenddown or a Medicaid Work Incentive (MWI) premium may not enroll in the UPP program.

(b) An individual who qualifies for Refugee Medical without paying a spenddown may not enroll in the UPP program.

(c) An individual who must pay a spenddown or MWI premium to receive Medicaid or pay a spenddown for Refugee Medical may enroll in UPP if the individual elects not to receive Medicaid or Refugee Medical.

(3) An individual who is open for Medicaid, Refugee Medical, PCN, or CHIP may request to enroll in the UPP program.

(a) A new application form is not required.

(b) The rules in Section R414-320-12 govern the effective date of enrollment.

(c) A new income test must be completed for the individual. If the individual's income places the UPP household over the income limit for UPP, the individual is not eligible to enroll in UPP.

(d) If the individual is moving from PCN or CHIP, the eligibility agency shall waive the open enrollment requirement if there is no break in coverage.

(e) If the individual was previously on UPP, became eligible for Medicaid or Refugee Medical, and requests to reenroll in UPP without a break in coverage, the eligibility agency shall waive the open enrollment period and the requirement in Subsection 414-320-6(2).

(f) If the individual is moving from Medicaid or Refugee Medical and was not previously on UPP, or there has been a break in coverage of one or more months, an adult individual must reapply during an open enrollment period.

(g) For a PCN or CHIP individual who enrolls in an employer-sponsored health plan, the eligibility agency shall waive the requirement found in Subsection 414-320-6(2) if the change is reported within ten calendar days of signing up for coverage or within ten calendar days after coverage begins, whichever is later.

(h) All other eligibility requirements must be met.

(4) The eligibility agency shall process each application to a decision unless:

(a) the applicant voluntarily withdraws the application and the eligibility agency sends a notice to the applicant to confirm the withdrawal;

(b) the applicant dies;

(c) the applicant cannot be located; or

(d) the applicant does not respond to requests for information within the 30-day application period or by the verification due date, if that date is later.

(5) The eligibility agency shall complete a periodic review of an enrollee's eligibility for medical assistance in accordance with the requirements of 42 CFR 435.916.

(a) The agency may request a recipient to contact the agency to complete the eligibility review.

(b) The agency shall provide the recipient a written request for verification needed to complete the review.

(c) The agency shall provide proper notice of an adverse decision.

(d) If the agency cannot provide proper notice of an adverse decision, the agency extends eligibility to the following month to allow for proper notice.

(6) If a recipient fails to respond to a request to complete the review or fails to provide all requested verification to complete the review, the eligibility agency shall end eligibility effective the end of the month for which the agency sends proper notice to the recipient.

(a) If the recipient contacts the agency to complete the review or returns all requested verification within three calendar months of the closure date, the eligibility agency shall treat such contact or receipt of verification as a new application. The agency may not require a new application form.

(b) The application processing period applies to this request to reapply.

(c) Eligibility can begin in the month the client contacts the agency to complete the review if all verification is received within the application processing period.

(d) If the recipient fails to return the verification timely, but before the end of the three calendar months, eligibility becomes effective the first day of the month in which all verification is provided and the individual is found eligible.

(e) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(f) During these three calendar months, the eligibility agency shall waive the open enrollment period requirement and the requirement at Subsection R414-320-6(2).

(g) If the enrollee does not respond to the request to complete a review for UPP during the three calendar months immediately following the review closure date, the enrollee must reapply for UPP and meet all eligibility criteria.

(7) If the individual files a new application or makes a request to reenroll within the calendar month that follows the effective closure date, when the closure is for a reason other than an incomplete review, the eligibility agency will process the request as a new application and waive the open enrollment period and the requirement found at Subsection R414-320-6(2).

(8) The enrollee must reapply if the case closes for one or more calendar months for any reason other than an incomplete review.

(9) The eligibility agency shall comply with the requirements of 42 CFR 435.1200(e), regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs.

R414-320-12. Effective Date of Enrollment and Enrollment Period.

(1) Subject to Section R414-320-6, and the limitations in Section R414-306-4, the effective date of enrollment in the UPP program is the first day of the application month.

(a) The effective date of enrollment for a newborn or adopted child is the date of birth or the date of adoption, if the request is made within 30 days of the date of birth or adoption.

(b) If the request to add a newborn or adopted child is made after 30 days of the date of birth or the date of adoption, enrollment is effective on the first day of the month in which the date of request occurs.

(2) An individual who is approved for the UPP program must enroll in the employer-sponsored health plan or COBRA within 30 days of receiving an approval notice from the eligibility agency.

(3) If the applicant does not enroll in the employer-sponsored health insurance plan or COBRA within 30 days of the date that the eligibility agency sends the UPP approval notice, the eligibility agency shall deny the application.

(4) The Department may not reimburse the enrollee for premiums before the effective date of enrollment and not before the month in which the enrollee pays a health insurance or COBRA premium. The enrollee must verify the premium payment.

(5) The effective date of enrollment for an individual moving directly from Medicaid, PCN, or CHIP is the first day of the month after eligibility for Medicaid, PCN, or CHIP ends.

(6) The effective date of reenrollment in UPP after the eligibility agency completes the periodic review, is the first day of the month after the review month, or the first day after the due process month. Subsection R414-320-11(5) defines the effective date of reenrollment when the enrollee completes the review process in the three calendar months after the case is closed for incomplete review.

(7) An individual who becomes eligible for UPP is enrolled for a 12-month certification period that begins with the first month of eligibility.

(8) The eligibility agency shall end eligibility before the end of a 12-month certification period for any of the following reasons:

(a) The individual turns 65 years of age;

(b) An enrolled child turns 19 years of age and was covered by the parent's or guardian's health insurance plan;

(c) The individual becomes entitled to receive Medicare;

(d) The individual becomes covered by VA Health Insurance, or fails to apply for VA health system coverage when potentially eligible;

(e) The individual is determined eligible for Medicaid when the household requests a new eligibility determination for any household member;

(f) The individual dies;

(g) The individual moves out of state or cannot be located;

or

(h) The individual enters a public institution or an Institution for Mental Disease.

(9) The eligibility agency shall end eligibility if an adult enrollee discontinues enrollment in employer-sponsored insurance or COBRA. The enrollee may switch to the PCN program if the enrollee meets PCN eligibility requirements.

R414-320-13. Change Reporting and Benefit Changes.

(1) Enrollees are required to report changes to the eligibility agency as defined in Subsection R414-320-3(2).

(a) The eligibility agency shall determine the effect of the change and make the appropriate change in the enrollee's eligibility.

(b) The eligibility agency shall send proper notice of changes in eligibility.

(2) An enrollee who fails to report changes or return verification timely must repay any overpayment of benefits for which the enrollee is not eligible to receive.

(3) An eligible household may request enrollment for an individual not enrolled in UPP; the application date for the individual is the date of the request.

(a) A new application form is not required.

(b) The eligibility agency determines the individual's eligibility for UPP in accordance with Section R414-320-11.

(c) The eligibility agency shall determine the effective date of enrollment for individuals in accordance with Section R414-320-12.

(d) The eligibility agency shall waive the requirement found in Subsection R414-320-6(2) if the individual is a newborn or adopted child, and the request to add the child is made within 30 days of the date of birth or adoption.

(e) A new income test must be completed for the individual. If the individual's income places the UPP household over the income limit for UPP, the individual is not eligible to enroll in UPP.

(f) All other eligibility requirements must be met.

(4) If an eligible household requests a new eligibility determination for any household member during the certification period, the eligibility agency shall determine if any enrolled household member is eligible for Medicaid coverage.

(a) An enrollee who is eligible for Medicaid coverage without a cost is no longer eligible for UPP.

(b) An enrollee who must meet a spenddown or MWI premium to receive Medicaid and chooses not to meet the spenddown or MWI premium may remain on UPP.

R414-320-14. Notice and Termination.

(1) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(2) The eligibility agency shall end an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

(3) The eligibility agency shall end an individual's enrollment if the individual fails to complete the periodic review process on time.

(4) The eligibility agency shall notify an enrollee in writing at least ten days before the effective date of an action adversely affecting the enrollee's eligibility. The notice must include:

- (a) the action to be taken;
- (b) the reason for the action;
- (c) the regulations or policy that support an adverse action;
- (d) the applicant's or enrollee's right to a hearing;
- (e) how an applicant or enrollee may request a hearing;

and

(f) the applicant or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(5) The eligibility agency need not give ten-day notice of termination if:

- (a) the enrollee is deceased;
- (b) the enrollee moves out-of-state and is not expected to return; or
- (c) the enrollee enters a public institution or institution for mental disease.

R414-320-15. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible, including benefits that an individual receives pending a fair hearing or during an undue hardship waiver if the enrollee fails to act as required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays too much or too little for medical assistance benefits on behalf of an eligible individual.

(2) An individual who receives benefits under the UPP program for which the individual is not eligible must repay the Department for the cost of the benefits that he receives.

(3) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee or for the benefit of the enrollee during a period that the enrollee is not eligible to receive the benefits.

R414-320-16. Benefits.

(1) The UPP program shall provide cash reimbursement to enrollees.

(2) The reimbursement may not exceed the amount that the enrollee pays toward the cost of the employer-sponsored health plan, employer-sponsored plans selected through UHE, or COBRA continuation coverage.

(3) The UPP program may reimburse an adult up to \$150 each month.

(4) The UPP program may reimburse a child up to \$120 each month for medical coverage. The UPP program will pay the child an additional \$20 if the child elects to enroll in employer-sponsored dental coverage.

(a) When the employer-sponsored insurance does not include dental benefits, a child may receive cash reimbursement up to \$120 for the medical insurance cost and may receive dental-only benefits through CHIP.

(b) When the employer also offers employer-sponsored dental coverage, the applicant may choose to enroll a child in the employer-sponsored dental coverage, in which case, the UPP program will pay the child an additional \$20. The enrollee may also choose to only enroll the child in the employer-sponsored health insurance and UPP, and not enroll the child in the employer-sponsored dental coverage, in which case the child may receive dental-only benefits through CHIP.

KEY: CHIP, Medicaid, PCN, UPP

December 24, 2014

Notice of Continuation February 1, 2016

26-18-3

26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-512. Use of Extrapolation in Provider Audits.****R414-512-1. Introduction and Authority.**

This rule implements rulemaking required by Section 26-18-20. It sets forth the conditions under which the Department or one of its contractors may use extrapolation as defined in Section 63A-13-102.

R414-512-2. Definition.

"Contractor" means a contractor or subcontractor of the Department.

R414-512-3. Use of Extrapolation Limited.

(1) The procedures set forth in Rule R380-400 may be used only if the Department or one of its contractors implements extrapolation pursuant to this rule.

(2) The Department or a contractor that conducts audits of providers on behalf of the Department shall:

(a) have on staff or contract with a medical or dental professional who is experienced in the treatment, billing, and coding procedures used by the type of provider being audited; and

(b) use the services of the appropriate professional described in Subsection R414-512-3(2)(a) if the provider who is the subject of the audit disputes the findings of the audit.

(3) The Department or a contractor may not base a finding of overpayment or underpayment on extrapolation as defined in Section 63A-13-102, unless:

(a) there is a determination that the level of payment error involving the provider exceeds a 10% error rate:

(i) for a sample of claims for a particular service code; and

(ii) over a three-year period of time;

(b) documented education intervention has failed to correct the level of payment error; and

(c) the value of the claims for the provider, in aggregate, exceeds \$200,000 in reimbursement for a particular service code on an annual basis.

(4) If a contractor intends to implement the use of extrapolation as a method of auditing claims, the contractor shall, before adopting the extrapolation method of auditing:

(a) report its intent to use extrapolation to the Department; and

(b) proceed with the use of extrapolation only after the Department has granted permission.

(5) If the Department or a contractor determines Subsection R414-512-3(3)(a) through (c) is applicable to a provider, the Department or the contractor may use extrapolation only for the service code associated with the findings under that subsection.

(6) If extrapolation is used under this rule, a provider may appeal the results of the audit based on:

(a) each individual claim; or

(b) the extrapolation sample.

(7) Nothing in this rule limits a provider's right to appeal the audit under Title 63G, Chapter 4, the Medicaid program and its manual or rules, or other laws or rules that may provide remedies to providers.

**KEY: Medicaid
January 11, 2016**

**26-1-5
26-18-3**

R430. Health, Family Health and Preparedness, Child Care Licensing.**R430-50. Residential Certificate Child Care.****R430-50-1. Legal Authority and Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. This rule establishes standards for the operation and maintenance of residentially certified child care providers who care for one to eight children in their home. It establishes minimum requirements for the health and safety of children in the care of residentially certified providers.

R430-50-2. Definitions.

(1) "Body fluid" means blood, urine, feces, vomit, mucus, and saliva.

(2) "Certificate holder" means the person holding a Department of Health child care certificate.

(3) "Department" means the Utah Department of Health.

(4) "Emotional abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(5) "Health care provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(6) "Inaccessible to children" means:

(a) locked, such as in a locked room, cupboard or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf more than 36 inches above the floor; or

(e) not in any location in a bathroom where a child could reach, including by climbing on a toilet, bathtub, or counter.

(7) "Infant" means a child aged birth through 11 months of age.

(8) "Infectious disease" means an illness that is capable of being spread from one person to another.

(9) "Over-the-counter medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.

(10) "Parent" means the parent or legal guardian of a child in care.

(11) "Physical abuse" means causing non-accidental physical harm to a child.

(12) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(13) "Provider" means the certificate holder or a substitute.

(14) "Related children" means children for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(15) "Sanitize" means to reduce the number of germs on a surface to such a level that disease transmission by that surface is unlikely.

(16) "School age" means children ages five through twelve.

(17) "Sexual abuse" means abuse as provided in Utah Code, Section 76-5-404.1.

(18) "Sexually explicit material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(19) "Sleeping equipment" means a cot, mat, crib, bassinet, porta-crib, play pen, or bed.

(20) "Stationary play equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(21) "Strangulation hazard" means something on a component of playground equipment on which a child's clothes or something around a child's neck could become caught. For example, bolt ends that extend more than two threads beyond the face of the nut, hardware configurations that form a hook or leave a gap or space between components, and open "S" type hooks.

(22) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

(23) "Substitute" means a person who assumes the certificate holder's duties under this rule when the certificate holder is not present. This includes emergency substitutes.

(24) "Toddler" means a child aged 12 months but less than 24 months.

(25) "Unrelated children" means children who are not related children.

(26) "Use zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(27) "Volunteer" means a person who provides direct care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio.

R430-50-3. Certificate Required.

(1) A person must either be certified under this rule or licensed under R430-90, if he or she:

(a) provides care in lieu of care ordinarily provided by a parent;

(b) provides care for five or more unrelated children;

(c) provides care for four or more hours per day;

(d) has a regularly scheduled, ongoing enrollment; and

(e) provides care for direct or indirect compensation.

(2) The Department does not issue certificates, nor is a certificate required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

R430-50-4. Indoor Environment.

(1) The certificate holder shall ensure that any building or playground structure on the premises constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the certificate holder shall contact the local health department and follow all required procedures for the remediation of the lead based paint hazard.

(2) There shall be a working toilet and a working handwashing sink accessible to each non-diapered child in care.

(3) Each school age child shall have privacy when using the bathroom.

(4) The home shall be ventilated by mechanical ventilation, or by windows that open and have screens.

(4) The certificate holder shall maintain adequate light intensity for the safety of children and the type of activity being conducted and shall keep the lighting equipment in good working condition.

(5) For certificate holders who receive an initial certificate after 1 September 2008 there shall be at least 35 square feet of indoor play space for each child, including the providers' related children who are ages four through twelve and not counted in the provider to child ratios.

(6) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or

equipment is used:

- (a) by children;
 - (b) for the care of children; or
 - (c) to store children's materials.
- (7) Bathrooms, closets, hallways, and entryways are not included when calculating indoor space for children's use.

R430-50-5. Cleaning and Maintenance.

(1) The certificate holder shall ensure that a clean and sanitary environment is maintained.

(2) The certificate holder shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(3) The certificate holder shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(4) The certificate holder shall ensure that entrances, exits, steps and outside walkways are maintained in a safe condition, and free of ice, snow, and other hazards.

R430-50-6. Outdoor Environment.

If there is an outdoor play area used by children in care, the following rules apply:

(1) The outdoor play area shall be safely accessible to children.

(2) For certificate holders who received an initial certificate after 1 September 2008, the outdoor play area shall have at least 40 square feet of space for each child using the space at one time.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or within a solid natural barrier that is at least 4 feet high if:

(a) the certificate holder's home is located on a street with a speed limit higher than 25 miles per hour, or within half a mile of a street with a speed limit higher than 25 miles per hour; or

(b) the certificate holder's home is located on a street with more than two lanes of traffic, or within half a mile of a street with more than two lanes of traffic.

(4) If any of the following hazards exist, they must be located behind a 4 foot high fence, wall, or solid barrier that separates the hazard from the children's outdoor play area:

(a) livestock on the certificate holder's property or within 50 yards of the certificate holder's property line;

(b) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on the certificate holder's property or within 100 yards of the certificate holder's property line;

(c) dangerous machinery, such as farm equipment, on the certificate holder's property or within 50 yards of the certificate holder's property line;

(d) a drop-off of more than 5 feet on the certificate holder's property or within 50 yards of the certificate holder's property line; or

(e) barbed wire within 30 feet of the children's play area.

(5) The outdoor play area shall be free of poisonous plants, harmful objects, toxic or hazardous substances, and standing water.

(6) When in use by children, the outdoor play area shall be free of animal excrement.

(7) If a fence or barrier is required in Subsections (3) or (4) above, or in Subsections 12(9)(c)(i) or 12(10)(b) below, there shall be no gap greater than five inches in the fence or barrier, nor shall any gap between the bottom of the fence or barrier and the ground be greater than five inches.

(8) The outdoor play area shall have a shaded area to protect each child from excessive sun and heat whenever there are children in the outdoor play area.

(9) An outdoor source of drinking water, such as individually labeled water bottles, or a pitcher of water and

individual cups that are taken outside, shall be available to each child whenever the outside temperature is 75 degrees or higher.

(10) Stationary play equipment used by any child in care shall not be located over hard surfaces such as cement, asphalt, or packed dirt.

(11) The certificate holder shall ensure that children using outdoor play equipment use it safely and in the manner intended by the manufacturer.

(12) There shall be no openings of a size greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment where the feet of any child in care whose head is entrapped in the opening cannot touch the ground.

(13) There shall be no strangulation hazard on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(14) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(15) The certificate holder shall ensure that outdoor play areas and outdoor play equipment are maintained to protect each child's safety.

R430-50-7. Personnel.

(1) The certificate holder and all substitutes must:

(a) be at least 18 years of age; and

(b) have knowledge of and comply with all applicable laws and rules.

(2) The certificate holder may make arrangements for a substitute who is at least 18 years old and who is capable of providing care, supervising children, and handling emergencies in the absence of the certificate holder.

(3) Substitutes who care for children an average of 10 hours per week or more shall meet the first aid and CPR requirements of this rule.

(4) In an unforeseeable emergency, such as a medical emergency requiring immediate care at a hospital or at an urgent care center or a lost child, the certificate holder may assign an emergency substitute who has not had a criminal background screening to care for the children. The certificate holder may use an emergency substitute for up to 24 hours for each emergency event.

(a) The emergency substitute shall be at least 18 years of age.

(b) The emergency substitute is not required to meet the training, first aid and CPR, and TB screening requirements of this rule.

(c) The emergency substitute cannot be a person who has been convicted of a felony or misdemeanor or has been investigated for abuse or neglect by any federal, state, or local government agency. The emergency substitute must provide a signed, written declaration to the certificate holder that he or she is not disqualified under this subsection.

(d) During the term of the emergency, the emergency substitute may be counted as a provider for the purpose of maintaining the required provider to child ratios.

(e) The certificate holder shall make reasonable efforts to minimize the time that the emergency substitute has unsupervised contact with the children in care.

(5) Any new non-emergency substitute or volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the individual's file and shall include the following topics:

(a) the certificate holder's emergency and disaster plan;

(b) the current child care certificate rules found in Sections R430-50-11 through 24;

(c) a review of the information in the health assessment for each child in care;

(d) procedure for releasing children to authorized

individuals only;

- (e) proper clean up of body fluids;
- (f) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- (g) obtaining assistance in emergencies; and
- (h) if the certificate holder accepts infants or toddlers for care, orientation training topics shall also include:
 - (i) preventing shaken baby syndrome and coping with crying babies; and
 - (ii) preventing sudden infant death syndrome.

(6) The certificate holder shall complete a minimum of 10 hours of child care training each year, based on the certificate date. A minimum of 5 hours of the required annual training shall be face-to-face instruction.

(a) Documentation of annual training shall be kept on file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(b) Annual training hours shall include the following topics at least once every two years:

- (i) a review of all of the current child care certificate rules found in Sections R430-50-11 through 24;
- (ii) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- (iii) principles of child growth and development, including development of the brain; and
- (iv) positive guidance; and
- (c) if the certificate holder accepts infants or toddlers for care, required training topics shall also include:
 - (i) preventing shaken baby syndrome and coping with crying babies; and
 - (ii) preventing sudden infant death syndrome.

R430-50-8. Administration.

(1) The certificate holder is responsible for all aspects of the operation and management of the child care program.

(2) The certificate holder shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care program.

(3) The certificate holder shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The certificate holder shall take all reasonable measures to protect the safety of each child in care. The certificate holder shall not engage in activity or allow conduct that unreasonably endangers any child in care.

(5) Either the certificate holder or a substitute with authority to act on behalf of the certificate holder shall be present whenever there is a child in care.

(6) Each week, the certificate holder shall be present at the home at least 50% of the time that one or more children are in care.

(7) There shall be a working telephone in the home. The certificate holder shall inform the parents of each child in care and the Department of any changes to the certificate holder's telephone number within 48 hours of the change.

(8) The provider shall report to the Child Care Licensing Program within the next Department business day any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless that medical service was part of the child's medical treatment plan identified by the parent. The provider shall also submit a written report to Child Care Licensing within five working days of the incident.

(9) The certificate holder shall train and supervise all substitutes to:

- (a) ensure their compliance with this rule;
- (b) ensure they meet the needs of the children in care as

specified in this rule; and

(c) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

R430-50-9. Records.

(1) The certificate holder shall maintain on-site for review by the Department during any inspection the following general records:

(a) current animal vaccination records as required in R430-50-22(1)(b);

(b) a six week record of child attendance, as required in R430-50-13(3);

(c) a current local health department kitchen inspection;

(d) an initial local fire department clearance for all areas of the home being used for care; and

(e) copy of the current background screening card issued by the Department for all providers, volunteers, and each person age 12 and older who resides in the certificate holder's home;

(2) The certificate holder shall maintain on-site for review by the Department during any inspection the following records for each enrolled child:

(a) an admission form containing the following information for each child:

- (i) name;
- (ii) date of birth;
- (iii) the parent's name, address, and phone number, including a daytime phone number;
- (iv) the names of people authorized by the parent to pick up the child;
- (v) the name, address and phone number of a person to be contacted in the event of an emergency if a provider is unable to contact the parent;
- (vi) child health information, as required in R430-50-14(7); and
- (vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) current immunization records or documentation of a legally valid exemption, as specified in R430-50-14(5) and (6);

(c) a completed transportation permission form, if transportation services are offered to any child in care; and

(d) a six week record of medication permission forms, and a six week record of medications actually administered, as specified in R430-50-17(3) and R430-50-17(5)(f), if medications are administered to any child in care.

(3) The certificate holder shall maintain on-site for review by the Department during any inspection the following records for the certificate holder and each non-emergency substitute:

(a) orientation training documentation for all non-emergency substitutes as required in R430-50-7(5);

(b) annual training documentation for the past two years as required in R430-50-7(6)(a); and

(c) current first aid and CPR certification, as required in R430-50-10(2) and R430-50-20(3)(d).

(4) The certificate holder shall maintain on-site for review by the Department during any inspection orientation training documentation for each volunteer as required in R430-50-7(5).

(5) The certificate holder shall ensure that information in any child's file is not released without written parental permission.

(6) The certificate holder shall ensure that information in any child's file is not released without written parental permission.

(7) The certificate holder shall ensure that information in any child's file is not released without written parental permission.

(8) The certificate holder shall ensure that information in any child's file is not released without written parental permission.

(9) The certificate holder shall ensure that information in any child's file is not released without written parental permission.

R430-50-10. Emergency Preparedness.

(1) The certificate holder shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near the telephone.

(2) The certificate holder and all substitutes who care for children an average of 10 hours per week or more shall maintain a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The certificate holder shall have an emergency and disaster plan which shall include at least the following:

- (a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;
- (b) procedures for responding to fire, earthquake, flood, power failure, and water failure;
- (c) the location of and procedure for emergency shut off of gas, electricity, and water;
- (d) procedures to be followed if a child is missing;
- (e) the name and phone number of a substitute to be called in the event the certificate holder must leave the home for any reason; and

(4) The certificate holder shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(5) The certificate holder shall conduct fire evacuation drills semi-annually. Drills shall include complete exit of all children and staff from the home.

(6) The certificate holder shall conduct drills for disasters other than fires at least once every 12 months.

(7) The certificate holder shall vary the days and times on which fire and other disaster drills are held.

R430-50-11. Supervision and Ratios.

(1) The certificate holder or a substitute shall be physically present on-site and provide care and direct supervision of each child at all times, both indoors and outdoors. Direct care and supervision of each child includes:

- (a) awareness of and responsibility for each child in care, including being near enough to intervene if needed;
- (b) ensuring that there is a provider present inside the home when a child in care is inside the home, and a provider present in the outdoor play area when a child in care is outdoors, except as allowed in subsection (2) below for school age children; and
- (c) monitoring of each sleeping infant in one of the following ways:

- (i) by placing each infant for sleep in a location where the infant is within sight and hearing of a provider; or
- (ii) by in person observation of each sleeping infant at least once every 15 minutes;

(2) A provider shall actively supervise each child during outdoor play to minimize the risk of injury to a child. A provider may allow only school age children to play outdoors while the provider is indoors, if:

- (a) a provider can hear the children playing outdoors; and
- (b) the children playing outdoors are in an area completely enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(3) The certificate holder may permit a child to participate in supervised out of the home activities without the certificate holder if:

- (a) the certificate holder has prior written permission from the child's parent for the child's participation; and
- (b) the certificate holder has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts responsibility for the care and supervision of the child throughout the period of the out of home activity.

(4) The maximum allowed number of children in care at any one time is eight children, including no more than two children under the age of two. The number of children in care includes the providers' own children under the age of four.

(5) The total number of children in care may be further limited based on square footage, as found in Subsection R430-50-4(5) through (7).

R430-50-12. Injury Prevention.

(1) The certificate holder shall ensure that the home, outdoor play area, toys, and equipment are maintained and used

in a safe manner to prevent injury to children.

(2) The certificate holder shall ensure that the indoor environment is free of tripping hazards such as unsecured flooring or cords in walkways.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that a child could pull down on himself or herself.

(4) The following items shall be inaccessible to each child in care:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, e-cigarettes, e-juice, e-liquids, open containers of alcohol, illegal substances, and sexually explicit material;

(c) when in use: portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, chains, and wires long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The certificate holder shall ensure that all toxic or hazardous chemicals are stored in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) If a wading pool is used:

(a) a provider must be at the pool supervising each child whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the pool shall be emptied and sanitized after each use; and

(d) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.

(10) If there is a swimming pool on the premises that is not emptied after each use:

(a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the certificate holder shall ensure that children are protected from unintended access to the pool in one of the following ways:

(i) the pool is enclosed within a fence or other solid barrier at least four feet high that is kept locked whenever the pool is not in use by any child in care; or

(ii) the pool has a properly working safety cover that meets ASTM Standard F1346, and the safety cover is in place whenever the pool is not in use by any child in care;

(d) the certificate holder shall maintain the pool in a safe manner;

(e) the certificate holder shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;

(f) if the pool is over six feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the certificate holder can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and

(g) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.

(11) If there is a hot tub on the premises with water in it, the certificate holder shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:

(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or

(b) it shall be surrounded by a four foot fence.

(12) If there is a trampoline on the premises that is accessible to any child in care, the certificate holder shall ensure compliance with the following requirements:

(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.

(b) Only one person at a time may use a trampoline.

(c) No child in care shall be allowed to do somersaults or flips on the trampoline.

(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.

(e) The trampoline must be placed at least 6' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences. If the trampoline is completely enclosed within properly installed netting that is in good repair and is at least 6' tall, and that is used as specified by the manufacturer, the trampoline must be placed at least 3' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences.

(f) There shall be no ladders near the trampoline.

(g) No child in care shall be allowed to play under the trampoline when it is in use.

(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.

(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame, or three feet from the perimeter of the trampoline frame if a net is used as specified above in subsection (e).

R430-50-13. Parent Notification and Child Security.

(1) The certificate holder shall either post or, upon enrollment, give each parent a copy of the Department's child care guide.

(2) At all times when their child is in care, parents shall have access to those areas of the certificate holder's home and outdoor area that are used for child care.

(3) The certificate holder shall ensure that a daily attendance record is maintained to document each enrolled child's attendance.

(4) Only parents or persons with written authorization from the parent may pick up any child. In an emergency, a provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(5) The certificate holder shall ensure that parents are informed of every incident, accident, or injury involving their child within 24 hours of occurrence.

(6) In the case of a life threatening incident or injury to a child, or an incident or injury that poses a threat of the loss of vision, hearing, or a limb, a provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, a provider shall attempt to contact the child's emergency contact person.

(7) If a child is injured and the injury appears serious but not life threatening, a provider shall contact the parent immediately.

R430-50-14. Child Health.

(1) The certificate holder shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All providers shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of alcohol, illegal substances, or sexually explicit material on the premises or in vehicles used to transport children is prohibited any time that a child is in care.

(4) At any time when a child is in care, the provider shall ensure that tobacco is not used:

(a) in the home, garage, or any other building used by a child in care;

(b) in any vehicle that is being used to transport a child in care;

(c) within 25 feet of any entrance to the home, garage, or any other building occupied by a child in care; or

(d) in any outdoor area where a child in care plays, or within 25 feet of any outdoor area where a child in care plays.

(5) The certificate holder shall not enroll any child for care without documentation of:

(a) proof of current immunizations, as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

(6) The certificate holder shall not provide ongoing care to a child without documentation of:

(a) proof of current immunizations as required by Utah law; or

(b) written documentation of an immunization exemption due to personal, medical or religious reasons.

(7) The certificate holder shall not admit any child for care without the following written health information from the parent:

(a) known allergies;

(b) acute and chronic medical conditions;

(c) instructions for special or non-routine daily health care;

(d) current medications; and,

(e) any other special health instructions for the certificate holder.

(8) If the parent of a child in care has informed the provider that his or her child has a food allergy, that child shall not be given the food or beverage they are allergic to.

(9) The certificate holder shall ensure that each child's parent reviews, updates, and signs or initials the child's health information at least annually.

R430-50-15. Child Nutrition.

(1) If food service is provided:

(a) The certificate holder shall ensure that his or her meal service complies with local health department food service regulations.

(b) The current week's menu shall be available for parent review.

(2) The certificate holder shall ensure that each child in care is offered a meal or a snack at least once every three hours.

(3) Providers shall serve each child's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the child's hands. The provider shall not place food on a bare table.

(4) The certificate holder shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name or another unique identifier, and refrigerated if needed. Children in care shall not be served food or beverages that were brought in for another child.

R430-50-16. Infection Control.

(1) All providers and volunteers shall wash their hands with soap and running water at the following times:

- (a) before handling or preparing food or bottles;
- (b) before and after eating meals and snacks or feeding a child;
- (c) after diapering each child;
- (d) after using the toilet or helping a child use the toilet;
- (e) after coming into contact with any body fluid;
- (f) after playing with or handling animals;
- (g) when coming in from outdoors; and
- (h) before administering medication.

(2) The certificate holder shall ensure that each child washes his or her hands with soap and running water at the following times:

- (a) before and after eating meals and snacks;
- (b) after using the toilet;
- (c) after coming into contact with any body fluid; and
- (d) when coming in from outdoors.

(3) During outdoor play time, the requirements of Subsections (1) and (2) may be met by having each provider, volunteer, and child clean his or her hands with individual disposable wet wipes and hand sanitizer.

(4) The certificate holder shall ensure that toilet paper is accessible to each child, and that it is kept in a dispenser.

(5) The certificate holder shall ensure that children are taught proper hand washing techniques, and shall oversee hand washing whenever possible.

(6) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by a provider on more than one child. Each child's items shall be stored so that they do not touch another child's items.

(7) The certificate holder shall ensure that all washable toys and materials are cleaned and sanitized as needed.

(8) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The certificate holder shall ensure that all stuffed animals, cloth dolls, dress-up clothes, and pillows or covers are washed after each 5 days of use, or more often if needed.

(9) If a water play table or tub is used, the certificate holder shall ensure that the table or tub is washed and sanitized daily, and that each child washes his or her hands prior to engaging in the activity.

(10) Persons with contagious TB shall not work with, assist with, or be present with any child in care.

(11) A provider shall promptly change a child's clothing if the child has a toileting accident.

(12) If a child uses a potty chair, the certificate holder shall ensure that it is cleaned and sanitized after each use.

(13) Except for diaper changes, which are covered in Section R430-50-23, the certificate holder shall ensure that the following precautions are taken when cleaning up blood, urine,

feces, and vomit.

(a) The person cleaning up the substance shall wear waterproof gloves;

(b) the surface shall be cleaned using a detergent solution;

(c) the surface shall be rinsed with clean water;

(d) the surface shall be sanitized;

(e) if disposable materials such as paper towels or other absorbent materials are used to clean up the body fluid, they shall be disposed of in a leakproof plastic bag;

(f) if non-disposable materials, such as a cleaning cloth, mop, or re-usable rubber gloves are used to clean up the body fluid, they shall be washed and sanitized before reuse; and

(g) the person cleaning up the fluid shall wash his or her hands after cleaning up the body fluid.

(14) The certificate holder shall ensure that any child who is ill with an infectious disease is separated from any other children in care in a safe, supervised location.

(15) The certificate holder shall ensure that a parent of any child who becomes ill after arrival is contacted as soon as the illness is observed or suspected.

(16) The certificate holder shall ensure that the parents of every child in care are informed when any person in the home or child in care has an infectious disease or parasite. Parents shall be notified the day the infectious disease or parasite is discovered.

R430-50-17. Medications.

(1) All over-the-counter and prescription medications shall:

- (a) be labeled with the child's name;
- (b) be kept in the original or pharmacy container;
- (c) have the original label; and,
- (d) have child-safety caps.

(2) The certificate holder shall ensure that all non-refrigerated over-the-counter and prescription medication is inaccessible to children. The certificate holder shall ensure that all refrigerated over-the-counter and prescription medication is placed in a waterproof container to avoid contamination between food and medication.

(3) The certificate holder shall have a written medication permission form completed and signed by the parent prior to the administering of any over-the-counter or prescription medication brought in by a parent for his or her child. The permission form must include:

- (a) the name of the child;
- (b) the name of the medication;
- (c) written instructions for administration; including:
 - (i) the dosage;
 - (ii) the method of administration;
 - (iii) the times and dates to be administered; and
 - (iv) the disease or condition being treated; and
- (d) the parent signature and the date signed.

(4) If the certificate holder keeps over-the-counter medication that is not brought in by a parent for his or her child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

- (a) prior written consent; or
- (b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent signs upon picking up the child.

(5) When administering medication, the person administering the medication shall:

- (a) wash his or her hands;
- (b) if the parent supplies the medication, check the medication label to confirm the child's name;
- (c) if the parent supplies the medication, compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is

not given a dosage larger than that recommended by the health care provider or the manufacturer;

(d) if the certificate holder supplies the medication, check the product package to ensure that a child is not given a dosage larger than that recommended by the manufacturer;

(e) administer the medication; and

(f) immediately record the following information:

(i) the date, time, and dosage of the medication given;

(ii) the signature or initials of the provider who administered the medication; and,

(iii) any errors in administration or adverse reactions.

(6) The certificate holder shall ensure that any adverse reaction to a medication or any error in administration is reported to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

R430-50-18. Napping.

(1) Sleeping equipment may not block exits at any time.

R430-50-19. Child Discipline.

(1) The certificate holder shall inform non-emergency substitutes, parents, and children of the certificate holder's behavioral expectations for children.

(2) A provider may use gentle, passive restraint with a child only when it is needed to stop the child from injuring himself or herself or others or from destroying property.

(3) Disciplinary measures shall not include any of the following:

(a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (2) above;

(c) shouting at any child;

(d) any form of emotional abuse;

(e) forcing or withholding of food, rest, or toileting; and,

(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R430-50-20. Activities.

(1) The certificate holder shall offer daily activities to support each child's healthy physical, social-emotional, and cognitive-language development.

(2) The certificate holder shall ensure that the toys and equipment necessary to carry out the activities are accessible to children.

(3) If off-site activities are offered:

(a) the certificate holder shall obtain parental consent for off-site activities in advance;

(b) the certificate holder shall accompany the children and shall take a copy of each child's emergency contact information.

(c) the certificate holder shall maintain required provider to child ratios and direct supervision during the activity;

(d) at least one provider present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing. And

(e) the certificate holder shall ensure that there is a way for each provider, volunteer, and child to wash his or her hands as specified in R430-50-16(1) and (2). If there is no source of running water, providers, volunteers, and children may clean their hands with individual disposable wet wipes and hand sanitizer.

(4) If off-site swimming activities are offered, providers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the provider to child ratio.

R430-50-21. Transportation.

(1) Any vehicle used for transporting any child in care shall:

(a) be enclosed;

(b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;

(c) be maintained in a safe condition and have a current vehicle registration and safety inspection;

(d) be maintained in a clean condition; and

(e) maintain temperatures between 60-90 degrees Fahrenheit when in use;

(2) The adult transporting any child in care shall:

(a) have and carry with him or her a current valid Utah driver's license, for the type of vehicle being driven, whenever he or she is transporting any child in care;

(b) have with him or her a copy of each child's emergency contact information;

(c) ensure that each child in care being transported is wearing an appropriate individual safety restraint;

(d) ensure that each child is always attended by an adult while in the vehicle;

(e) ensure that all children remain seated while the vehicle is in motion;

(f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and

(g) ensure that the vehicle is locked during transport.

R430-50-22. Animals.

(1) The certificate holder shall inform parents of the types of animals permitted on the premises.

(2) The certificate holder shall ensure that all animals on the premises and accessible to any child in care :

(a) are clean and free of obvious disease or health problems that could adversely affect any child in care; and

(b) have current vaccinations for all vaccine preventable diseases that are transmissible to humans. The certificate holder shall have documentation of the vaccinations.

(3) The certificate holder shall ensure that there is no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(4) The certificate holder shall ensure that no child in care assists with the cleaning of animals or animal cages, pens, or equipment.

(5) The certificate holder shall ensure that there is no animal or animal equipment in food preparation or eating areas during food preparation or eating times.

(6) The certificate holder shall ensure that no child in care handles reptiles or amphibians while in care.

R430-50-23. Diapering.

If children in care are diapered on the premises, the following applies:

(1) The diapering area shall not be located in a food preparation or eating area.

(2) Children shall not be diapered directly on the floor, or on any surface used for another purpose.

(3) The diapering surface shall be smooth, waterproof, and in good repair.

(4) A provider shall clean and sanitize the diapering surface after each diaper change, or use a disposable non-permeable diapering surface that is thrown away after each diaper change.

(5) The provider shall wash his or her hands after each diaper change.

(6) The provider shall place soiled disposable diapers in a container that has a plastic lining and a tightly fitting lid, or place soiled diapers directly in an outdoor garbage container

that has a tightly fitting lid or is inaccessible to children.

(7) The certificate holder shall ensure that each child's diaper is checked at least once every two hours, and that each child's diaper is changed promptly if it is wet or soiled. If a child is napping at the end of a two-hour period, the child's diaper must be checked when the child awakes.

R430-50-24. Infant and Toddler Care.

If the certificate holder cares for infants or toddlers, the following applies:

(1) If an infant is not able to sit upright and hold his or her own bottle, a provider shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) A provider shall clean and sanitize high chair trays prior to each use.

(3) A provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. A provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) If there is more than one infant or toddler in care, baby food, formula, and breast milk for each child that is brought from home must be labeled with the child's name or another unique identifier.

(5) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:

(a) kept refrigerated if needed; and

(b) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(6) The certificate holder shall ensure that formula and milk, including breast milk, is discarded after each feeding, or within two hours of initiating a feeding.

(7) To prevent burns, a provider shall shake each heated bottle and test it for temperature before the bottle is fed to a child.

(8) If there is more than one infant or toddler in care, pacifiers and bottles shall be:

(a) labeled with each child's name or another unique identifier; or

(b) washed and sanitized after each individual use, before use by another child.

(9) The certificate holder shall ensure that only one infant or toddler occupies any one piece of equipment, such as a crib, playpen, stroller, or swing, at any time, unless the equipment has individual seats for more than one child.

(10) The certificate holder shall ensure that infants sleep in equipment designed for sleep, such as a crib, bassinet, porta-crib or play pen. The certificate holder shall ensure that infants are not placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment, unless the certificate holder has written permission from the infant's parent.

(11) The certificate holder shall ensure that each crib used by a child in care:

(a) has a tight fitting mattress;

(b) has slats spaced no more than 2-3/8 inches apart;

(c) has at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance;

(d) does not have strings, cords, ropes, or other entanglement hazards strung upon the crib rails or within reach of the child. And

(e) meet CPSC crib standards.

(12) The certificate holder shall ensure that infants are not placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(13) The certificate holder shall ensure that each infant and toddler is allowed to follow his or her own pattern of sleeping

and eating.

(14) Infant walkers with wheels are prohibited.

(15) The certificate holder shall ensure that infants and toddlers do not have access to objects made of styrofoam.

(16) The certificate holder shall ensure that a provider responds as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(17) The certificate holder shall ensure that awake infants and toddlers receive positive physical stimulation and positive verbal interaction with a provider at least once every 20 minutes.

(18) The certificate holder shall ensure that awake infants and toddlers have freedom of movement in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(19) The certificate holder shall ensure that mobile infants and toddlers have freedom of movement in a safe area.

(20) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. The certificate holder shall ensure that there are enough toys for each child in the group to be engaged in play with toys.

(21) The certificate holder shall ensure that all toys used by infants and toddlers are cleaned and sanitized:

(a) weekly;

(b) after being put in a child's mouth before another child uses it; and

(c) after being contaminated by any body fluid.

**KEY: child care facilities, residential certification
January 31, 2016
Notice of Continuation May 29, 2013**

26-39

R430. Health, Family Health and Preparedness, Child Care Licensing.**R430-90. Licensed Family Child Care.****R430-90-1. Legal Authority and Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. This rule establishes standards for the operation and maintenance of licensed family child care providers who care for one to 16 children in their home. It establishes minimum requirements for the health and safety of children in the care of licensed family providers.

R430-90-2. Definitions.

(1) "Body fluid" means blood, urine, feces, vomit, mucus, or saliva.

(2) "Caregiver" means a person in addition to the licensee or substitute, including an assistant caregiver, who provides direct care to a child in care.

(3) "Department" means the Utah Department of Health.

(4) "Emotional abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(5) "Health care provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(6) "Inaccessible to children" means:

(a) locked, such as in a locked room, cupboard or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf more than 36 inches above the floor; or

(e) not in any location in a bathroom where a child could reach, including by climbing on a toilet, bathtub, or counter.

(7) "Infant" means a child aged birth through 11 months of age.

(8) "Infectious disease" means an illness that is capable of being spread from one person to another.

(9) "Licensee" means the person holding a Department of Health child care license.

(10) "Over-the-counter medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.

(11) "Parent" means the parent or legal guardian of a child in care.

(12) "Physical abuse" means causing non-accidental physical harm to a child.

(13) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(14) "Provider" means the licensee, a substitute, a caregiver, or an assistant caregiver.

(15) "Related children" means children for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(16) "Sanitize" means to reduce the number of germs on a surface to such a level that disease transmission by that surface is unlikely.

(17) "School age" means children ages five through twelve.

(18) "Sexual abuse" means abuse as provided in Utah Code, Section 76-5-404.1.

(19) "Sexually explicit material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(20) "Sleeping equipment" means a cot, mat, crib, bassinet, porta-crib, play pen, or bed.

(21) "Stationary play equipment" means equipment such

as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(22) "Strangulation hazard" means something on a component of playground equipment on which a child's clothes or something around a child's neck could become caught. For example, bolt ends that extend more than two threads beyond the face of the nut, hardware configurations that form a hook or leave a gap or space between components, and open "S" type hooks.

(23) "Substitute" means a person who assumes either the licensee's or a caregiver's duties under this rule when the licensee or caregiver is not present. This includes emergency substitutes.

(24) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

(25) "Toddler" means a child aged 12 months but less than 24 months.

(26) "Unrelated children" means children who are not related children.

(27) "Use zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(28) "Volunteer" means a person who provides direct care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio.

R430-90-3. License Required.

(1) A person must either be licensed under this rule or certified under R430-50, if he or she:

(a) provides care in lieu of care ordinarily provided by a parent;

(b) provides care for five or more unrelated children;

(c) provides care for four or more hours per day;

(d) has a regularly scheduled, ongoing enrollment; and

(e) provides care for direct or indirect compensation.

(2) The Department does not license, nor is a license required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

R430-90-4. Indoor Environment.

(1) The licensee shall ensure that any building or playground structure on the premises constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the remediation of the lead based paint hazard.

(2) There shall be a working toilet and a working handwashing sink accessible to each non-diapered child in care.

(3) Each school age child shall have privacy when using the bathroom.

(4) The home shall be ventilated by mechanical ventilation or by windows that open and have screens.

(5) The licensee shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(6) The licensee shall maintain adequate light intensity for the safety of children and the type of activity being conducted and shall keep the lighting equipment in good working condition.

(7) There shall be at least 35 square feet of indoor play

space for each child, including providers' related children who are ages four through twelve.

(8) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

- (a) by children;
- (b) for the care of children; or
- (c) to store children's materials.

(9) Bathrooms, closets, hallways, and entryways are not included when calculating indoor space for children's use.

R430-90-5. Cleaning and Maintenance.

(1) The licensee shall ensure that a clean and sanitary environment is maintained.

(2) The licensee shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(3) The licensee shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(4) The licensee shall ensure that entrances, exits, steps and outside walkways are maintained in a safe condition, and free of ice, snow, and other hazards.

R430-90-6. Outdoor Environment.

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the space at one time.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or within a solid natural barrier that is at least 4 feet high if:

(a) the licensee's home is located on a street with a speed limit higher than 25 miles per hour, or within half a mile of a street with a speed limit higher than 25 miles per hour; or

(b) the licensee's home is located on a street with more than two lanes of traffic, or within half a mile of a street with more than two lanes of traffic.

(4) If any of the following hazards exist, they must be located behind a 4 foot high fence, wall, or solid barrier that separates the hazard from the children's outdoor play area:

(a) livestock on the licensee's property or within 50 yards of the licensee's property line;

(b) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on the licensee's property or within 100 yards of the licensee's property line;

(c) dangerous machinery, such as farm equipment, on the licensee's property or within 50 yards of the licensee's property line;

(d) a drop-off of more than five feet on the licensee's property or within 50 yards of the licensee's property line; or

(e) barbed wire within 30 feet of the children's play area.

(5) The outdoor play area shall be free of poisonous plants, harmful objects, toxic or hazardous substances, and standing water.

(6) When in use by a child in care, the outdoor play area shall be free of animal excrement.

(7) If a fence or barrier is required in Subsections (3) or (4) above, or Subsections 12(10)(c)(i) or 12(11)(b) below, there shall be no gap greater than five inches in the fence or barrier, nor shall any gap between the bottom of the fence or barrier and the ground be greater than five inches.

(8) The outdoor play area shall have a shaded area to protect each child from excessive sun and heat whenever there are children in the outdoor play area.

(9) An outdoor source of drinking water, such as individually labeled water bottles or a pitcher of water and individual cups that are taken outside, shall be available to each

child whenever the outside temperature is 75 degrees or higher.

(10) Stationary play equipment used by any child in care shall not be located over hard surfaces such as cement, asphalt, or packed dirt, and shall have a 3' use zone that is free of hard surfaces. The licensee shall have until 1 September 2013 to meet the 3' use zone requirement.

(11) The licensee shall ensure that children using outdoor play equipment use it safely and in the manner intended by the manufacturer.

(12) There shall be no openings of a size greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on or within the use zone of any piece of stationary play equipment where the feet of any child in care whose head is entrapped in the opening cannot touch the ground.

(13) There shall be no strangulation hazard on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(14) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(15) There shall be no tripping hazards, such as concrete footings, tree stumps, exposed tree roots, or rocks within the use zone of any piece of stationary play equipment.

(16) The licensee shall ensure that outdoor play areas and outdoor play equipment are maintained to protect each child's safety.

R430-90-7. Personnel.

(1) The licensee and all substitutes and caregivers must:

(a) be at least 18 years of age; and

(b) have knowledge of and comply with all applicable laws and rules.

(2) All assistant caregivers shall:

(a) be at least 16 years of age;

(b) work under the immediate supervision of a provider who is at least 18 years of age; and

(c) have knowledge of and comply with all applicable laws and rules.

(3) Assistant caregivers may be included in provider to child ratios, but only if there is also another provider present in the home who is 18 years of age or older.

(4) Assistant caregivers shall meet the training requirements of this rule.

(5) The licensee may make arrangements for a substitute who is at least 18 years old and who is capable of providing care, supervising children, and handling emergencies in the absence of the licensee.

(6) Substitutes who care for children an average of 10 hours per week or more shall meet the training, first aid, and CPR requirements of this rule.

(7) In an unforeseeable emergency, such as a medical emergency requiring immediate care at a hospital or at an urgent care center or a lost child, the licensee may assign an emergency substitute who has not had a criminal background screening to care for the children. A licensee may use an emergency substitute for up to 24 hours for each emergency event.

(a) The emergency substitute shall be at least 18 years of age.

(b) The emergency substitute is not required to meet the training, first aid, and CPR requirements of this rule.

(c) The emergency substitute cannot be a person who has been convicted of a felony or misdemeanor or has been investigated for abuse or neglect by any federal, state, or local government agency. The emergency substitute must provide a signed, written declaration to the licensee that he or she is not disqualified under this subsection.

(d) During the term of the emergency, the emergency substitute may be counted as a provider for the purpose of maintaining the required provider to child ratios.

(e) The licensee shall make reasonable efforts to minimize the time that the emergency substitute has unsupervised contact with the children in care.

(8) Any new caregiver, volunteer, or non-emergency substitute shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the individual's file and shall include the following topics:

- (a) specific job responsibilities;
- (b) the licensee's written policies and procedures;
- (c) the licensee's emergency and disaster plan;
- (d) the current child care licensing rules found in Sections R430-90-11 through 24;
- (e) introduction and orientation to the children in care;
- (f) a review of the information in the health assessment for each child in care;
- (g) procedure for releasing children to authorized individuals only;
- (h) proper clean up of body fluids;
- (i) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- (j) obtaining assistance in emergencies; and
- (k) if the licensee accepts infants or toddlers for care, orientation training topics shall also include:
 - (i) preventing shaken baby syndrome and coping with crying babies; and
 - (ii) preventing sudden infant death syndrome.

(9) Substitutes who care for children an average of 10 hours per week or more, the licensee, and all caregivers shall complete a minimum of 20 hours of child care training each year, based on the license date. A minimum of 10 hours of the required annual training shall be face-to-face instruction.

(a) Documentation of annual training shall be kept in each individual's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(b) All caregivers and non-emergency substitutes who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the relicensure date.

(c) Annual training hours shall include the following topics at least once every two years:

- (i) a review of all of the current child care licensing rules found in Sections R430-90-11 through 24;
- (ii) a review of the licensee's written policies and procedures and emergency and disaster plan, including any updates;
- (iii) signs and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- (iv) principles of child growth and development, including development of the brain; and
- (v) positive guidance; and
- (d) if the licensee accepts infants or toddlers for care, required training topics shall also include:
 - (i) preventing shaken baby syndrome and coping with crying babies; and
 - (ii) preventing sudden infant death syndrome.

R430-90-8. Administration.

(1) The licensee is responsible for all aspects of the operation and management of the child care program.

(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care program.

(3) The licensee shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The licensee shall take all reasonable measures to

protect the safety of each child in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers any child in care.

(5) Either the licensee or a substitute with authority to act on behalf of the licensee shall be present whenever there is a child in care.

(6) Each week, the licensee shall be present at the home at least 50% of the time that one or more children are in care.

(7) There shall be a working telephone in the home. The licensee shall inform the parents of each child in care and the Department of any changes to the licensee's telephone number within 48 hours of the change.

(8) The provider shall report to the Child Care Licensing Program within the next Department business day any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless that medical service was part of the child's medical treatment plan identified by the parent. The provider shall also submit a written report to Child Care Licensing within five working days of the incident.

(9) The licensee shall establish, and shall ensure that all providers follow, written policies and procedures for the health and safety of each child in care. The written policies and procedures shall address at least the following areas:

- (a) direct supervision and protection of each child at all times, including when he or she is sleeping, outdoors, and during off-site activities;
- (b) procedures to account for each child's attendance and whereabouts;
- (c) the licensee's policy and practices regarding sick children, and whether they are allowed to be in care;
- (d) recognizing early signs of illness and determining when there is a need for exclusion from care;
- (e) discipline of children, including behavioral expectations of children and discipline methods used;
- (f) transportation to and from off-site activities, or to and from home, if the licensee offers these services; and
- (g) if the program offers transportation to or from school, policies addressing:
 - (i) how long a child will be unattended by a provider before school starts and after school lets out;
 - (ii) what steps will be taken if a child fails to meet the vehicle; and
 - (iii) how and when parents will be notified of delays or problems with transportation to and from school.

(10) The licensee shall ensure that the written policies and procedures are available for review by parents and the Department during business hours.

(11) The licensee shall train and supervise all caregivers and substitutes to:

- (a) ensure their compliance with this rule;
- (b) ensure they meet the needs of the children in care as specified in this rule; and
- (c) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

R430-90-9. Records.

(1) The licensee shall maintain on-site for review by the Department during any inspection the following general records:

- (a) documentation of the previous 12 months of quarterly fire drills and annual disaster drills as specified in R430-90-10(9) and R430-90-10(11);
- (b) current animal vaccination records as required in R430-90-22(2)(b);
- (c) a six week record of child attendance as required in R430-90-13(3);
- (d) a current local health department kitchen inspection;
- (e) an initial local fire department clearance for all areas of the home being used for care; and

(f) copy of the current background screening card issued by the Department for all providers, volunteers, and each person age 12 and older who resides in the licensee's home;

(2) The licensee shall maintain on-site for review by the Department during any inspection the following records for each enrolled child:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if a provider is unable to contact the parent;

(vi) child health information, as required in R430-90-14(7); and

(vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) current immunization records or documentation of a legally valid exemption, as specified in R430-90-14(5) and (6);

(c) a completed transportation permission form, if transportation services are offered to any child in care;

(d) a six week record of medication permission forms, and a six week record of medications actually administered as specified in R430-90-17(4) and R430-90-17(6)(f), if medications are administered to any child in care; and

(e) a six week record of incident, accident, and injury reports.

(3) The licensee shall maintain on-site for review by the Department during any inspection the following records for the licensee and each non-emergency substitute and caregiver:

(a) orientation training documentation for all non-emergency substitutes and caregivers as required in R430-90-7(8);

(b) annual training documentation for the past two years, for the licensee and all non-emergency substitutes and caregivers, as required in R430-90-7(9)(a); and

(c) current first aid and CPR certification, as required in R430-90-10(2), R430-90-20(3)(d), and R430-90-21(2).

(4) The licensee shall maintain on-site for review by the Department during any inspection orientation training documentation for each volunteer as required in R430-90-7(8).

(5) The licensee shall ensure that information in any child's file is not released without written parental permission.

R430-90-10. Emergency Preparedness.

(1) The licensee shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near the telephone.

(2) The licensee and all substitutes who care for children an average of 10 hours per week or more shall maintain a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The licensee shall maintain first-aid supplies in the home, including at least antiseptic, band-aids, and tweezers.

(4) The licensee shall have a written emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) procedures to be followed if a child is missing;

(e) the name and phone number of a substitute to be called

in the event the licensee must leave the home for any reason;

(f) an emergency relocation site where children will be housed if the licensee's home is uninhabitable;

(g) provisions for emergency supplies, including at least food, water, a first aid kit, and diapers if the licensee accepts diapered children for care; and

(h) procedures for ensuring adequate supervision of children during emergency situations, including while at the emergency relocation site.

(5) The licensee shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(6) The licensee shall review the emergency and disaster plan annually, and update it as needed. The licensee shall note the date of reviews and updates to the plan on the plan.

(7) The emergency and disaster plan shall be available for immediate review by parents and the Department during business hours.

(8) The licensee shall conduct fire evacuation drills quarterly. Drills shall include complete exit of all children and staff from the home.

(9) A provider shall document all fire drills, including:

(a) the date and time of the drill;

(b) the number of children participating;

(c) the total time to complete the evacuation; and

(d) any problems encountered.

(10) The licensee shall conduct drills for disasters other than fires at least once every 12 months.

(11) A provider shall document all disaster drills, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, or tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(12) The licensee shall vary the days and times on which fire and other disaster drills are held.

R430-90-11. Supervision and Ratios.

(1) The licensee or a substitute shall be physically present on-site and provide care and direct supervision of each child at all times, both indoors and outdoors. Direct care and supervision of each child includes:

(a) awareness of and responsibility for each child in care, including being near enough to intervene if needed;

(b) ensuring that there is a provider present inside the home when a child in care is inside the home, and there is a provider present in the outdoor play area when a child in care is outdoors, except as allowed in subsection (2) below for school age children; and

(c) monitoring of each sleeping infant in one of the following ways:

(i) by placing each infant for sleep in a location where the infant is within sight and hearing of a provider; or

(ii) by in person observation of each sleeping infant at least once every 15 minutes;

(2) A provider shall actively supervise each child during outdoor play to minimize the risk of injury to a child. A provider may allow only school age children to play outdoors while the provider is indoors, if:

(a) a provider can hear the children playing outdoors; and

(b) the children playing outdoors are in an area completely enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(3) The licensee may permit a child to participate in supervised out of the home activities without the licensee if:

(a) the licensee has prior written permission from the child's parent for the child's participation; and

(b) the licensee has clearly assigned the responsibility for

the child's whereabouts and supervision to a responsible adult who accepts responsibility for the care and supervision of the child throughout the period of the out of home activity.

(4) The maximum allowed capacity for a licensed family child care facility is 16 children, including providers' own children under age four.

(5) The licensee shall maintain a provider to child ratio of one provider for up to eight children in care, and two providers for nine to sixteen children in care.

(a) Children in care include the providers' own children under the age of four.

(b) Providers who are included in the provider to child ratio must meet all of the requirements of this rule.

(6) There shall be no more than four children under the age of two in care with two providers; and no more than two children under the age of two in care with one provider, except that if there are six or fewer children in care, there may be up to three children under the age of two in care.

(7) The total number of children in care may be further limited based on square footage, as found in Subsections R430-90-4(7) through (9).

(8) The licensee shall not exceed the maximum group sizes found in Table 1 and Table 2.

TABLE 1

MAXIMUM GROUP SIZE WITH 1 PROVIDER

# of Providers' Related Children Ages 4-12 Present in the Home During Child Care Hours	Maximum Allowed Number of Children in Care, Including the Providers' Children Under Age 4	Total # of All Children Through Age 12 Present in the Home During Child Care Hours
0-4	8 children	12
5	7 children	12
6	6 children	12
7	5 children	12
8	4 children	12
9	3 children	12
10	2 children	12
11	1 child	12

TABLE 2

MAXIMUM GROUP SIZE WITH 2 PROVIDERS

# of Providers' Related Children Ages 4-12 Present in the Home During Child Care Hours	Maximum Allowed Number of Children in Care, Including the Providers' Children Under Age 4	Total # of All Children Through Age 12 Present in the Home During Child Care Hours
0-8	16 children	24
9	15 children	24
10	14 children	24
11	13 children	24
12	12 children	24
13	11 children	24
14	10 children	24
15	9 children	24
16	8 children	24
17	7 children	24
18	6 children	24
19	5 children	24
20	4 children	24
21	3 children	24
22	2 children	24
23	1 child	24

R430-90-12. Injury Prevention.

(1) The licensee shall ensure that the home, outdoor play area, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The licensee shall ensure that walkways are free of tripping hazards such as unsecured flooring or cords in walkways.

(3) Areas accessible to children shall be free of unstable

heavy equipment, furniture, or other items that a child could pull down on himself or herself.

(4) The following items shall be inaccessible to each child in care:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, e-cigarettes, e-juice, e-liquids, open containers of alcohol, illegal substances, and sexually explicit material;

(c) when in use: portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, chains, and wires long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The licensee shall ensure that all toxic or hazardous chemicals are stored in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) If a wading pool is used:

(a) a provider must be at the pool supervising each child whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the pool shall be emptied and sanitized after each use; and

(d) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.

(10) If there is a swimming pool on the premises that is not emptied after each use:

(a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the licensee shall ensure that children in care are protected from unintended access to the pool in one of the following ways:

(i) the pool is enclosed within a fence or other solid barrier at least four feet high that is kept locked whenever the pool is not in use by any child in care; or

(ii) the pool has a properly working safety cover that meets ASTM Standard F1346, and the safety cover is in place whenever the pool is not in use by any child in care;

(d) the licensee shall maintain the pool in a safe manner;

(e) the licensee shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;

(f) if the pool is over six feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and

(g) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.

(11) If there is a hot tub on the premises with water in it, the licensee shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:

(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or

(b) it shall be surrounded by a four foot fence.

(12) If there is a trampoline on the premises that is accessible to any child in care, the licensee shall ensure compliance with the following requirements:

(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.

(b) Only one person at a time may use a trampoline.

(c) No child in care shall be allowed to do somersaults or flips on the trampoline.

(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.

(e) The trampoline must be placed at least 6' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences. If the trampoline is completely enclosed within properly installed netting that is in good repair and is at least 6' tall, and that is used as specified by the manufacturer, the trampoline must be placed at least 3' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences.

(f) There shall be no ladders near the trampoline.

(g) No child in care shall be allowed to play under the trampoline when it is in use.

(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.

(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame, or three feet from the perimeter of the trampoline frame if a net is used as specified above in subsection (e).

R430-90-13. Parent Notification and Child Security.

(1) The licensee shall either post or, upon enrollment, give each parent a copy of the Department's child care guide.

(2) At all times when their child is in care, parents shall have access to those areas of the licensee's home and outdoor area that are used for child care.

(3) The licensee shall ensure that a daily attendance record is maintained each day there is a child in care, to document each child's attendance.

(4) Only parents or persons with written authorization from the parent may pick up any child. In an emergency, a provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(5) The licensee shall ensure that parents are given a written report of every serious incident, accident, or injury involving their child on the day of occurrence. A provider and the person picking up the child shall sign the report to acknowledge that he or she has received it.

(6) The licensee shall ensure that parents are notified verbally of minor accidents and injuries on the day of occurrence.

(7) In the case of a life threatening incident or injury to a child, or an incident or injury that poses a threat of the loss of vision, hearing, or a limb, a provider shall contact emergency

personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, a provider shall attempt to contact the child's emergency contact person.

(8) If a child is injured and the injury appears serious but not life threatening, a provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

R430-90-14. Child Health.

(1) The licensee shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All providers shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of alcohol, illegal substances, or sexually explicit material on the premises or in vehicles used to transport children is prohibited any time that a child is in care.

(4) At any time when a child is in care, the provider shall ensure that tobacco is not used:

(a) in the home, garage, or any other building used by a child in care;

(b) in any vehicle that is being used to transport a child in care;

(c) within 25 feet of any entrance to the home, garage, or any other building occupied by a child in care; or

(d) in any outdoor area where a child in care plays, or within 25 feet of any outdoor area where a child in care plays.

(5) The licensee shall not enroll any child for care without documentation of:

(a) proof of current immunizations as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

(6) The licensee shall not provide ongoing care to a child without documentation of:

(a) proof of current immunizations as required by Utah law; or

(b) written documentation of an immunization exemption due to personal, medical or religious reasons.

(7) The licensee shall not admit any child for care without the following written health information from the parent:

(a) known allergies;

(b) known food sensitivities;

(c) acute and chronic medical conditions;

(d) instructions for special or non-routine daily health care;

(e) current medications; and

(f) any other special health instructions for the licensee.

(8) If the parent of a child in care has informed the provider that his or her child has a food allergy or sensitivity, that child shall not be given the food or beverage they are allergic to.

(9) The licensee shall ensure that each child's parent reviews, updates, and signs or initials the child's health information at least annually.

R430-90-15. Child Nutrition.

(1) If food service is provided:

(a) The licensee shall ensure that his or her meal service complies with local health department food service regulations.

(b) Foods served by license holders not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, current menus

provided by the CACFP, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.

(c) License holders not currently participating and in good standing with the CACFP shall keep a one week record of foods served at each meal or snack.

(d) The current week's menu shall be available for parent review.

(2) The licensee shall ensure that each child in care is offered a meal or a snack at least once every three hours.

(3) Providers shall serve each child's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the child's hands. Providers shall not place food on a bare table.

(4) The licensee shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name or another unique identifier, and refrigerated if needed. Children in care shall not be served food or beverages that were brought in for another child.

R430-90-16. Infection Control.

(1) All providers and volunteers shall wash their hands with soap and running water at the following times:

- (a) before handling or preparing food or bottles;
- (b) before and after eating meals and snacks or feeding a child;
- (c) after diapering each child;
- (d) after using the toilet or helping a child use the toilet;
- (e) after coming into contact with any body fluid;
- (f) after playing with or handling animals;
- (g) when coming in from outdoors; and
- (h) before administering medication.

(2) The licensee shall ensure that each child washes his or her hands with soap and running water at the following times:

- (a) before and after eating meals and snacks;
- (b) after using the toilet;
- (c) after coming into contact with any body fluid; and
- (d) when coming in from outdoors.

(3) During outdoor play time, the requirements of Subsections (1) and (2) may be met by having each provider, volunteer, and child clean his or her hands with individual disposable wet wipes and hand sanitizer.

(4) Only single-use paper towels or individually labeled cloth towels shall be used to dry a child's hands. If cloth towels are used, they shall not be shared by children, providers, or volunteers, and a provider shall wash the towels daily.

(5) The licensee shall ensure that toilet paper is accessible to each child, and that it is kept in a dispenser.

(6) The licensee shall ensure that children are taught proper hand washing techniques, and shall oversee hand washing whenever possible.

(7) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by a provider on more than one child. Each child's items shall be stored so that they do not touch another child's items.

(8) The licensee shall ensure that all washable toys and materials are cleaned and sanitized after each 5 days of use, or more often if needed.

(9) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The licensee shall ensure that all stuffed animals, cloth dolls, dress-up clothes, and pillows or covers are washed after each 5 days of use, or more often if needed.

(10) If a water play table or tub is used, the licensee shall ensure that the table or tub is washed and sanitized daily, and that each child washes his or her hands prior to engaging in the

activity.

(11) Persons with contagious TB shall not work with, assist with, or be present with any child in care.

(12) A provider shall promptly change a child's clothing if the child has a toileting accident.

(13) If a child's clothing is wet or soiled from any body fluid, the licensee shall ensure that:

- (a) the clothing is washed and dried; or
- (b) the clothing is placed in a leakproof container, labeled with the child's name, and returned to the parent.

(14) If a child uses a potty chair, the licensee shall ensure that it is cleaned and sanitized after each use.

(15) Except for diaper changes, which are covered in Section R430-90-23, and children's clothing that is soiled from a toileting accident, which is covered in Subsection R430-90-16(13), the licensee shall ensure that the following precautions are taken when cleaning up blood, urine, feces, and vomit.

(a) The person cleaning up the substance shall wear waterproof gloves;

- (b) the surface shall be cleaned using a detergent solution;
- (c) the surface shall be rinsed with clean water;
- (d) the surface shall be sanitized;

(e) if disposable materials such as paper towels or other absorbent materials are used to clean up the body fluid, they shall be disposed of in a leakproof plastic bag;

(f) if non-disposable materials, such as a cleaning cloth, mop, or re-usable rubber gloves are used to clean up the body fluid, they shall be washed and sanitized before reuse; and

(g) the person cleaning up the fluid shall wash his or her hands after cleaning up the body fluid.

(16) The licensee shall ensure that any child who is ill with an infectious disease is separated from any other children in care in a safe, supervised location.

(17) The licensee shall ensure that a parent of any child who becomes ill after arrival is contacted as soon as the illness is observed or suspected.

(18) The licensee shall ensure that the parents of every child in care are informed when any person in the home or child in care has an infectious disease or parasite. Parents shall be notified the day the infectious disease or parasite is discovered.

R430-90-17. Medications.

(1) Only a provider trained in the administration of medications as specified in this rule may administer medication to a child in care.

(2) All over-the-counter and prescription medications shall:

- (a) be labeled with the child's name;
- (b) be kept in the original or pharmacy container;
- (c) have the original label; and,
- (d) have child-safety caps.

(3) The licensee shall ensure that all non-refrigerated over-the-counter and prescription medication is inaccessible to children. The licensee shall ensure that all refrigerated over-the-counter and prescription medication is placed in a waterproof container to avoid contamination between food and medication.

(4) The licensee shall have a written medication permission form completed and signed by the parent prior to the administering of any over-the-counter or prescription medication brought in by a parent for his or her child. The permission form must include:

- (a) the name of the child;
- (b) the name of the medication;
- (c) written instructions for administration; including:
 - (i) the dosage;
 - (ii) the method of administration;
 - (iii) the times and dates to be administered; and
 - (iv) the disease or condition being treated; and
- (d) the parent's signature and the date signed.

(5) If the licensee keeps over-the-counter medication that is not brought in by a parent for his or her child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

(a) prior written consent; or
 (b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent signs upon picking up the child.

(6) When administering medication, the person administering the medication shall:

(a) wash his or her hands;
 (b) if the parent supplies the medication, check the medication label to confirm the child's name;
 (c) if the parent supplies the medication, compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;
 (d) if the licensee supplies the medication, check the product package to ensure that a child is not given a dosage larger than that recommended by the manufacturer;
 (e) administer the medication; and
 (f) immediately record the following information:
 (i) the date, time, and dosage of the medication given;
 (ii) the signature or initials of the provider who administered the medication; and,
 (iii) any errors in administration or adverse reactions.

(7) The licensee shall ensure that any adverse reaction to a medication or any error in administration is reported to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

R430-90-18. Napping.

(1) The licensee shall ensure that children in care are offered a daily opportunity for rest or sleep in an environment that provides a low noise level and freedom from distractions.

(2) If the licensee has a scheduled nap time for children, it shall not exceed two hours daily.

(3) If a child uses sleeping equipment, sleeping bags, a pillow, a pillow case, sheets, or blankets while in care, the licensee shall meet the following requirements:

(a) The licensee shall maintain sleeping equipment in good repair.

(b) If sleeping equipment, sleeping bags, pillow cases, sheets, or blankets are clearly assigned to and used by an individual child, a provider must clean and sanitize them as needed, but at least weekly.

(c) If sleeping equipment, sleeping bags, pillow cases, sheets, or blankets are not clearly assigned to and used by an individual child, a provider must clean and sanitize them prior to each use.

(4) If a child uses a pillow without a pillow case while in care, then the provider must clean and sanitize the pillow as required in Subsection (3). If a child uses a pillow with a pillow case while in care, then the provider must clean and sanitize the pillow case as required in Subsection (3).

(5) Sleeping equipment may not block exits at any time.

R430-90-19. Child Discipline.

(1) The licensee shall inform non-emergency substitutes, caregivers, parents, and children of the licensee's behavioral expectations for children.

(2) Providers and volunteers may discipline children using positive reinforcement and redirection, and by setting clear limits that promote a child's ability to become self-disciplined.

(3) A provider may use gentle, passive restraint with a child only when it is needed to stop the child from injuring

himself or herself or others or from destroying property.

(4) Disciplinary measures shall not include any of the following:

(a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above;

(c) shouting at any child;

(d) any form of emotional abuse;

(e) forcing or withholding of food, rest, or toileting; and,

(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

R430-90-20. Activities.

(1) The licensee shall develop a daily activity plan that offers activities to support each child's healthy physical, social-emotional, and cognitive-language development.

(2) The licensee shall ensure that the toys and equipment needed to carry out the activity plan are accessible to children.

(3) If off-site activities are offered:

(a) the licensee shall obtain parental consent for off-site activities in advance;

(b) a provider who meets all of the caregiver requirements of this rule shall accompany the children and shall take a copy of each child's admission form as specified in Subsection R430-90-9(2)(a).

(c) a provider shall maintain required provider to child ratios and direct supervision during the activity;

(d) at least one provider present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing. And

(e) a provider shall ensure that there is a way for each provider, volunteer, and child to wash his or her hands as specified in R430-90-16(1) and (2). If there is no source of running water, providers, volunteers, and children may clean their hands with individual disposable wet wipes and hand sanitizer.

(4) If off-site swimming activities are offered, providers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the provider to child ratio.

R430-90-21. Transportation.

(1) Any vehicle used for transporting any child in care shall:

(a) be enclosed;

(b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;

(c) be maintained in a safe condition and have a current vehicle registration and safety inspection;

(d) be maintained in a clean condition;

(e) maintain temperatures between 60-90 degrees Fahrenheit when in use; and

(f) contain first aid supplies, including at least antiseptic, band-aids, and tweezers.

(2) At least one adult in each vehicle transporting any child in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The adult transporting any child in care shall:

(a) have and carry with him or her a current valid Utah driver's license for the type of vehicle being driven whenever he or she is transporting any child in care;

(b) have with him or her a copy of each child's admission

form as specified in Subsection R430-90-9(2)(a);

(c) ensure that each child in care being transported is wearing an appropriate individual safety restraint;

(d) ensure that each child is always attended by an adult while in the vehicle;

(e) ensure that all children remain seated while the vehicle is in motion;

(f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and,

(g) ensure that the vehicle is locked during transport.

R430-90-22. Animals.

(1) The licensee shall inform parents of the types of animals permitted on the premises.

(2) The licensee shall ensure that all animals on the premises and accessible to any child in care :

(a) are clean and free of obvious disease or health problems that could adversely affect any child in care; and

(b) have current vaccinations for all vaccine preventable diseases that are transmissible to humans. The licensee shall have documentation of the vaccinations.

(3) The licensee shall ensure that there is no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(4) The licensee shall ensure that no child in care assists with the cleaning of animals or animal cages, pens, or equipment.

(5) The licensee shall ensure that there is no animal or animal equipment in food preparation or eating areas during food preparation or eating times.

(6) The licensee shall ensure that no child in care handles reptiles or amphibians while in care.

R430-90-23. Diapering.

If children in care are diapered on the premises, the following applies:

(1) The diapering area shall not be located in a food preparation or eating area.

(2) Children shall not be diapered directly on the floor, or on any surface used for another purpose.

(3) The diapering surface shall be smooth, waterproof, and in good repair.

(4) A provider shall clean and sanitize the diapering surface after each diaper change, or use a disposable non-permeable diapering surface that is thrown away after each diaper change.

(5) The provider shall wash his or her hands after each diaper change.

(6) The provider shall place soiled disposable diapers in a container that has a disposable plastic lining and a tightly fitting lid, or place soiled diapers directly in an outdoor garbage container that has a tightly fitting lid or is inaccessible to children.

(7) A provider shall daily clean and sanitize indoor containers where soiled diapers are placed.

(8) If cloth diapers are used:

(a) they shall not be rinsed at the facility; and

(b) after a diaper change, the provider shall place the cloth diaper directly into a leakproof container that is inaccessible to any child and labeled with the child's name, or a leakproof diapering service container.

(9) The licensee shall ensure that each child's diaper is checked at least once every two hours, and that each child's diaper is changed promptly if it is wet or soiled. If a child is napping at the end of a two-hour period, the child's diaper must be checked when the child awakes.

R430-90-24. Infant and Toddler Care.

If the licensee accepts infants or toddlers for care, the

following applies:

(1) If an infant is not able to sit upright and hold his or her own bottle, a provider shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) A provider shall clean and sanitize high chair trays prior to each use.

(3) A provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. A provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) If there is more than one infant or toddler in care, baby food, formula, and breast milk for each child that is brought from home must be labeled with the child's name or another unique identifier.

(5) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:

(a) kept refrigerated if needed; and

(b) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(6) The licensee shall ensure that formula and milk, including breast milk, is discarded after each feeding, or within two hours of initiating a feeding.

(7) To prevent burns, a provider shall shake each heated bottle and test it for temperature before the bottle is fed to a child.

(8) If there is more than one infant or toddler in care, pacifiers and bottles shall be:

(a) labeled with each child's name or another unique identifier; or

(b) washed and sanitized after each individual use, before use by another child.

(9) The licensee shall ensure that only one infant or toddler occupies any one piece of equipment, such as a crib, playpen, stroller, or swing, at any time, unless the equipment has individual seats for more than one child.

(10) The licensee shall ensure that infants sleep in equipment designed for sleep, such as a crib, bassinet, porta-crib or play pen. The licensee shall ensure that infants are not placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment, unless the licensee has written permission from the infant's parent.

(11) The licensee shall ensure that each crib used by a child in care:

(a) has a tight fitting mattress;

(b) has slats spaced no more than 2-3/8 inches apart;

(c) has at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance;

(d) does not have strings, cords, ropes, or other entanglement hazards strung upon the crib rails or within reach of the child; and

(e) meet CPSC crib standards.

(12) The licensee shall ensure that infants are not placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(13) The licensee shall ensure that each infant and toddler is allowed to follow his or her own pattern of sleeping and eating.

(14) Infant walkers with wheels are prohibited.

(15) The licensee shall ensure that infants and toddlers do not have access to objects made of styrofoam.

(16) The licensee shall ensure that a provider responds as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(17) The licensee shall ensure that awake infants and toddlers receive positive physical stimulation and positive

verbal interaction with a provider at least once every 20 minutes.

(18) The licensee shall ensure that awake infants and toddlers are not confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(19) The licensee shall ensure that mobile infants and toddlers have freedom of movement in a safe area.

(20) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. The licensee shall ensure that there are enough toys for each child in the group to be engaged in play with toys.

(21) The licensee shall ensure that all toys used by infants and toddlers are cleaned and sanitized:

- (a) weekly;
- (b) after being put in a child's mouth before another child uses it; and
- (c) after being contaminated by any body fluid.

KEY: child care facilities, licensed family child care

January 31, 2016

26-39

Notice of Continuation May 29, 2013

R432. Health, Family Health and Preparedness, Licensing.**R432-270. Assisted Living Facilities.****R432-270-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-270-2. Purpose.

This rule establishes the licensing and operational standards for assisted living facilities Type I and Type II. Assisted living is intended to enable persons experiencing functional impairments to receive 24-hour personal and health-related services in a place of residence with sufficient structure to meet the care needs in a safe manner.

R432-270-3. Definitions.

- (1) The terms used in these rules are defined in R432-1-3.
- (2) In addition:
 - (a) "Assessment" means documentation of each resident's ability or current condition in the following areas:
 - (i) memory and daily decision making ability;
 - (ii) ability to communicate effectively with others;
 - (iii) physical functioning and ability to perform activities of daily living;
 - (iv) continence;
 - (v) mood and behavior patterns;
 - (vi) weight loss;
 - (vii) medication use and the ability to self-medicate;
 - (viii) special treatments and procedures;
 - (ix) disease diagnoses that have a relationship to current activities of daily living status, behavior status, medical treatments, or risk of death;
 - (x) leisure patterns and interests;
 - (xi) assistive devices; and
 - (xii) prosthetics.
 - (b) "Activities of daily living (ADL)":
 - (i) means those personal functional activities required for an individual for continued well-being, including:
 - (A) personal grooming, including oral hygiene and denture care;
 - (B) dressing;
 - (C) bathing;
 - (D) toileting and toilet hygiene;
 - (E) eating/nutrition;
 - (F) administration of medication; and
 - (G) transferring, ambulation and mobility.
 - (ii) are divided into the following levels:
 - (A) "Independent" means the resident can perform the ADL without help.
 - (B) "Assistance" means the resident can perform some part of an ADL, but cannot do it entirely alone.
 - (C) "Dependent" means the resident cannot perform any part of an ADL; it must be done entirely by someone else.
 - (c) "Home-like" as used in statute and this rule means a place of residence which creates an atmosphere supportive of the resident's preferred lifestyle. Home-like is also supported by the use of residential building materials and furnishings.
 - (d) "Hospice patient" means an individual who is admitted to a hospice program or agency.
 - (e) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.
 - (f) "Self-direct medication administration" means the resident can:
 - (i) recognize medications offered by color or shape; and
 - (ii) question differences in the usual routine of medications.
 - (g) "Service Plan" means a written plan of care for services which meets the requirements of R432-270-13.

(h) "Services" means activities which help the residents develop skills to increase or maintain their level of psychosocial and physical functioning, or which assist them in activities of daily living.

(i) "Significant change" means a major change in a resident's status that is self-limiting or impacts on more than one area of the resident's health status.

(j) "Significant assistance" means the resident is unable to perform any part of an ADL and is dependent upon staff or others to accomplish the ADL as defined in R432-270-3(2)(b).

(k) "Social care" means:

(l) providing opportunities for social interaction in the facility or in the community; or

(ii) providing services to promote independence or a sense of self-direction.

(m) "Unit" means an individual living space, including living and sleeping space, bathroom, and optional kitchen area.

R432-270-4. Licensing.

(1) A person that offers or provides care to two or more unrelated individuals in a residential facility must be minimally licensed as an assisted living facility if:

(a) the individuals stay in the facility for more than 24 hours; and

(b) the facility provides or arranges for the provision of assistance with one or more activity of daily living for any of the individuals.

(2) An assisted living facility may be licensed as a Type I facility if:

(a) the individuals under care are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

(3) An assisted living facility must be licensed as a Type II facility if the individuals under care are capable of achieving mobility sufficient to exit the facility only with the limited assistance of one person;

(4) A Type I assisted living facility shall provide social care to the individuals under care.

(5) A Type II assisted living facility shall provide care in a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who need any of these services as required by department rule.

(6) Type I and II assisted living facilities must provide each resident with a separate living unit. Two residents may share a unit upon written request of both residents.

(7) An individual may continue to remain in an assisted living facility provided:

(a) the facility construction can meet the individual's needs;

(b) the individual's physical and mental needs are appropriate to the assisted living criteria; and

(c) the facility provides adequate staffing to meet the individual's needs.

(8) Assisted living facilities may be licensed as large, small or limited capacity facilities.

(a) A large assisted living facility houses 17 or more residents.

(b) A small assisted living facility houses six to 16 residents.

(c) A limited capacity assisted living facility houses two to five residents.

R432-270-5. Licensee.

(1) The licensee must:

(a) ensure compliance with all federal, state, and local laws;

(b) assume responsibility for the overall organization, management, operation, and control of the facility;

(c) establish policies and procedures for the welfare of residents, the protection of their rights, and the general operation of the facility;

(d) implement a policy which ensures that the facility does not discriminate on the basis of race, color, sex, religion, ancestry, or national origin in accordance with state and federal law;

(e) secure and update contracts for required services not provided directly by the facility;

(f) respond to requests for reports from the Department; and

(g) appoint, in writing, a qualified administrator who shall assume full responsibility for the day-to-day operation and management of the facility. The licensee and administrator may be the same person.

(2) The licensee shall implement a quality assurance program to include a Quality Assurance Committee. The committee must:

(a) consist of at least the facility administrator and a health care professional, and

(b) meet at least quarterly to identify and act on quality issues.

(3) If the licensee is a corporation or an association, it shall maintain an active and functioning governing body to fulfill licensee duties and to ensure accountability.

R432-270-6. Administrator Qualifications.

(1) The administrator shall have the following qualifications:

(a) be 21 years of age or older;

(b) have knowledge of applicable laws and rules;

(c) have the ability to deliver, or direct the delivery of, appropriate care to residents;

(d) successfully complete the criminal background screening process defined in R432-35; and

(e) for all Type II facilities, complete a Department approved national certification program within six months of hire.

(2) In addition to R432-270-6(1) the administrator of a Type I facility shall have an associate degree or two years experience in a health care facility.

(3) In addition to R432-270-6(1) the administrator of a Type II small or limited-capacity assisted living facility shall have one or more of the following:

(a) an associate degree in a health care field;

(b) two years or more management experience in a health care field; or

(c) one year's experience in a health care field as a licensed health care professional.

(4) In addition to R432-270-6(1) the administrator of a Type II large assisted living facility must have one or more of the following:

(a) a State of Utah health facility administrator license;

(b) a bachelor's degree in a health care field, to include management training or one or more years of management experience;

(c) a bachelor's degree in any field, to include management training or one or more years of management experience and one year or more experience in a health care field; or

(d) an associates degree and four years or more management experience in a health care field.

R432-270-7. Administrator Duties.

(1) The administrator must:

(a) be on the premises a sufficient number of hours in the business day, and at other times as necessary, to manage and administer the facility;

(b) designate, in writing, a competent employee, 21 years of age or older, to act as administrator when the administrator is

unavailable for immediate contact. It is not the intent of this subsection to permit a de facto administrator to replace the designated administrator.

(2) The administrator is responsible for the following:

(a) recruit, employ, and train the number of licensed and unlicensed staff needed to provide services;

(b) verify all required licenses and permits of staff and consultants at the time of hire or the effective date of contract;

(c) maintain facility staffing records for the preceding 12 months;

(d) admit and retain only those residents who meet admissions criteria and whose needs can be met by the facility;

(e) review at least quarterly every injury, accident, and incident to a resident or employee and document appropriate corrective action;

(f) maintain a log indicating any significant change in a resident's condition and the facility's action or response;

(g) complete an investigation whenever there is reason to believe that a resident has been subject to abuse, neglect, or exploitation;

(h) report all suspected abuse, neglect, or exploitation in accordance with Section 62A-3-305, and document appropriate action if the alleged violation is verified.

(i) notify the resident's responsible person within 24 hours of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the facility's license;

(j) conduct and document regular inspections of the facility to ensure it is safe from potential hazards;

(k) complete, submit, and file all records and reports required by the Department;

(l) participate in a quality assurance program; and

(m) secure and update contracts for required professional and other services not provided directly by the facility.

(3) The administrator's responsibilities shall be included in a written and signed job description on file in the facility.

R432-270-8. Personnel.

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by the residents' assessment and service plans. Additional staff shall be employed as necessary to perform office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents in a Type I facility shall be at least 18 years of age or be a certified nurse aide and shall have related experience in the job assigned or receive on the job training.

(4) Personnel who provide personal care to residents in a Type II facility must be certified nurse aides or complete a state certified nurse aide program within four months of the date of hire.

(5) Personnel shall be licensed, certified, or registered in accordance with applicable state laws.

(6) The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

(7) Facility policies and procedures must be available to personnel at all times.

(8) All personnel must receive documented orientation to the facility and the job for which they are hired. Orientation shall include the following:

(a) job description;

(b) ethics, confidentiality, and residents' rights;

(c) fire and disaster plan;

(d) policy and procedures; and
 (e) reporting responsibility for abuse, neglect and exploitation.

(9) Each employee shall receive documented in-service training. The training shall be tailored to include all of the following subjects that are relevant to the employee's job responsibilities:

- (a) principles of good nutrition, menu planning, food preparation, and storage;
- (b) principles of good housekeeping and sanitation;
- (c) principles of providing personal and social care;
- (d) proper procedures in assisting residents with medications;
- (e) recognizing early signs of illness and determining when there is a need for professional help;
- (f) accident prevention, including safe bath and shower water temperatures;
- (g) communication skills which enhance resident dignity;
- (h) first aid;
- (i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and
- (j) special needs of the Dementia/Alzheimer's resident.

(10) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone.

(11) The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.

(12) The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.

(a) A health inventory shall obtain at least the employee's history of the following:

- (i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and
- (ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.

(b) The facility shall develop employee health screening and immunization components of the personnel health program.

(c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

- (A) initial hiring;
- (B) suspected exposure to a person with active tuberculosis; and
- (C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with the Communicable Disease Rule, R386-702-3.

(e) The facility shall comply with the Occupational Safety and Health Administration's Blood-borne Pathogen Standard.

R432-270-9. Residents' Rights.

(1) Assisted living facilities shall develop a written resident's rights statement based on this section.

(2) The administrator or designee shall give the resident a written description of the resident's legal rights upon admission, including the following:

(a) a description of the manner of protecting personal funds, in accordance with Section R432-270-20; and

(b) a statement that the resident may file a complaint with the state long term care ombudsman and any other advocacy

group concerning resident abuse, neglect, or misappropriation of resident property in the facility.

(3) The administrator or designee shall notify the resident or the resident's responsible person at the time of admission, in writing and in a language and manner that the resident or the resident's responsible person understands, of the resident's rights and of all rules governing resident conduct and responsibilities during the stay in the facility.

(4) The administrator or designee must promptly notify in writing the resident or the resident's responsible person when there is a change in resident rights under state law.

(5) Resident rights include the following:

(a) the right to be treated with respect, consideration, fairness, and full recognition of personal dignity and individuality;

(b) the right to be transferred, discharged, or evicted by the facility only in accordance with the terms of the signed admission agreement;

(c) the right to be free of mental and physical abuse, and chemical and physical restraints;

(d) the right to refuse to perform work for the facility;

(e) the right to perform work for the facility if the facility consents and if:

(i) the facility has documented the resident's need or desire for work in the service plan,

(ii) the resident agrees to the work arrangement described in the service plan,

(iii) the service plan specifies the nature of the work performed and whether the services are voluntary or paid, and

(iv) compensation for paid services is at or above the prevailing rate for similar work in the surrounding community;

(f) the right to privacy during visits with family, friends, clergy, social workers, ombudsmen, resident groups, and advocacy representatives;

(g) the right to share a unit with a spouse if both spouses consent, and if both spouses are facility residents;

(h) the right to privacy when receiving personal care or services;

(i) the right to keep personal possessions and clothing as space permits;

(j) the right to participate in religious and social activities of the resident's choice;

(k) the right to interact with members of the community both inside and outside the facility;

(l) the right to send and receive mail unopened;

(m) the right to have access to telephones to make and receive private calls;

(n) the right to arrange for medical and personal care;

(o) the right to have a family member or responsible person informed by the facility of significant changes in the resident's cognitive, medical, physical, or social condition or needs;

(p) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night. Assisted living Type II residents who have been assessed to require a secure environment may be housed in a secure unit, provided the secure unit is approved by the fire authority having jurisdiction. This right does not prohibit the establishment of house rules such as locking doors at night for the protection of residents;

(q) the right to be informed of complaint or grievance procedures and to voice grievances and recommend changes in policies and services to facility staff or outside representatives without restraint, discrimination, or reprisal;

(r) the right to be encouraged and assisted throughout the period of a stay to exercise these rights as a resident and as a citizen;

(s) the right to manage and control personal funds, or to be given an accounting of personal funds entrusted to the facility,

as provided in R432-270-20 concerning management of resident funds;

(t) the right, upon oral or written request, to access within 24 hours all records pertaining to the resident, including clinical records;

(u) the right, two working days after the day of the resident's oral or written request, to purchase at a cost not to exceed the community standard photocopies of the resident's records or any portion thereof;

(v) the right to personal privacy and confidentiality of personal and clinical records;

(w) the right to be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(x) the right to be fully informed in a language and in a manner the resident understands of the resident's health status and health rights, including the following:

(i) medical condition;

(ii) the right to refuse treatment;

(iii) the right to formulate an advance directive in accordance with UCA Section 75-2a; and

(iv) the right to refuse to participate in experimental research.

(6) The following items must be posted in a public area of the facility that is easily accessible by residents:

(a) the long term care ombudsmen's notification poster;

(b) information on Utah protection and advocacy systems; and

(c) a copy of the resident's rights.

(7) The facility shall have available in a public area of the facility the results of the current survey of the facility and any plans of correction.

(8) A resident may organize and participate in resident groups in the facility, and a resident's family may meet in the facility with the families of other residents.

(a) The facility shall provide private space for resident groups or family groups.

(b) Facility personnel or visitors may attend resident group or family group meetings only at the group's invitation.

(c) The administrator shall designate an employee to provide assistance and to respond to written requests that result from group meetings.

R432-270-10. Admissions.

(1) The facility shall have written admission, retention, and transfer policies that are available to the public upon request.

(2) Before accepting a resident, the facility must obtain sufficient information about the person's ability to function in the facility through the following:

(a) an interview with the resident and the resident's responsible person; and

(b) the completion of the resident assessment.

(3) If the Department determines during inspection or interview that the facility knowingly and willfully admits or retains residents who do not meet license criteria, then the Department may, for a time period specified, require that resident assessments be conducted by an individual who is independent from the facility.

(4) A Type I facility:

(a) shall accept and retain residents who meet the following criteria:

(i) are ambulatory or mobile and are capable of taking life saving action in an emergency without the assistance of another person;

(ii) have stable health;

(iii) require no assistance or only limited assistance in the activities of daily living (ADL); and

(iv) do not require total assistance from staff or others with more than three ADLs.

(b) may accept and retain residents who meet the following criteria:

(i) are cognitively impaired or physically disabled but able to evacuate from the facility without the assistance of another person; and

(ii) require and receive intermittent care or treatment in the facility from a licensed health care professional either through contract or by the facility, if permitted by facility policy.

(5) A Type II facility may accept and retain residents who meet the following criteria:

(a) require total assistance from staff or others in more than three ADLs, provided that:

(i) the staffing level and coordinated supportive health and social services meet the needs of the resident; and

(ii) the resident is capable of evacuating the facility with the limited assistance of one person.

(b) are physically disabled but able to direct their own care; or

(c) are cognitively impaired or physically disabled but able to evacuate from the facility with the limited assistance of one person.

(6) Type I and Type II assisted living facilities shall not admit or retain a person who:

(a) manifests behavior that is suicidal, sexually or socially inappropriate, assaultive, or poses a danger to self or others;

(b) has active tuberculosis or other chronic communicable diseases that cannot be treated in the facility or on an outpatient basis; or may be transmitted to other residents or guests through the normal course of activities; or

(c) requires inpatient hospital, long-term nursing care or 24-hour continual nursing care that will last longer than 15 calendar days after the day on which the nursing care begins.

(7) The prospective resident or the prospective resident's responsible person must sign a written admission agreement prior to admission. The admission agreement shall be kept on file by the facility and shall specify at least the following:

(a) room and board charges and charges for basic and optional services;

(b) provision for a 30-day notice prior to any change in established charges;

(c) admission, retention, transfer, discharge, and eviction policies;

(d) conditions under which the agreement may be terminated;

(e) the name of the responsible party;

(f) notice that the Department has the authority to examine resident records to determine compliance with licensing requirements; and

(g) refund provisions that address the following:

(i) thirty-day notices for transfer or discharge given by the facility or by the resident,

(ii) emergency transfers or discharges,

(iii) transfers or discharges without notice, and

(iv) the death of a resident.

(8) A type I assisted living facility may accept and retain residents who have been admitted to a hospice program, under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) a facility may retain hospice patient residents who are not capable of exiting the facility without assistance with the following conditions:

(i) the facility must assure that a worker or an individual is assigned solely to each specific hospice patient and is on-site to assist the resident in emergency evacuation 24 hours a day, seven days a week;

(ii) the facility must train the assigned worker or individual to specifically assist in the emergency evacuation of the assigned hospice patient resident;

(iii) the worker or individual must be physically capable of providing emergency evacuation assistance to the particular hospice patient resident; and

(iv) hospice residents who are not capable of exiting the facility without assistance comprise no more than 25 percent of the facility's resident census.

(9) A type II assisted living facility may accept and retain hospice patient residents under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) if the hospice patient resident cannot evacuate the facility without significant assistance, the facility must:

(i) develop an emergency plan to evacuate the hospice resident in the event of an emergency; and

(ii) integrate the emergency plan into the resident's service plan.

R432-270-11. Transfer or Discharge Requirements.

(1) A resident may be discharged, transferred, or evicted for one or more of the following reasons:

(a) The facility is no longer able to meet the resident's needs because the resident poses a threat to health or safety to self or others, or the facility is not able to provide required medical treatment.

(b) The resident fails to pay for services as required by the admission agreement.

(c) The resident fails to comply with written policies or rules of the facility.

(d) The resident wishes to transfer.

(e) The facility ceases to operate.

(2) Prior to transferring or discharging a resident, the facility shall serve a transfer or discharge notice upon the resident and the resident's responsible person.

(a) The notice shall be either hand-delivered or sent by certified mail.

(b) The notice shall be made at least 30 days before the day on which the facility plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:

(i) the safety or health of persons in the facility is endangered; or

(ii) an immediate transfer or discharge is required by the resident's urgent medical needs.

(3) The notice of transfer or discharge shall:

(a) be in writing with a copy placed in the resident file;

(b) be phrased in a manner and in a language the resident can understand;

(c) detail the reasons for transfer or discharge;

(d) state the effective date of transfer or discharge;

(e) state the location to which the resident will be transferred or discharged;

(f) state that the resident may request a conference to discuss the transfer or discharge; and

(g) contain the following information:

(i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;

(ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(4) The facility shall provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.

(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the facility shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.

(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.

(b) Participants in the conference shall include the facility representatives, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

R432-270-12. Resident Assessment.

(1) A signed and dated resident assessment shall be completed on each resident prior to admission and at least every six months thereafter.

(2) In Type I and Type II facilities, the initial and six-month resident assessment must be completed and signed by a licensed health care professional.

(3) The resident assessment must accurately reflect the resident's status at the time of assessment.

(4) The resident assessment must include a statement signed by the licensed health care professional completing the resident assessment that the resident meets the admission and level of assistance criteria for the facility.

(5) The facility shall use a resident assessment form that is approved and reviewed by the Department to document the resident assessments.

(6) The facility shall revise and update each resident's assessment when there is a significant change in the resident's cognitive, medical, physical, or social condition and update the resident's service plan to reflect the change in condition.

R432-270-13. Service Plan.

(1) Each resident must have an individualized service plan that is consistent with the resident's unique cognitive, medical, physical, and social needs, and is developed within seven calendar days of the day the facility admits the resident. The facility shall periodically revise the service plan as needed.

(2) The facility shall use the resident assessment to develop, review, and revise the service plan for each resident.

(3) The service plan must be prepared by the administrator or a designated facility service coordinator.

(4) The service plan shall include a written description of the following:

(a) what services are provided;

(b) who will provide the services, including the resident's significant others who may participate in the delivery of services;

(c) how the services are provided;

(d) the frequency of services; and

(e) changes in services and reasons for those changes.

R432-270-14. Service Coordinator.

(1) If the administrator appoints a service coordinator, the service coordinator must have knowledge, skills and abilities to coordinate the service plan for each resident.

(2) The duties and responsibilities of the service coordinator must be defined by facility policy and included in

the designee's job description.

(3) The service coordinator is responsible to document that the resident or resident's designated responsible person is encouraged to actively participate in developing the service plan.

(4) The administrator and designated service coordinator are responsible to ensure that each resident's service plan is implemented by facility staff.

R432-270-15. Nursing Services.

(1) The facility must develop written policies and procedures defining the level of nursing services provided by the facility.

(2) A Type I assisted living facility must employ or contract with a registered nurse to provide or delegate medication administration for any resident who is unable to self-medicate or self-direct medication management.

(3) A Type II assisted living facility must employ or contract with a registered nurse to provide or supervise nursing services to include:

- (a) a nursing assessment on each resident;
- (b) general health monitoring on each resident; and
- (c) routine nursing tasks, including those that may be delegated to unlicensed assistive personnel in accordance with the Utah Nurse Practice Act R156-31B-701.

(4) A Type I assisted living facility may provide nursing care according to facility policy. If a Type I assisted living facility chooses to provide nursing services, the nursing services must be provided in accordance with R432-270-15(3)(a) through (c).

(5) Type I and Type II assisted living facilities shall not provide skilled nursing care, but must assist the resident in obtaining required services. To determine whether a nursing service is skilled, the following criteria shall apply:

(a) The complexity or specialized nature of the prescribed services can be safely or effectively performed only by, or under the close supervision of licensed health care professional personnel.

(b) Care is needed to prevent, to the extent possible, deterioration of a condition or to sustain current capacities of a resident.

(6) At least one certified nurse aide must be on duty in a Type II facility 24 hours per day.

R432-270-16. Secure Units.

(1) A Type II assisted living facility with approved secure units may admit residents with a diagnosis of Alzheimer's/dementia if the resident is able to exit the facility with limited assistance from one person.

(2) Each resident admitted to a secure unit must have an admission agreement that indicates placement in the secure unit.

(a) The secure unit admission agreement must document that a wander risk management agreement has been negotiated with the resident or resident's responsible person.

(b) The secure unit admission agreement must identify discharge criteria that would initiate a transfer of the resident to a higher level of care than the assisted living facility is able to provide.

(3) There shall be at least one staff with documented training in Alzheimer's/dementia care in the secure unit at all times.

(4) Each secure unit must have an emergency evacuation plan that addresses the ability of the secure unit staff to evacuate the residents in case of emergency.

R432-270-17. Arrangements for Medical or Dental Care.

(1) The facility shall assist residents in arranging access for ancillary services for medically related care including physician, dentist, pharmacist, therapy, podiatry, hospice, home health, and

other services necessary to support the resident.

(2) The facility shall arrange for care through one or more of the following methods:

- (a) notifying the resident's responsible person;
- (b) arranging for transportation to and from the practitioner's office; or

(c) arrange for a home visit by a health care professional.

(3) The facility must notify a physician or other health care professional when the resident requires immediate medical attention.

R432-270-18. Activity Program.

(1) Residents shall be encouraged to maintain and develop their fullest potential for independent living through participation in activity and recreational programs.

(2) The facility shall provide opportunities for the following:

- (a) socialization activities;
- (b) independent living activities to foster and maintain independent functioning;
- (c) physical activities; and
- (d) community activities to promote resident participation in activities away from the facility.

(3) The administrator shall designate an activity coordinator to direct the facility's activity program. The activity coordinator's duties include the following:

- (a) coordinate all recreational activities, including volunteer and auxiliary activities;
- (b) plan, organize, and conduct the residents' activity program with resident participation; and
- (c) develop and post monthly activity calendars, including information on community activities, based on residents' needs and interests.

(4) The facility shall provide sufficient equipment, supplies, and indoor and outdoor space to meet the recreational needs and interests of residents.

(5) The facility shall provide storage for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-270-19. Medication Administration.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided shall be documented on each resident's assessment.

(2) Each resident's medication program must be administered by means of one of the methods described in (a) through (f) in this section:

- (a) The resident is able to self-administer medications.
- (i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, a resident shall keep his medication in a locked container in the unit.

(b) The resident is able to self-direct medication administration. Facility staff may assist residents who self-direct medication administration by:

- (i) reminding the resident to take the medication;
- (ii) opening medication containers; and
- (iii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a designated responsible person may administer medications. If a family member or designated responsible person assists with medication administration, they shall sign a waiver indicating that they agree to assume the

responsibility to fill prescriptions, administer medication, and document that the medication has been administered. Facility staff may not serve as the designated responsible person.

(d) For residents who are unable to self-administer or self-direct medications, facility staff may administer medications only after delegation by a licensed health care professional under the scope of their practice.

(i) If a licensed health care professional delegates the task of medication administration to unlicensed assistive personnel, the delegation shall be in accordance with the Nurse Practice Act and R156-31B-701.

(ii) The medications must be administered according to the prescribing order.

(iii) The delegating authority must provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration.

(iv) The delegating authority or another registered nurse shall be readily available either in person or by telecommunication.

(e) Residents may independently administer their own personal insulin injections if they have been assessed to be independent in that process. This may be done in conjunction with the administration of medication in methods (a) through (d) of this section.

(f) home health or hospice agency staff may provide medication administration to facility residents exclusively, or in conjunction with (a) through (e) of this section.

(3) The facility must have a licensed health care professional or licensed pharmacist review all resident medications at least every six months.

(4) Medication records shall include the following:

- (a) the resident's name;
- (b) the name of the prescribing practitioner;
- (c) medication name including prescribed dosage;
- (d) the time, dose and dates administered;
- (e) the method of administration;
- (f) signatures of personnel administering the medication;

and

(g) the review date.

(5) The licensed health care professional or licensed pharmacist should document any change in the dosage or schedule of medication in the medication record. When changes in the medication are documented by the facility staff the licensed health care professional must co-sign within 72 hours. The licensed health care professional must notify all unlicensed assistive personnel who administer medications of the medication change.

(6) Each resident's medication record must contain a list of possible reactions and precautions for prescribed medications.

(7) The facility must notify the licensed health care professional when medication errors occur.

(8) Medication error incident reports shall be completed when a medication error occurs or is identified.

(9) Medication errors must be incorporated into the facility quality improvement process.

(10) Medications shall be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, the resident shall have timely access to the medication.

(b) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees Fahrenheit.

(c) The facility must develop and implement policies for the security and disposal of narcotics. Any disposal of controlled substances by a licensee or facility staff shall be consistent with the provisions of 21 CFR 1307.21.

(11) The facility shall develop and implement a policy for disposing of unused, outdated, or recalled medications.

(a) The facility shall return a resident's medication to the

resident or to the resident's responsible person upon discharge.

(b) The administrator shall document the return to the resident or the resident's responsible person of medication stored in a central storage.

R432-270-20. Management of Resident Funds.

(1) Residents have the right to manage and control their financial affairs. The facility may not require residents to deposit their personal funds or valuables with the facility.

(2) The facility need not handle residents' cash resources or valuables. However, upon written authorization by the resident or the resident's responsible person, the facility may hold, safeguard, manage, and account for the resident's personal funds or valuables deposited with the facility, in accordance with the following:

(a) The licensee shall establish and maintain on the residents' behalf a system that assures a full, complete, and separate accounting according to generally accepted accounting principles of each resident's personal funds entrusted to the facility. The system shall:

(i) preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident, and preclude facility personnel from using residents' monies or valuables as their own;

(ii) separate residents' monies and valuables intact and free from any liability that the licensee incurs in the use of its own or the facility's funds and valuables;

(iii) maintain a separate account for resident funds for each facility and not commingle such funds with resident funds from another facility;

(iv) for records of residents' monies which are maintained as a drawing account, include a control account for all receipts and expenditures and an account for each resident and supporting receipts filed in chronological order;

(v) keep each account with columns for debits, credits, and balance; and

(vi) include a copy of the receipt that it furnished to the residents for funds received and other valuables entrusted to the licensee for safekeeping.

(b) The facility shall make individual financial records available on request through quarterly statements to the resident or the resident's legal representative.

(c) The facility shall purchase a surety bond or otherwise provide assurance satisfactory to the Department that all resident personal funds deposited with the facility are secure.

(d) The facility shall deposit, within five days of receipt, all resident monies that are in excess of \$150 in an interest-bearing bank account, that is separate from any of the facility's operating accounts, in a local financial institution.

(i) Interest earned on a resident's bank account shall be credited to the resident's account.

(ii) In pooled accounts, there shall be a separate accounting for each resident's share, including interest.

(e) The facility shall maintain a resident's personal funds that do not exceed \$150 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

(f) Upon discharge of a resident with funds or valuables deposited with the facility, the facility shall that day convey the resident's funds, and a final accounting of those funds, to the resident or the resident's legal representative. Funds and valuables kept in an interest-bearing account shall be accounted for and made available within three working days.

(g) Within 30 days following the death of a resident, except in a medical examiner case, the facility shall convey the resident's valuables and funds entrusted to the facility, and a final accounting of those funds, to the individual administering the resident's estate.

R432-270-21. Facility Records.

(1) The facility must maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.

(2) Records shall be protected against access by unauthorized individuals.

(3) The facility shall maintain personnel records for each employee and shall retain such records for at least three years following termination of employment. Personnel records must include the following:

- (a) employee application;
- (b) date of employment;
- (c) termination date;
- (d) reason for leaving;
- (e) documentation of CPR and first aid training;
- (f) health inventory;
- (g) food handlers permits;
- (h) TB skin test documentation; and
- (i) documentation of criminal background screening.

(4) The facility must maintain in the facility a separate record for each resident that includes the following:

- (a) the resident's name, date of birth, and last address;
- (b) the name, address, and telephone number of the person who administers and obtains medications, if this person is not facility staff;
- (c) the name, address, and telephone number of the individual to be notified in case of accident or death;
- (d) the name, address, and telephone number of a physician and dentist to be called in an emergency;
- (e) the admission agreement;
- (f) the resident assessment; and
- (g) the resident service plan.

(5) Resident records must be retained for at least three years following discharge.

(6) There shall be written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of residents. The reports shall be kept on file for at least three years.

R432-270-22. Food Services.

(1) Facilities must have the capability to provide three meals a day, seven days a week, to all residents, plus snacks.

(a) The facility shall maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.

(b) There shall be no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.

(c) The facility food service must comply with the following:

(i) All food shall be of good quality and shall be prepared by methods that conserve nutritive value, flavor, and appearance.

(ii) The facility shall ensure food is palatable, attractively served, and delivered to the resident at the appropriate temperature.

(iii) Powdered milk may only be used as a beverage, upon the resident's request, but may be used in cooking and baking.

(2) The facility shall provide adaptive eating equipment and utensils for residents as needed.

(3) A different menu shall be planned and followed for each day of the week.

(a) All menus must be approved and signed by a certified dietitian.

(b) Cycle menus shall cover a minimum of three weeks.

(c) The current week's menu shall be posted for residents' viewing.

(d) Substitutions to the menu that are actually served to the residents shall be recorded and retained for three months for review by the Department.

(4) Meals shall be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(5) Residents shall be encouraged to eat their meals in the dining room with other residents.

(6) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(7) If the facility admits residents requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing meals. Dietitian consultation shall be provided at least quarterly and documented for residents requiring therapeutic diets.

(8) The facility shall employ food service personnel to meet the needs of residents.

(a) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

(b) All personnel who prepare or serve food shall have a current Food Handler's Permit.

(9) Food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100.

(10) If food service personnel also work in housekeeping or provide direct resident care, the facility must develop and implement employee hygiene and infection control measures to maintain a safe, sanitary food service.

R432-270-23. Housekeeping Services.

(1) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility.

(2) The facility shall designate a person to direct housekeeping services. This person shall:

(a) post routine laundry, maintenance, and cleaning schedules for housekeeping staff.

(b) ensure all furniture, bedding, linens, and equipment are clean before use by another resident.

(3) The facility shall control odors by maintaining cleanliness.

(4) There shall be a trash container in every occupied room.

(5) All cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials shall be stored in a locked area to prevent unauthorized access.

(6) Housekeeping personnel shall be trained in preparing and using cleaning solutions, cleaning procedures, proper use of equipment, proper handling of clean and soiled linen, and procedures for disposal of solid waste.

(7) Bathtubs, shower stalls, or lavatories shall not be used as storage places.

(8) Throw or scatter rugs that present a tripping hazard to residents are not permitted.

R432-270-24. Laundry Services.

(1) The facility shall provide laundry services to meet the needs of the residents, including a sufficient supply of linens.

(2) The facility shall inform the resident or the resident's responsible person in writing of the facility's laundry policy for residents' personal clothing.

(3) Food may not be stored, prepared, or served in any laundry area.

(4) The facility shall make available for resident use at least one washing machine and one clothes dryer.

R432-270-25. Maintenance Services.

(1) The facility shall conduct maintenance, including preventive maintenance, according to a written schedule to ensure that the facility equipment, buildings, fixtures, spaces,

and grounds are safe, clean, operable, in good repair and in compliance with R432-6.

(a) Fire rated construction and assemblies must be maintained in accordance with R710-3, Assisted Living Facilities.

(b) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

(c) Electrical systems, including appliances, cords, equipment call lights, and switches shall be maintained to guarantee safe functioning.

(d) Air filters installed in heating, ventilation and air conditioning systems must be inspected, cleaned or replaced in accordance with manufacturer specifications.

(2) A pest control program shall be conducted in the facility buildings and on the grounds by a licensed pest control contractor or a qualified employee, certified by the State, to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(3) The facility shall document maintenance work performed.

(4) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. The facility shall maintain hot water delivered to public and resident care areas at temperatures between 105 - 120 degrees Fahrenheit.

R432-270-26. Disaster and Emergency Preparedness.

(1) The facility is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee and the administrator must review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The facility's emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the residents.

(c) The facility shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) Personnel and residents shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The facility shall:

(a) annually review the procedures with existing staff and residents and carry out unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the facility, relieve subordinates and take charge.

(7) The facility shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The following information shall be posted in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

R432-270-27. First Aid.

(1) There shall be one staff person on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation and emergency procedures to ensure that each resident receives prompt first aid as needed.

(2) First aid training refers to any basic first aid course approved by the American Red Cross or Utah Emergency Medical Training Council.

(3) The facility must have a first aid kit available at a specified location in the facility.

(4) The facility shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

(5) The facility must have a clean up kit for blood borne pathogens.

R432-270-28. Pets.

(1) The facility may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment shall be kept clean.

(4) Small pets such as birds and hamsters shall be kept in

appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations.

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-270-29. Respite Services.

(1) Assisted Living facilities may offer respite services and are not required to obtain a respite license from the Utah Department of Health.

(2) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(3) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days shall be considered a non-respite assisted living facility admission, subject to the requirements of R432-270.

(4) The facility shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(5) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(6) The facility must complete a service agreement to serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(7) The facility shall have written policies and procedures approved by the Department prior to providing respite care. Policies and procedures must be available to staff regarding the respite care clients which include:

(a) medication administration;
(b) notification of a responsible party in the case of an emergency;

(c) service agreement and admission criteria;

(d) behavior management interventions;

(e) philosophy of respite services;

(f) post-service summary;

(g) training and in-service requirement for employees; and
(h) handling personal funds.

(8) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon admission.

(9) The facility shall maintain a record for each person receiving respite services which includes:

(a) a service agreement;
(b) demographic information and resident identification data;

(c) nursing notes;

(d) physician treatment orders;

(e) records made by staff regarding daily care of the person in service;

(f) accident and injury reports; and

(g) a post-service summary.

(10) Retention and storage of respite records shall comply with R432-270-21(1), (2), and (5).

(11) If a person has an advanced directive, a copy shall be filed in the respite record and staff shall be informed of the advanced directive.

R432-270-29b. Adult Day Care Services.

(1) Assisted Living Facilities Type I and II may offer adult day care services and are not required to obtain a license from Utah Department of Human Services. If facilities provide adult day care services, they shall submit policies and procedures for Department approval.

(2) "Adult Day Care" means the care and support to three or more functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a licensed health care setting.

(3) A qualified Director shall be designated by the governing board to be responsible for the day to day program operation.

(4) The Director shall have written records on-site for each consumer and staff person, to include the following:

(a.) Demographic information;

(b.) An emergency contact with name, address and telephone number;

(c.) Consumer health records, including the following:

(i) record of medication including dosage and administration;

(ii) a current health assessment, signed by a licensed practitioner; and

(iii) level of care assessment.

(d.) Signed consumer agreement and service plan.

(e) Employment file for each staff person which includes:

(i) health history;

(ii) background clearance consent and release form;

(iii) orientation completion, and

(iv) in-service requirements.

(5) The program shall have written eligibility, admission and discharge policy to include the following:

(a) Intake process;

(b) Notification of responsible party;

(c) Reasons for admission refusal which includes a written, signed statement;

(d) Resident rights notification; and

(e) Reason for discharge or dismissal.

(6) Before a program admits a consumer, a written assessment shall be completed to evaluate current health and medical history, immunizations, legal status, and social psychological factors.

(7) A written consumer agreement, developed with the consumer, the responsible party and the Director or designee, shall be completed, signed by all parties include the following:

(a) Rules of the program;

(b) Services to be provided and cost of service, including refund policy; and

(c) Arrangements regarding absenteeism, visits, vacations, mail, gifts and telephone calls.

(8) The Director, or designee, shall develop, implement and review the individual consumer service plan. The plan shall include the specification of daily activities and services. The service plan shall be developed within three working days of admission and evaluated semi-annually.

(9) There shall be written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of a consumer while in care. Each report will be reviewed by the Director and responsible party. The reports will be kept on file.

(10) There shall be a daily activity schedule posted and implemented as designed. (11) Consumers shall receive direct supervision at all times and be encouraged to participate in activities.

(12) There shall be a minimum of 50 square feet of indoor floor space per consumer designated for adult day care during

program operational hours.

(a) Hallways, office, storage, kitchens, and bathrooms shall not be included in computation.

(b) All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.

(c) There shall be at least one bathroom designated for consumers use during business hours. For facilities serving more than 10 consumers, there shall be separate male and female bathrooms designated for consumer use.

(13) Staff supervision shall be provided continually when consumers are present.

(a) When eight or fewer consumers are present, one staff person shall provide direct supervision.

(b) When 9-16 consumers are present, two staff shall provide direct supervision at all time. The ratio of one staff per eight consumers will continue progressively.

(c) In all programs where one-half or more of the consumers are diagnosed by a physician's assessment with Alzheimer, or related dementia, the ratio shall be one staff for each six consumers.

R432-270-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health care facilities

January 28, 2016

Notice of Continuation April 10, 2014

26-21-5

26-21-1

R456. Heritage and Arts, Indian Affairs.**R456-1. Native American Grave Protection and Repatriation.****R456-1-1. General Policy Statement Regarding Native American Burials.**

1. Native American burials are regarded as spiritual and sacred ceremonies where the deceased is prepared for their journey into the next dimension of life. Once the deceased, the grave and the funerary objects are blessed, consecrated and dedicated to the care and keeping of the creator the burial site is then considered "sacred ground".

2. Native American burial sites discovered on state lands or non-federal lands must not be disturbed except as allowed by this rule and other applicable law. Any disturbances that are allowed should be conducted in a manner that minimizes desecration of the site.

R456-1-2. Purpose.

1. This rule provides procedures designed to preserve the sacred nature of Native American burials by protecting Native American burial sites and insuring that the final disposition of unidentified Native American remains, discovered on state lands or non-federal lands, shall be in keeping with that sacred nature.

R456-1-3. Authority.

1. This rule is authorized under Section 9-9-403 and Section 9-9-405, the Native American Grave Protection and Repatriation Act and Section 9-9-104(2)(c).

R456-1-4. Definitions.

1. Terms used in this rule are defined in Section 9-9-402.
2. In addition, as used in this rule "agency" means the state agency having primary management authority over the land or state repository, including museums, where Native American remains are found.
3. "Committee" means the Native American Remains Review Committee.
4. "Director" means the Director of the Division of Indian Affairs.
5. "Division" means the Division of Indian Affairs.
6. "Scientific testing" means physical or chemical tests such as radiocarbon dating and DNA analysis, performed by a qualified technician to determine the age, ethnicity or any other pertinent information.
7. "Lineal descendant" means the genealogical descendant established by oral or written record or other evidence.
8. "Cultural affiliation" means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe and an identifiable earlier group.
9. "State land" as defined by 9-9-402.
10. "Nonfederal land" as defined by 9-9-402.

R456-1-5. Scope and Applicability.

1. This rule applies to all Native American remains found on state lands or non-federal lands.

R456-1-6. Ascertaining Lineal Descendants and Cultural Affiliation.

1. Each agency, in consultation with Antiquities Section, Utah Division of State History, shall compile an inventory of acquired ancient human remains and report updates of the inventory to the Committee biannually until such time as the remains have been determined to be unclaimed, unaffiliated, or placed in the burial vault.

a. The inventory shall identify the lineal descent, cultural affiliation, and geographic location of the remains to the extent possible, and upon completion, the inventory shall be sent to the Director to disseminate to the Committee, Indian tribes, and all

interested parties.

b. The inventory of lineal descent and cultural affiliation shall be completed in consultation with appropriate tribes and tribal government representatives, which consultation shall be coordinated and facilitated by the Division.

2. The agency shall have one year from date of discovery to complete research for an assessment of lineal descent or cultural affiliation.

a. The documentation for the inventory can consist of existing agency records, relevant studies, other pertinent data for determining lineal descent, the cultural affiliation, geographical origin, and basic facts surrounding the acquisition of ancient human remains.

b. Evidence of a lineal descendant or cultural affiliation to ancient human remains shall be established by using the following types of evidence: kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, geographical, or other relevant information or expert opinion.

3. Lineal descent and cultural affiliation assessments shall be established by a preponderance of the evidence. Agencies do not have to establish lineal descent or cultural affiliation with scientific certainty.

4. If an agency has made a good faith effort to consult and identify the remains, but has been unable to complete the process within the one year time frame, the agency may appeal to the Committee for an extension. The Committee may grant an extension upon findings of good faith effort.

R456-1-7. Notification of Possible Owners of the Remains.

1. Once the Division has been notified of the discovery of Native American remains and a lineal descendant ascertained by the Agency, the Director shall notify any known or possible lineal descendants, Indian tribes in Utah, and all other interested parties within 30 days.

2. If no lineal descendants can be ascertained, and if the cultural affiliation of the remains has been determined by the Agency, the Director shall notify within 30 days all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person.

3. If no lineal descendant or cultural affiliation to any tribe can be ascertained, or the geographic location of discovery of the remains is unknown, the Director shall notify all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person, of known information regarding the remains.

4. Notice to the tribes shall include a request that the tribes take reasonable steps to notify their members of the discovery and of the process and time limits for filing an intent to claim by posting the notice in a public place and/or by including it in tribal news media.

5. Any interested party may request notification of the discovery and repatriation process of Native American remains by sending a letter to the Division, specifying a contact person to be notified in the event of a discovery and an address where they can be reached.

R456-1-8. Claims of Ownership.

1. Lineal descendants or Indian tribes may assert a claim of ownership for the remains by notifying the Division of their intent to claim within forty-five days from the date that notification is sent out by the Division. Lineal descendants or Indian tribes will have sixty days from the Division's receipt of the Intent to Claim notice to provide substantiating documentation.

R456-1-9. Determination of Ownership.

1. When only one claimant has asserted a claim of ownership with an intent to claim notice regarding a claim of lineal descent or cultural affiliation, the Director shall request a

written petition from the claimant, substantiating the claim. The claimant will have 60 days from the Divisions receipt of the intent to claim notice, to deliver substantiating documents. Once the Division receives the substantiating documents and/or the 60 days has expired, the Director shall notify the Agency of all claims with substantiating documents, or lack of claims, within 10 business days. If the claimant makes a substantial showing of lineal descent or cultural affiliation the Agency will make a determination of lineal descent or cultural affiliation and grant ownership of the remains to that claimant.

2. When two or more claimants have asserted claims of ownership with intent to claim notices for lineal descent or cultural affiliation, the Director shall request a written petition from the claimants, substantiating the claims. The claimants will have 60 days from the Division's receipt of the intent to claim notices to deliver substantiating documents. Once the Division receives the substantiating documents and/or the 60 days has expired, the Director shall notify the Agency of all claims with substantiating documents, or lack of claims, within 10 business days. If the agency determines both claimants have made a substantial showing of lineal descent or cultural affiliation, the Director and Committee shall facilitate a resolution of the competing claims. If the facilitation of resolution between claimants does not result in resolution, determination of ownership shall be made by the Agency in consultation with the Director and Committee based upon a preponderance of the evidence in an informal proceeding which shall comply with Section 63G-4-101 et seq., the Utah Administrative Procedures Act.

R456-1-10. Procedure for the Resolution of Claims for Lineal Descent or Cultural Affiliation.

1. After the expiration of time for the substantiating documents of claims regarding lineal descent or cultural affiliation to be submitted has occurred, and the agency has determined all claims have made a substantial showing, the Director, in consultation with the Agency and Committee, shall schedule a time within 60 days to facilitate the resolution of the competing claims and shall notify the claimants of such date.

2. In an informal proceeding, the Director and Committee shall meet with competing claimants and facilitate the resolution between claimants if at all possible.

3. If the facilitation of resolution of the competing claims does not result in resolution, the Agency shall conduct an informal hearing at which the competing claimants shall be allowed to testify, present evidence, and comment on issues concerning their claim.

a. Lineal descent or cultural affiliation may be established by genealogical records, archeological records, oral or written history, oral tradition, scientific analysis, relevant Tribal records, associated funerary objects and any other supporting material.

4. The Agency shall grant ownership to the claimant that has shown the closest lineal descent, or if none, to the tribe that has shown the strongest genetic or cultural relationship with the remains, by a preponderance of the evidence.

R456-1-11. Adjudication of Disputed Claims.

1. If any party is dissatisfied with the Agency's or Director's decision, the claimants may appeal the decision to the Committee. The Committee shall review the decision and issue findings relating to the identity of, the cultural affiliation of the remains, or an aboriginal land use determination, which shall be used in accordance with 9-9-403(6).

2. A copy of the Committee's findings and the Director's or Agency's decision shall be mailed to each of the claimants and interested parties who have designated a contact person along with a notice explaining the procedure for seeking an appeal of the Director's or Agency's decision in the District Court where the Agency that has temporary possession of the

remains pending this process, is located.

3. If no party has filed an appeal in the District Court within 30 days, the Director's or Agency's decision shall be binding upon the parties.

R456-1-12. Disposition of Unidentified and Unclaimed Remains.

1. When lineal descent and cultural affiliation cannot be determined, and the Division has notified all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person, and has received no intent to claim notices within 30 days, then the Director shall, upon recommendation of the agency and in consultation with the Committee, coordinate at least every six months, the placement of the ancient human remains in the Indian burial vault or other designated cemetery until such time as further information regarding the identity and owner of the remains can be obtained.

2. If the remains have not been excavated and have gone through the determination of ownership and control process and are unclaimed, the remains may be permanently left in place upon final approval by the agency and in consultation with the Director.

3. If the remains have been excavated and have gone through the determination of ownership process and are unclaimed, the remains shall be re-interred in the Indian Burial Repository or other designated cemeteries throughout the state.

R456-1-13. Re-interment of Ancient Human Remains.

1. Annually, or as needed, the Director shall present to the Committee an inventory of remains that have completed the process of repatriation and have been determined to be without a lineal descendant or cultural affiliation or unclaimed, that reside in the burial vault. The Director shall include a plan for interment regarding the final resting place of the remains in either the burial vault or designated cemetery, and with approval of the Committee, the Director shall coordinate the interment of the remains.

R456-1-14. Role and Responsibilities of Committee.

1. The Committee shall meet quarterly or as deemed necessary to monitor the identification process described in R456-1-10 conducted by the Agency for lineal descent or cultural affiliation claims per 9-9-405(3).

R456-1-15. Disposition of Remains Once Ownership has been Determined.

1. If the remains have not been excavated, the owner of the remains may excavate the remains pursuant to Section 76-9-704, for the purpose of repatriation elsewhere or may leave the remains in place, subject to agreement by the agency or non-federal agency.

2. If the remains have already been excavated pursuant to R212-4, the owner or person or tribe in control of the remains may then take possession of the remains from the agency that has temporary possession of the remains.

R456-1-16. Scientific Investigation of Remains.

1. No scientific investigation beyond that allowed in 9-9-4 shall be conducted on remains except upon written permission granted by the Director in consultation with the Committee.

2. If the ownership of the remains has not been determined, and further information regarding the identity and owner of remains becomes available, the agency or other interested parties may petition the Committee to recommend removal of the remains from the Indian burial vault or designated cemetery for testing.

a. The agency will provide to the Committee and Director a report specifying the nature and duration of the testing and the

Committee will determine per majority vote whether to grant the removal request.

R456-1-17. Savings Provision.

1. If, following the conclusion of the process to determine ownership of human remains using lineal descent and cultural affiliation, an owner cannot be identified by the responsible agency, tribes may submit claims based on aboriginal land to the Division. The Director shall make a determination of ownership based upon findings of the Committee and in consultation with the landowner.

KEY: Indian affairs, state lands, Native American remains
July 16, 2008 9-9-104
Notice of Continuation January 14, 2016 9-9-403
9-9-405

R460. Housing Corporation, Administration.**R460-1. Authority and Purpose.****R460-1-1. Authority.**

The rules under R460 are promulgated under authority granted to the Utah Housing Corporation under Sections 63H-8-301 and 63H-8-302.

R460-1-2. Purpose.

The rules under R460 govern the activities of the Utah Housing Corporation and the public with whom it deals, to carry into effect its powers and purposes and the conduct of its operations.

KEY: housing finance**1990****Notice of Continuation September 28, 2012****63H-8-301****63H-8-302**

R460. Housing Corporation, Administration.
R460-4. Additional Servicing Rules (Reserved).
R460-4-1. Reserved.
Reserved.

KEY: housing finance
November 27, 2012 **63H-8-301**
Notice of Continuation September 28, 2012 **63H-8-302**

R460. Housing Corporation, Administration.**R460-5. Termination of Eligibility to Participate in Programs.****R460-5-1. Mortgage Lenders.**

UHC may terminate the eligibility of a mortgage lender to participate in UHC's programs if UHC finds that a mortgage lender:

- (1) has failed to comply with the provisions of the Act or the rules, guidelines, policies or procedures adopted thereunder;
- (2) has failed to perform any one or more of its obligations arising under any contractual agreement with UHC;
- (3) has commenced a voluntary case under any chapter of the Federal Bankruptcy Code, or has consented to, or has failed to controvert in a timely manner, the commencement of an involuntary case against the mortgage lender under such code, or has initiated or suffered any proceeding of insolvency under any other federal or state receivership law, or made any common law assignment for the benefit of creditors or written admission of its inability to pay debts generally as they become due;
- (4) has failed to comply with any state or federal regulatory requirement relating to the mortgage lender's financial condition or operating performance;
- (5) has suffered the appointment, by decree or order of a court, agency or supervisory authority having jurisdiction in the premises, of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding affecting the mortgage lender or substantially all of its properties, or for the termination or liquidation of its affairs;
- (6) has consented to the appointment of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding affecting the mortgage lender or substantially all of its properties.

R460-5-2. Servicers (Reserved).

Reserved.

R460-5-3. Other Participants.

- (1) UHC may terminate the eligibility of a participant to participate in UHC's programs if UHC finds that a participant:
 - (a) has made or procured to be made any false statement for the purpose of influencing in any way an action of UHC or any other participant;
 - (b) has falsely advertised, made misleading or false offers, or otherwise attempted to induce persons to participate in UHC programs when program requirements cannot be met or have not been represented accurately;
 - (c) has represented, either orally or in writing or advertising, that UHC mortgage loans are available at a specified interest rate when such participant either knew or reasonably should have known that UHC mortgage loans are not available at such rate;
 - (d) has provided funds, whether by gift or by loan, to unqualified borrowers to enable such borrowers to obtain a mortgage loan or other benefits of a UHC program;
 - (e) has violated a law, regulation or procedure relating to an application for a mortgage loan or other benefits of a UHC program or relating to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee;
 - (f) has been debarred or suspended or issued a limited denial of participation from a federal housing program;
 - (g) has been convicted of or held liable in a civil judgment for any of the following:
 - (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
 - (ii) forgery, falsification or destruction of records, making

false statements, making false claims, or obstruction of justice;

- (iii) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person;

(h) has been determined to be "not in good standing" as detailed in the current-year Qualified Allocation Plan utilized by UHC and its development partners for the housing credit and multifamily bond programs.

(2) For purposes of determining the scope of a participant's ineligibility to participate in UHC programs, conduct may be imputed as follows:

(a) The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, employee, partner, joint venturer or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, employee, partner, joint venturer or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) The eligibility of an affiliate or organizational element of a participant may be terminated solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the action. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party, or by an entity that itself is controlled by the primary sanctioned party, is on the affiliate or organizational element.

(4) Ineligibility shall be for a period commensurate with the seriousness of the cause. Ineligibility generally should not exceed three years. Where circumstances warrant, a longer period of ineligibility may be imposed. If a suspension precedes a determination of ineligibility, the length of the suspension period shall be considered in determining the length of the ineligibility period.

(5) The president or other designated officer of UHC may suspend a participant for any of the causes set forth in R460-5-1 or R460-5-3(1) which shall immediately exclude a participant from participating in transactions involving UHC programs for a temporary period not to exceed 12 months.

(a) Suspension is a serious action to be imposed only when there exists adequate evidence of one or more of the causes set out in R460-5-1 or R460-5-3(1) and immediate action is necessary to protect the public interest.

(b) In assessing the adequacy of the evidence, the president of UHC shall consider how much information is available, the credibility of the evidence given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result of all available evidence.

(c) All suspensions shall be for a temporary period pending the completion of an investigation and such legal or ineligibility proceedings as may ensue but in any event shall be for no longer than 12 months.

(d) Suspension shall be made effective by advising the participant, and any specifically named affiliates, electronically via email or facsimile and by certified mail, return receipt requested, of each of the following:

- (i) suspension is being imposed;
- (ii) the cause relied upon under R460-5-1 or R460-5-3(1) for imposing suspension;
- (iii) the suspension is for a temporary period pending the completion of an investigation and such legal or ineligibility proceedings as may ensue; and

(iv) the right to request within 30 days, in writing, a hearing, either oral or on the basis of any written submissions by the respondent.

(e) Within 30 days of receipt of a notice of suspension, a suspended participant, including any affiliate, desiring a hearing shall file a written request for a hearing with UHC. If a hearing is requested, it shall be held in accordance with R460-6-3.3.

(6) UHC shall compile and maintain a list of all persons or entities whose eligibility to participate in UHC's programs has been terminated or suspended. The list shall include the following items:

(a) the names and addresses of all ineligible and suspended persons or entities;

(b) the type of action;

(c) the cause for the action;

(d) the scope of the action;

(e) any termination date for each listing;

(f) the name and telephone number of UHC point of contact for the action.

(7) Before resorting to adjudicative proceedings under R460-6, UHC may issue a cease and desist order, advising a participant of present actions by the participant that violate this rule, and ordering the participant to cease and desist such actions, subject to further sanctions.

(8) UHC may also refer a case involving a participant to the Utah Department of Commerce, or any other state or federal agency, for further action.

(9) UHC may settle a case at any time.

(10) UHC and a participant may agree to a voluntary exclusion of a participant from a specific program or project.

KEY: housing finance

November 27, 2012

Notice of Continuation September 28, 2012

63H-8-301

63H-8-302

R460. Housing Corporation, Administration.**R460-6. Adjudicative Proceedings.****R460-6-1. Nature of Proceeding.**

(1) An adjudicative proceeding conducted by UHC, shall generally be conducted as an informal adjudicative proceeding, as provided for in Section 63G-4-203; however at the election of the president of UHC, the proceeding may be conducted as a formal adjudicative proceeding, as provided for in Sections 63G-4-204 through 63G-4-209. The president of UHC will appoint the presiding officer of an adjudicative proceeding who may be the chair, vice chair, acting chair or president of UHC pursuant to Section 63H-8-201 and 63H-8-203.

(2) All requests for formal or informal adjudication proceedings shall be made in writing and signed by the person invoking the jurisdiction of UHC (the "affected party"), or by that person's representative, shall only be addressed to the president, shall be delivered to the offices of UHC, and shall include:

- (a) the names and addresses of all persons to whom a copy of the request for UHC action is being sent;
- (b) UHC's file number or other reference number, if known;
- (c) the date that the request for UHC action was mailed;
- (d) a statement of the legal authority and jurisdiction under which UHC action is requested;
- (e) a statement of the relief or action sought from UHC; and
- (f) a statement of the facts and reasons forming the basis for relief or UHC action.

(3) If the affected party knows of other persons who have a direct interest in the UHC action requested, then the affected party shall mail a copy of his or her request to each such person.

(4) The presiding officer may conduct a single adjudicative proceeding for similar requests for UHC action.

(5) The presiding officer may restrict the submission of additional pleadings and amendment of pleadings after a response has been made by UHC to a request for UHC action.

R460-6-2. Notice of Adjudicative Proceeding.

Whether an adjudicative proceeding is commenced by UHC or requested by an affected party, UHC shall file and serve notice of the adjudicative proceeding upon the affected parties, which notice shall be in writing, shall be mailed postage paid by first-class mail, shall designate the presiding officer, shall be signed by the president of UHC, shall include a statement of whether the adjudicative proceeding is to be conducted informally or formally and otherwise shall be prepared in accordance with the requirements of Section 63G-4-201. For informal adjudication, such notice shall be sent not less than 20 calendar days prior to the proceeding. For formal adjudication, such notice shall be sent not less than 60 calendar days prior to the proceeding (subject to any extensions pursuant to R460-6-4) and shall comply with the requirements set forth in R460-6-4(1) and R460-6-4(2), as applicable.

R460-6-3. Procedures for Informal Adjudicative Proceeding.

(1) No answer or pleading responsive to the notice of adjudicative proceeding need be filed by the affected party.

(2) No hearing shall be held unless the affected party requests a hearing in writing or the presiding officer elects to hold a hearing. The written request for a hearing must be received by UHC no more than 10 calendar days after the service of the notice of adjudicative proceeding.

(3) If a hearing is requested by the affected party, the presiding officer shall elect whether to conduct a hearing given the nature of the dispute. If the presiding officer does elect to conduct a hearing, it will be held no sooner than 10 calendar days after notice of the hearing is mailed to the affected party. The affected party shall be permitted to testify, present evidence,

and comment on UHC's proposed action. Prior to the hearing, the affected party may have access to information contained in UHC's files and to materials and information gathered by UHC in its investigation relevant to the adjudicative proceeding, but discovery is prohibited. Access to such information, files and materials is subject to any disclosure exemption afforded under UHC's Governmental Records Access and Management Act (GRAMA) rules. The presiding officer may issue subpoenas or other orders to compel production of necessary evidence.

(4) Intervention is prohibited.

R460-6-4. Procedures for Formal Adjudicative Proceeding.

(1) If UHC denies an affected party's request for a formal adjudicative proceeding, UHC shall send notice to the affected party of the denial stating the proceeding will not be a formal adjudicative proceeding, and stating whether the request for a formal proceeding is denied or whether the proceeding will be held as an informal proceeding, and stating that the affected party may request a hearing before UHC to challenge the denial.

(2) If UHC's proceeding is to be conducted as a formal proceeding, UHC shall send notice to all known interested parties stating that a written response must be filed with UHC by the affected party within 30 calendar days of when the notice was mailed.

(3) The presiding officer may elect to hold a pre-hearing conference with all affected parties or their representatives to review the issues of the dispute and the procedure to be followed.

(4) A hearing shall be held no more than 60 calendar days after the service of the notice of formal adjudicative proceeding. However, in unusual circumstances, the presiding officer may elect to extend the date of the hearing for good cause.

(5) The affected parties shall be permitted to testify, present evidence, and comment on UHC's proposed action. In addition to access to the information available in connection with an informal adjudicative proceeding pursuant to R460-6-3(3), the presiding officer may permit additional discovery as is reasonable given the nature of the dispute. The presiding officer may issue subpoenas or other orders to compel production of necessary evidence.

(6) Intervention determinations will be made by and subject to conditions established by the presiding officer.

(7) UHC shall record the audio of all formal adjudicative proceedings. Any party, at its sole expense, can have such audio recordings transcribed.

R460-6-5. Decision of UHC.

(1) Within 30 calendar days after any hearing requested by an affected party, or after the party's failure to request a hearing within the time prescribed under R460-6-3, UHC shall issue a signed order in writing stating UHC's decision and such other information as is required by Section 63G-4-203. An order of default may be issued by UHC if circumstances described in Section 63G-4-209(1) shall occur.

(2) Requests for reconsideration of determinations made by the presiding officer in an adjudicative proceeding shall be submitted in the same manner as a request for UHC action as specified in R460-6-1(2), and must be submitted within 20 calendar days of UHC's issuance of a determination or signed order.

(3) Requests for reconsiderations of determinations will be evaluated by the presiding officer who may be the chair, vice chair, acting chair or president of UHC pursuant to Section 63H-8-201 and 63H-8-203. The presiding officer will issue an order granting or denying such request within 20 calendar days of its receipt by the presiding officer. If the presiding officer does not issue an order within such 20 calendar day period, the request shall be considered to be denied.

(4) No separate hearings will be conducted, and no oral

arguments will be heard in connection with a request for reconsideration, unless requested by the presiding officer.

KEY: housing finance

July 10, 2014

Notice of Continuation September 28, 2012

63G-4

R460. Housing Corporation, Administration.**R460-8. Americans with Disabilities Act (ADA) Complaint Procedures.****R460-8-1. Authority and Purpose.**

(1) UHC, pursuant to 28 CFR 35.107 adopts and publishes within this rule, complaint procedures providing for prompt and equitable resolution of complaints filed according to Title II of the Americans With Disabilities Act, as amended.

(2) The provision of 28 CFR 35 implements the provisions of Title II of the Americans With Disabilities Act, as amended, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.

R460-8-2. Filing of Complaints.

(1) Any qualified individual (defined as an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by UHC; also, an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires) may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) The complaint shall be filed timely to assure prompt, effective assessment and consideration of the facts, but no later than 90 days from the date of the alleged act of discrimination.

(3) The complaint shall be filed with the president of UHC or the president's appointed ADA coordinator in writing or in another accessible format suitable to the complainant.

(4) Each complaint shall include the following:

- (a) the complainant's name and mailing address;
- (b) the nature and extent of the complainant's disability;
- (c) a description of UHC's alleged discriminatory action in sufficient detail to inform UHC of the nature and date of the alleged violation;
- (d) a description of the action and accommodation desired; and
- (e) a signature of the complainant or by his or her legal representative.

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

R460-8-3. Investigation of Complaint.

(1) The ADA coordinator shall investigate each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in R460-8-2(4) if it is not made available by the complainant.

(2) When conducting the investigation, the ADA coordinator may seek assistance from UHC's legal counsel and human resource staff in determining what action, if any, shall be taken on the complaint. The coordinator will consult with the president before making any decision that would involve any of the following:

- (a) an expenditure of funds;
- (b) facility modifications; or
- (c) modification of an employment classification.

R460-8-4. Issuance of Decision.

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

(2) If the ADA coordinator is unable to reach a decision within the 30 day period, he shall notify the complainant in

writing or by another suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R460-8-5. Appeals.

(1) The complainant may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

(2) The appeal shall be filed in writing with the president or a designee other than the ADA coordinator.

(3) The filing of an appeal shall be considered as authorization by the complainant to allow review of all information, including information classified as private or controlled, by the president or designee.

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

(5) The president or designee shall review the factual findings of the investigation and the complainant's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. The president may consult with legal counsel and/or the human resource department before making any decision that would involve any of the following:

- (a) an expenditure of funds;
- (b) facility modifications; or
- (c) modification of an employment classification.

(6) The decision shall be issued within 45 days after receiving the appeal and shall be in writing or in another suitable format to the individual.

(7) If the president or his designee is unable to reach a decision within the 30 day period, he shall notify the complainant in writing or by another suitable format why the decision is being delayed and the additional time needed to reach a decision.

R460-8-6. Classification of Records.

The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63G-2-305 until the ADA coordinator, president or their designees issue the decision at which time any portions of the record that may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302 or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, president or their designees shall be classified as public information.

R460-8-7. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the Utah Antidiscrimination Act (see Utah Code 34A-5); the Federal ADA Complaint Procedures (28 CFR 35 Subpart F); or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: housing finance**November 27, 2012****Notice of Continuation September 28, 2012****63H-8-301**

R495. Human Services, Administration.**R495-862. Communicable Disease Control Act.****R495-862-1. Compliance with Communicable Disease Control Act.**

All units of the Department of Human Services will follow established public health guidelines and procedures, including the Communicable Disease Control Act, when providing services to persons infected with the human immunodeficiency virus (HIV). When persons are admitted to programs of the Department, it must be done in such a manner so as to protect the community, other consumers, staff, and the infected party. Administrative guidelines established by the Department are to be available to all units.

KEY: social services, communicable diseases

1987

62A-1-110

Notice of Continuation January 4, 2016

R501. Human Services, Administration, Administrative Services, Licensing.**R501-14. Human Service Program Background Screening.**

R501-14-1. Authority and Purpose.
(1) This Rule is authorized by Sections 62A-2-106, 62A-2-120, 62A-2-121, and 62A-2-122.

(2) This Rule clarifies the standards for approving, denying, or revoking an applicant's background screening.

R501-14-2. Definitions.

(1) "Abuse" is defined in Sections 78A-6-105 and 62A-3-301, and may include "severe abuse", "severe neglect", and "sexual abuse", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(2) "Applicant" means a person whose identifying information is submitted to Office under Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-128, and 78B-6-113. Applicant includes the legal guardian of an individual described in Section 62A-2-101(2)(c).

(3) "Background Screening Agent" means the applicable licensing specialist, human services program, Area Agency on Aging (for Personal Care Attendant applicants only), or DHS Division of Services for People with Disabilities (for Direct Service Worker applicants only).

(4) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(5) "Child" is defined in Section 62A-2-101.

(6) "Comprehensive Review Committee" means the Committee appointed to conduct reviews in accordance with Section 62A-2-120.

(7) "Direct Access" is defined in Section 62A-2-101.

(8) "Direct Service Worker" is defined in Section 62A-5-101.

(9) "Directly Supervised" is defined in 62A-2-101.

(10) "Expiration date" is 395 days from the approval date of the current screening application or one year from the current license start date, whichever is longer. In the event that a human services program has more than one license, the current license start date means the earliest current license start date. A background screening approval that has expired is void.

(11) "FBI Rap Back System" is defined in Section 53-10-108.

(12) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards by a law enforcement agency, an agency approved by the BCI, or Background Screening Agent.

(13) "Human services program" is defined in Section 62A-2-101.

(14) "Licensee" is defined in Section 62A-2-101.

(15) "Licensing Information System" is created by Section 62A-4a-1006, as a sub-part of the Division of Child and Family Services' Management Information System created by Section 62A-4a-1003.

(16) "Neglect" may include "severe neglect", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(17) "Office" means the Office of Licensing within the Utah Department of Human Services.

(18) "Personal Care Attendant" is defined in Section 62A-3-101.

(19) "Personal identifying information" is defined in Section 62A-2-120, and shall include:

(a) a current, valid state driver's license or state identification card bearing the applicant's photo, current name, and address;

(b) any current, valid government-issued identification

card bearing the applicant's name and photo, including passports, military identification and foreign government identification cards; or

(c) other records specifically requested in writing by the Office.

(20) "Rap Back System" is defined in Section 53-10-108.

(21) "Statewide Database" of the Division of Aging and Adult Services is created by Section 62A-3-311.1 to maintain reports of vulnerable adult abuse, neglect, or exploitation.

(22) "Substantiated" is defined in Section 62A-4a-101.

(23) "Supported" is defined in Sections 62A-3-301 and 62A-4a-101.

(24) "Vulnerable Adult" is defined in Section 62A-2-101.

(25) "WIN Database" is as defined in Section 53-10-108, and includes information from Alaska, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

R501-14-3. Initial Background Screening Procedure.

(1) An applicant for initial background screening shall legibly complete, date and sign a background screening application and consent on a form provided by the Office.

(2) An applicant shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application.

(3) An applicant who presents only a foreign country identification card shall:

(a) enroll in the FBI rap back system; and

(b) submit an original or certified copy of a government-issued criminal history report from that country.

(4) An applicant who presents only a US passport or state issued identification card from any state other than Utah, Alaska, Idaho, Montana, Nevada, Oregon, Washington, and Wyoming shall:

(a) enroll in the FBI rap back system.

(5) The background screening application, personal identifying information including fingerprints, and applicable fee shall be submitted to the Background Screening Agent. The Background Screening Agent shall:

(a) inspect the applicant's government-issued identification card and determine that it does not appear to have been forged or altered;

(b) review and sign the application; and

(c) forward the background screening application, and applicable fee to the Office background screening unit.

R501-14-4. Renewal Background Screening Procedure.

(1) An applicant for background screening renewal shall legibly complete, date and sign a background screening application and consent on a form provided by the Office.

(2) An applicant shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application.

(3) The background screening application, personal identifying information, and applicable fee shall be submitted to the Background Screening Agent.

(a) Notwithstanding R501-14-4(3), an applicant for a background screening renewal who is not currently on rap back is not required to submit fingerprints for a rap back system search and applicable rap back fees unless:

(i) the applicant's most current background screening has expired;

(ii) the human services program with which the applicant is associated requires a rap back system search;

(iii) the applicant wishes to provide services with another licensee and has not submitted fingerprints for a rap back system search and applicable rap back fees;

(iv) the applicant does not present a current, valid

identification card issued by the State of Utah; or

(v) the renewal application is submitted on or after July 1, 2017 and the applicant is not already enrolled in rap back.

(4) A licensed human services program wishing to submit background screening renewal applications for multiple applicants associated with the licensee may submit a summary log of the renewing applicants in lieu of individuals' applications.

(a) A summary log may only be used for applicants:

(i) who are enrolled in rap back with the Office;

(ii) with a current, non-expired approval;

(iii) whose name and address have not changed since their last background screening approval;

(iv) who have not had any of the following since their last background screening approval:

I. criminal arrests or charges;

II. supported or substantiated findings of abuse, neglect or exploitation; or

III. any pending or unresolved criminal issues.

(b) Summary logs shall contain:

(i) applicant name,

(ii) applicant date of birth,

(iii) the last four numbers of each applicant's social security number;

(iv) program name; and

(v) name of program representative completing summary form.

(c) A licensed human services program choosing to submit a summary log of the renewing applicants in lieu of individuals' applications shall maintain documentation signed by each applicant and attesting to the accuracy of the information described in R501-14-4(4)(a) and (b).

(5) An application shall be submitted each time an applicant may have direct access to a child or vulnerable adult at any human services program other than the program identified on the initial application.

(6) The Background Screening Agent shall:

(a) inspect the applicant's government-issued identification card and determine that it does not appear to have been forged or altered;

(b) review and sign the application; and

(c) forward the background screening application, and applicable fee to the Office background screening unit within 30 calendar days after the applicant completes and signs the application and no later than 15 calendar days preceding the background screening expiration date.

R501-14-5. General Background Screening Procedure.

(1)(a) An application that is illegible, incomplete, unsigned, undated, or lacks a signed consent or required identifying information, may be returned to the individual who submitted it without further action.

(b) Personal identifying information submitted pursuant to Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-113, and 78B-6-128 shall be used to perform a search in accordance with Sections 62A-2-120(3) and (13).

(2)(a) Except as permitted by Section 62A-2-120(9), an applicant for an initial background screening shall have no direct access to a child or vulnerable adult prior to receiving written confirmation of background screening approval from the Office.

(b) Except as permitted by Section 62A-2-120(9), an applicant seeking background screening renewal shall have no direct access to a child or vulnerable adult after the background screening expiration date and prior to receiving written confirmation of background screening approval from the Office.

(3)(a) The Office may defer action on an application for up to 30 calendar days until the applicant submits all additional information required by the Office.

(b) The Office may deny an application in the event that an applicant fails to provide all additional information required by the Office.

An applicant whose background screening has been denied shall have no further direct access.

(4) The Office may notify a program that the applicant must:

(a) submit fingerprints for a FBI Rap Back System check within 15 calendar days of a letter of notification; and/or

(b) obtain and submit a certified copy of the applicant's criminal history or records from local, state, federal, or foreign officials within 30 calendar days of a letter of notification.

(5)(a) The Office shall send all written communications to the applicant or to the applicable Background Screening Agent by first-class mail.

(b) A Background Screening Agent shall provide the applicant with a copy of all written communication from the Office within 5 calendar days after the date it is received.

(c) Notwithstanding R501-14-5(5)(a), if the Office sends an applicant a sealed letter in care of or via the Background Screening Agent, the letter shall be provided to the applicant unopened.

(6) The applicant shall promptly notify the Office of any change of address while the application remains pending.

(7) A Background Screening Agent may roll fingerprints of applicants for submission to the Office only after it has received and applied training in the proper methods of taking fingerprints.

(a) The program shall verify the identity of the applicant via government-issued identification card at the time that fingerprints are taken.

(b) In the event that 10% or more of the fingerprints submitted by a Background Screening Agent are rejected for quality purposes, the Office may thereafter require that a program utilize law enforcement or BCI to roll prints.

R501-14-6. Background Screening Fees.

(1) The applicant and background screening agent are responsible for ensuring the accuracy of information submitted with fee payments.

(2) Fees shall only be made by cashiers' check, corporate check, money order, or internal DHS transfer. Personal checks and credit or debit card payments shall not be accepted.

(3) A Background Screening Agent may choose to submit one payment for any number of applicants.

(4) Fees are not refundable or transferable for any reason.

R501-14-7. Results of Screening.

(1)(a) The Office shall approve an application for background screening in accordance with Section 62A-2-120(7).

(b) The Office shall notify the applicant or the Background Screening Agent when an applicant's background screening application is approved.

(c) The approval granted by the Office shall be valid for a period not to exceed 395 days from the date of approval.

(d) An approval granted by the Office shall not be transferable, except as provided in Section R501-14-11.

(2)(a) The Office may conditionally approve an application for background screening in accordance with Section 62A-2-120(8).

(b) A program seeking the conditional approval of an applicant shall not request conditional approval unless 10 business days have passed after the applicant's background screening application is received by the Office without receiving notification of the approval or denial of the application.

(c) A written request for conditional approval shall include the applicant's full name, the last four digits of the applicant's social security number, and the date the application was

submitted to the Office.

(d) Upon receipt of a written request for conditional approval that complies with R501-14-7(2)(b), the Office shall make a conditional determination within three business days.

(e) If the Office does not provide a standard approval before the expiration date of the conditional approval, the applicant shall have no unsupervised direct access.

(f) The Office may revoke the conditional approval prior to the expiration date.

(3) The Office shall deny an application for background screening in accordance with Subsections 62A-2-120(5), (6), (8), and (13).

(4) An applicant whose background screening has been denied shall have no further direct access.

(5) The Office shall refer an application to the Comprehensive Review Committee for a comprehensive review in accordance with Section 62A-2-120(6).

(a) The Office shall refer an applicant to the comprehensive review committee upon learning of a potentially disqualifying offense or finding described in Section 62A-2-120(6)(a) not previously considered by the comprehensive review committee.

R501-14-8. Comprehensive Review Committee.

(1) The Director of the following Department of Human Services divisions and offices shall appoint one member and one alternate to serve on the Comprehensive Review Committee:

- (a) the Executive Director's Office;
- (b) the Division of Aging and Adult Services;
- (c) the Division of Child and Family Services;
- (d) the Division of Juvenile Justice Services;
- (e) the Division of Services for People with Disabilities;
- (f) the Division of Substance Abuse and Mental Health;
- (g) Public Guardian; and
- (h) the Office of Licensing.

(2) Comprehensive Review Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office member shall chair the Comprehensive Review Committee as a non-voting member.

(4) Five voting members shall constitute a quorum.

(5) The Comprehensive Review Committee shall conduct a comprehensive review of an applicant's background screening application, criminal history records, abuse, neglect or exploitation records, and related circumstances, in accordance with Section 62A-2-120(6).

R501-14-9. Comprehensive Review Investigation.

(1) The Comprehensive Review Committee shall not deny a background screening application without the Office first sending the applicant a written notice that:

(a) the Office is investigating the applicant's criminal history or findings of abuse, neglect or exploitation;

(b) the applicant is encouraged to submit any written statements or records that the applicant wants the Comprehensive Review Committee to consider;

(c) the Comprehensive Review Committee evaluates information using the criteria established by Section 62A-2-120(6)(b), and the applicant may specifically address these issues; and

(d) submissions must be received within 15 calendar days of the written notice.

(2)(a) The Office shall gather information described in Section 62A-2-120(6)(b) and provide available information to the Comprehensive Review Committee.

(b) The Office may request additional information from any available source, including the applicant, victims, witnesses, investigators, the criminal justice system, law enforcement agencies, the courts and any others it deems necessary for the

comprehensive evaluation of an application.

(i) The Office may defer action on an application for up to 30 calendar days until the applicant submits all additional information required by the Office.

(ii) The Office may deny an application in the event that an applicant fails to provide all additional information required by the Office.

(iii) An applicant whose background screening has been denied shall have no direct access.

R501-14-10. Comprehensive Review Determination.

(1) The Comprehensive Review Committee shall only consider applications and information presented by the Office. The Comprehensive Review Committee shall evaluate the information provided by the Office and any information provided by the applicant.

(a) A background screening approval may be transferred to other human service programs, therefore the Comprehensive Review Committee shall evaluate whether direct access should be authorized for all types of programs.

(2) The Comprehensive Review Committee may, by unanimous vote that includes a representative from each entity identified in R501-14-8(1), identify infraction or misdemeanor offenses that create no risk of harm to a child or vulnerable adult.

(a) The Office may approve the background screening of an applicant whose only offenses are those identified in R501-14-10(2).

(3) The Comprehensive Review Committee shall recommend approval of the background screening of an applicant only after a simple majority of the voting members of the Comprehensive Review Committee determines that approval will not likely create a risk of harm to a child or vulnerable adult.

(4) The Comprehensive Review Committee shall recommend denial of the background screening of an applicant when it finds that approval will likely create a risk of harm to a child or vulnerable adult.

(5) The Office shall approve or deny the applicant's background screening application in accordance with the recommendation of the Comprehensive Review Committee, and send written notification to the applicant or Background Screening Agent.

(6) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access

R501-14-11 Background Screening Approval Transfer or Concurrent Use.

(1) An applicant is eligible to have his/her current background screening approval shared with or transferred to another program only if the applicant is currently enrolled on the rap back system.

(2) An applicant who wishes to have his/her current background screening shared with or transferred to another program shall complete a background screening application and identify the name of the original program.

(3) An applicant shall not have unsupervised direct access until the program receives written confirmation from the Office that the background screening is current and valid.

(4) A background screening approval that has been transferred or shared shall have the same expiration date as the original approval.

R501-14-12. Post-Approval Responsibilities.

(1) An applicant and Background Screening Agent shall immediately notify the Office if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records, or the

statewide database after a background screening application is approved.

(a) An applicant who is associated with a licensee shall immediately notify the licensee if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records, or the statewide database.

(2) An applicant who has received an approved background screening shall resubmit an application and personal identifying information to the Office within ten calendar days after being charged with any felony, misdemeanor, or infraction, or being listed in the Licensing Information System, the statewide database, or juvenile court records.

(3) An applicant who has been charged with any felony, misdemeanor, or infraction or listed in the Licensing Information System or the statewide database, or juvenile court records, after a background screening application is approved shall have no unsupervised direct access to a child or vulnerable adult until after an application and personal identifying information have been resubmitted to the Office and a current background screening approval is received from the Office.

(4)(a) An applicant charged with an offense for which there is no final disposition shall inform the Office of the current status of each case.

(b) The Office shall determine whether the charge could require a denial or committee review, and if so, notify the applicant to submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.

(c) An applicant shall submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.

(5) The Office may revoke the background screening approval of an applicant who:

(a) has been charged with any felony, misdemeanor, or infraction or is listed in the Licensing Information System, the statewide database, or juvenile court records; and

(b) fails to provide required current status information.

(6) The Office shall process identifying information received pursuant to Subsection R501-14-12(2) in accordance with Rule R501-14.

(7) A Background Screening Agent shall notify the Office when an applicant is no longer associated with the program no later than five months from the date of termination.

(a) The Office shall verify that the applicant is not associated with another program, and notify BCI within six months of the date that the applicant is no longer associated with any licensee.

R501-14-13. Confidentiality.

(1) The Office may disclose criminal background screening information, including information acknowledging the existence or non-existence of a criminal history, only to the Applicant and the Background Screening Agent, and in accordance with the Government Records Access and Management Act, Section 63G-2-101, et seq.

(2) Except as described in R501-14-11 and below, background screening information may not be transferred or shared between human service programs.

(a) A licensed child-placing agency may provide the approval granted by the Office to the person who is the subject of the approval, another licensed child-placing agency, or the attorney for the adoptive parents, in accordance with Section 53-10-108(4).

R501-14-14. Retention of Background Screening Information.

A human services program shall retain the background

screening information of all individuals associated with the program for a minimum of eight years after the termination of the individual's association with the program.

R501-14-15. Expungement.

An applicant whose background screening application has been denied due to the applicant's criminal record may submit a new application with a certified copy of an Order of Expungement.

R501-14-16. Administrative Hearing.

A notice of agency action that denies the applicant's background screening application or revokes the applicant's background screening approval shall inform the applicant of the right to appeal in accordance with Administrative Rule R497-100 and Section 63G-4-101, et seq.

**KEY: licensing, background screening, fingerprinting
January 13, 2016 62A-2-108 et seq.
Notice of Continuation September 29, 2015**

R512. Human Services, Child and Family Services.**R512-31. Foster Parent Due Process.****R512-31-1. Purpose and Authority.**

(1) The purpose of this rule is to define the due process rights of foster parents when a decision is made to remove a foster child from their home.

(2) This rule is authorized by Section 62A-4a-102.

R512-31-2. Definitions.

(1) For the purpose of this rule, the following definitions apply:

(a) "Child and Family Services" means the Division of Child and Family Services.

(b) "Emergency foster care" means temporary placement of a child in a foster home or crisis placement.

(c) "Natural parent" means a child's biological or adoptive parent, and includes a child's noncustodial parent.

(d) "Removal" means taking a child from a foster home for the purpose of placing the child in another foster home or facility, or not returning a child who has run from a foster home back to that foster home.

R512-31-3. Due Process Rights.

(1) As authorized by Section 62A-4a-206, a foster parent has a right to due process when a decision is made to remove a foster child from their home, if the foster parent disagrees with the decision, unless the removal is for the purpose of:

(a) Returning the child to the child's natural parent or legal guardian.

(b) Immediately placing the child in an approved adoptive home.

(c) Placing the child with a relative, as defined in Section 78A-6-307, who obtained custody or asserted an interest in the child within the preference period described in Section 78A-6-307.

(d) Placing an Indian child in accordance with preplacement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C., Section 1915.

R512-31-4. Notice to Foster Parents.

(1) A foster parent shall be notified that a foster child in the foster parent's care is to be moved to another placement ten days prior to removal, unless there is a reasonable basis to believe that immediate removal is necessary, as specified in R512-31-4(4). The foster parent shall be notified by personal communication with the foster parent and by written Notice of Agency Action.

(2) The Notice of Agency Action shall be sent by certified mail, return receipt requested, or personally delivered.

(3) In addition to requirements specified in Section 63G-4-201, the Notice of Agency Action shall include the date of removal, the reason for removal, a description of the Foster Parent Conflict Resolution Procedure, and notice regarding the ability of the foster parent to petition the juvenile court judge currently assigned to the case for a review and determination of the appropriateness of the decision by Child and Family Services to remove the child from the foster home, if the child has been in the foster home for 12 months or longer, in accordance with Section 78A-6-318.

(4) If there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, the notification to the foster parent may occur after removal of the child. Notification shall be provided through personal communication on the day of removal and by written Notice of Agency Action. The Notice of Agency Action shall be sent by certified mail, return receipt requested, within three working days of removal of the child.

R512-31-5. Request for Due Process.

(1) The foster parent shall submit a written request for a hearing prior to removal of the child from the home, unless the child was removed as specified in Rule R512-31-4(4). The request shall be sent to the entity specified in the Notice of Agency Action.

(2) If the child was removed as specified in Rule R512-31-4(4), the foster parent shall submit a written request for a hearing no later than ten days after receiving the Notice of Agency Action.

(3) Prior to a hearing being granted, an attempt to resolve the conflict shall be made as specified in Rule R512-31-(6)(1)(a) and Rule R512-31-(6)(1)(b).

R512-31-6. Foster Parent Conflict Resolution Procedure.

(1) The Foster Parent Conflict Resolution Procedure consists of the following:

(a) A foster parent must first attempt to resolve a conflict with Child and Family Services informally through discussion with the caseworker or supervisor. If a conflict is not resolved through informal discussion, an agency conference may be requested by the foster parent.

(b) The foster parent shall have the opportunity to provide written and oral comments to Child and Family Services in an agency conference chaired by the region director or designee. The agency conference shall include the foster parent, foster care caseworker, and the caseworker's supervisor, and may include other individuals at the request of the foster parent or caseworker.

(c) If the foster parent is not satisfied with the results of the agency conference with Child and Family Services, the foster parent shall have the opportunity to request a review, to be held before removal of the child, by a third party neutral fact finder. If the child has been placed with the foster parents for a period of at least two years, the foster parent may request a review to be held before removal of the child, by:

(i) The juvenile court judge currently assigned to the child's case, or

(ii) If the juvenile court judge currently assigned to the child's case is not available, another juvenile court judge.

(d) If the foster parent is not satisfied with the results of the agency conference with Child and Family Services and a foster child is to be removed from the foster home, an administrative hearing shall be held through the Department of Human Services, Office of Administrative Hearings. The Office of Administrative Hearings shall serve as the neutral fact finder required by Section 62A-4a-206.

(e) If a child is removed from a foster home based upon the child's statement alone, an agency conference will be held within five business days of a request by the foster parent. If the foster parent is not satisfied with the results of the agency conference, Child and Family Services shall request an expedited administrative hearing or expedited juvenile court hearing. No formal action may be taken with regard to that foster parent's license until after all conflict resolution procedures have been completed.

R512-31-7. Administrative Hearing.

(1) An administrative hearing regarding removal of a child from a foster home for another placement shall be conducted in accordance with Rule R497-100. The administrative law judge shall determine if Child and Family Services has abused its discretion in removing the child from the foster home, i.e., the decision was arbitrary and capricious.

(2) If there is a criminal investigation of the foster parent in progress relevant to the reason for removal of the child, no administrative hearing shall be granted until the criminal investigation is completed and, if applicable, charges are filed against the foster parent.

(3) If there is an investigation for child abuse, neglect, or

dependency involving the foster home, no administrative hearing shall be granted until the investigation is completed.

R512-31-8. Removal of a Foster Child.

(1) The foster child shall remain in the foster home until the conflict resolution procedure specified in Rule R512-31-6 is completed, unless the child was removed as specified in Rule R512-31.4(4). The time frame for the conflict resolution procedure shall not exceed 45 days.

(2) If the child was removed as specified in Rule R512-31.4(4), the child shall be placed in emergency foster care until the conflict is resolved or a final determination is made by the Office of Administrative Hearings as required by Section 62A-4a-206.

KEY: child welfare, foster care, due process

January 7, 2016

Notice of Continuation March 5, 2012

62A-41-102

62A-4a-105

62A-4a-206

63G-4-201

78A-6-318

R512. Human Services, Child and Family Services.**R512-43. Adoption Assistance.****R512-43-1. Purpose and Authority.**

(1) The purpose of the adoption assistance program is to aid an adoptive family to establish and maintain a permanent adoptive living arrangement for a child who qualifies for the program under state and federal law.

(2) The adoption assistance program is intended to provide a permanent family for a child in public foster care or who receives Supplemental Security Income (SSI) by providing financial and medical assistance for the child's benefit and best interest to the family who adopts the child.

(3) Section 62A-4a-901, et seq. authorizes the state to provide adoption assistance and supplemental adoption assistance and Section 473, Social Security Act, authorizes federal adoption assistance. Section 473, Social Security Act (42 USC 673) as amended by Public Law 110-351 (October 7, 2008), 45 CFR 1356.40 (October 1, 2009), and 45 CFR 1356.41 (October 1, 2009) are incorporated by reference.

(4) This rule is authorized by Section 62A-4a-102.

R512-43-2. Definitions.

In addition to terms defined in Section 62A-4a-902, the following terms are defined for purposes of this rule:

(1) Initiation of adoption proceedings means the earlier of (a) the date an Adoption Agreement is signed with Child and Family Services for placement of a child in the home, or (b) the date an adoption petition is filed.

(2) Child in public foster care means a judicially removed child whose placement resulting in adoption was immediately preceded by protective, temporary, or legal custody with a State IV-E agency, or a child who was placed with a State IV-E agency through a Voluntary Placement Agreement, or the child of a minor parent in foster care.

(3) A child or youth who was taken into protective custody and, as a result of the protective episode, was placed with a relative who was given legal custody meets the definition of a child in public foster care.

(a) If the court orders Child and Family Services to continue to provide Protective Supervision Services for the family in making safety and permanency decisions for the child, including placement decisions and permanency goals, the child is eligible for adoption assistance if the child's permanency goal becomes adoption, if all other criteria in R512-43-3(1-4) are met.

(i) This may include a change in placement to another relative while the Protective Supervision Services continue to be court ordered.

(4) State IV-E agency means Child and Family Services or a public agency or tribal organization with whom Child and Family Services has an agreement in effect for foster care maintenance payments in accordance with Title IV-E, Section 42 USC 672.

(5) AFDC means the Aid to Families with Dependent Children program that was in effect on July 16, 1996.

(6) Child with a previous IV-E agreement means a child who was Title IV-E eligible in a previous adoption with a fully executed adoption assistance agreement originating in any state, and the previous adoption was legally dissolved or ended due to the death of both of the adoptive parents.

R512-43-3. General Requirements for Adoption Assistance.

(1) Qualification for adoption assistance is based upon the child meeting qualifying factors, not the adoptive family.

(2) A child qualifies for adoption assistance if all of the following are met:

(a) The state has determined that the child cannot or should not be returned home.

(b) The state can document that reasonable efforts were

made to place the child for adoption without providing adoption assistance. An exception applies if the child has significant emotional ties with the adoptive family and it is not in the child's best interest to consider a different adoptive placement.

(c) The state determines the child meets the definition of a child with a special need in accordance with Section 62A-4a-901, et seq.

(i) A child under age five in public foster care meets the special need definition of "a child with a physical, emotional or mental disability" when the child is at risk to develop such a condition due to specific factors identified in the child's or birth parents' health and social histories.

(3) In determining eligibility for adoption assistance, there is no income eligibility requirement or means test for the adoptive parents.

(4) A child must be a U.S. citizen or qualified alien to receive adoption assistance.

(5) An application for adoption assistance is submitted to the regional adoption assistance committee on a form provided by Child and Family Services.

(6) Application for adoption assistance, approval, and completion of the adoption assistance agreement, including signatures of an adoptive parent and a representative from Child and Family Services, are to be completed prior to finalization of the adoption.

(7) Adoptive parents may request adoption assistance after an adoption is finalized by requesting a fair hearing through the Office of Administrative Hearings. Adoption assistance may only be granted after finalization when the conditions stated in R512-43-11-2(a) are met.

(8) Adoption assistance usually begins after finalization of an adoption. However, adoption assistance may be initiated at the time of placement if the child is legally free for adoption, the adoptive home is approved, adoption proceedings are initiated, an adoption assistance agreement is fully executed prior to placement, and foster care maintenance payments are not being provided for the child.

(9) An adoption assistance agreement shall be approved and have all required signatures before any payments may be made to an adoptive family or before state medical assistance may be initiated.

(10) A qualified child shall continue to be eligible to receive adoption assistance until a child reaches age 18 unless causes for termination apply as stated in R512-43-10. Assistance may be extended until a child reaches age 21 when the regional adoption assistance committee has determined that the child has a mental or physical disability that warrants continuing assistance.

(a) An extension of adoption assistance beyond age 18 is warranted if the child meets the criteria for services in the Department of Human Services, Division of Services for People with Disabilities.

(11) Child and Family Services is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family begins an adoptive placement of a qualified child in public foster care.

(12) The adoptive parents are responsible to notify Child and Family Services of any circumstances that may affect the child's eligibility for adoption assistance or eligibility for adoption assistance in a different amount.

R512-43-4. Reimbursement of Non-Recurring Adoption Expenses.

(1) A parent who adopts a child meeting all of the qualifying factors for adoption assistance listed in R512-43-3(2) may be reimbursed for non-recurring adoption expenses on behalf of the child.

(2) A parent may be reimbursed up to \$2,000 per child for allowable non-recurring expenses directly related to the legal

adoption of a child with a special need. Reimbursement shall be limited to costs approved by the regional adoption assistance committee.

(3) Expenses may include reasonable and necessary adoption fees, court costs, adoption-related attorney fees, pre-placement adoptive evaluation, health and psychological examinations of adoptive parents, post-placement adoptive evaluation prior to adoption, and transportation and reasonable costs of lodging and food for the child and/or adoptive parents during the placement or adoption process.

(4) Adoptive parents are responsible to provide necessary receipts for reimbursement.

(5) Only costs that are incurred in accordance with State and Federal law and that have not been reimbursed from other sources or funds may be included.

(6) Non-recurring adoption expenses are reimbursable through Title IV-E Adoption Assistance. The child does not have to be determined Title IV-E eligible for the parents to receive this reimbursement.

R512-43-5. Monthly Subsidy.

(1) Qualifying for a Monthly Subsidy.

A child qualifies for a monthly subsidy when the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI, or the child had a previous IV-E agreement or Utah state adoption assistance agreement.

(c) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(2) Guiding Principles for Monthly Subsidies.

(a) The amount of monthly subsidy to be paid for a child is based on the child's present and long-term treatment and care needs and available resources, including the family's ability to meet the needs of the child. A combination of the parents' resources and subsidy should cover the ordinary and special needs expenses of the child projected over an extended period of time.

(b) The amount of the monthly subsidy may not exceed the payment that would be made if the child was placed in a foster family home at the point in time when the agreement is being initiated or revised.

(c) The amount of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet those needs changes. The family or the caseworker may initiate a change in the amount of subsidy at any time when needs or resources change.

(d) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and caseworker. The Adoptive Parent Statement of Disclosure items must be reviewed in depth by the caseworker and adoptive parent prior to subsidy negotiation.

(e) The amount of the monthly subsidy is subject to the approval of the regional adoption assistance committee. If the requested amount is not granted, the adoptive parent has a right to appeal as stated in R512-43-11.

(3) Process for Determining Monthly Subsidy Amount.

(a) Utilizing the level of need criteria specified in R512-43-5(4), the caseworker and adoptive family identify the child's level of need.

(b) The caseworker and adoptive family identify the applicable monthly subsidy payment range, according to the child's specified level of need, as specified in R512-43-5(5).

(c) The caseworker and adoptive family negotiate the amount of monthly subsidy to be requested from the regional adoption assistance committee. The requested monthly subsidy amount may not exceed the maximum amount for the specific level of need identified for the child nor the maximum amount

that the child would receive if placed in a foster family home.

(d) The identified need level for the child and requested amount of monthly subsidy is presented to the regional adoption assistance committee for approval. If the requested amount is not approved or is reduced by the committee, Child and Family Services must send a written notice to the adoptive parents within 30 days informing them of the process to request a fair hearing.

(4) Determining Child's Level of Need.

(a) The level of need is determined by considering the child's age, history, physical, mental, emotional, and social functioning and needs, and any other relevant factors. Frequency of occurrence, duration, severity, and number of needs or problem areas are also considered.

(b) The presence of a particular issue listed within a designated level does not mandate that the child be categorized at that level. The child's needs, taken as a whole, determine the level selected for the child.

(c) Level of need is classified into three categories.

(i) Level One applies to a child with a minimal number and severity of needs. It is expected that most of these issues will improve with time, and significant improvement may be anticipated over the course of the adoption. For children ages five and under issues may include, but are not limited to: feeding problems, aggressive or self destructive behavior, victimization from sexual abuse, victimization from physical abuse; or no more than one developmental delay in fine motor, gross motor, cognitive or social/emotional domains. For children ages 6-18, issues may include but are not limited to: social conflict, physical aggression, minor sexual reactivity, need for education resource classes or tutoring, some minor medical problems requiring ongoing monitoring, or mental health issues requiring time limited counseling.

(ii) Level Two applies to a child with a moderate number and severity of needs. It is expected that a number of these issues are long-term in nature and the adoptive family and child will be working with them over the course of the adoption, and some may intensify or worsen if not managed carefully. Outside provider support will probably continue to be needed during the course of the adoption. For children ages five and under, issues may include, but are not limited to: developmental delays in two or more areas of fine motor, gross motor, cognitive or social/emotional domains; diagnosis of failure to thrive; moderate genetic disease or physical handicapping condition; or physical aggression expressed several times a week, including superficial injury to self or others. For children ages 6-18, issues may include, but are not limited to: daily social conflict or serious withdrawn behavior; moderate risk of harm to self or others due to physically aggressive behavior; emotional or psychological issues with a DSM-IV diagnosis requiring ongoing counseling sessions over an extended period of time; moderate sexual reactivity or perpetration; chronic patterns of being destructive to items or property; cruelty to animals; mild mental retardation or autism, with ongoing need for special education services; and physical disabilities requiring ongoing attendant care or other caretaker support.

(iii) Level Three applies to a child with a significant number or high severity of needs. It is expected that these issues will not moderate and may become more severe over time. The child's level of need may at some time require personal attendant care or specialized care outside of the home, when prescribed by a professional. For children ages five and under issues may include, but are not limited to: severe life threatening medical issues; moderate or severe retardation or autism; serious developmental delays in three or more areas of fine or gross motor, cognitive or social/emotional domains; anticipated need for ongoing support for activities of daily living, such as feeding, dressing and self care; or high levels of threat for harm to self or others due to aggressive behaviors. For children ages

6-18 issues may include, but are not limited to: moderate or severe retardation or autism; life threatening medical issues; severe physical disabilities not expected to improve over time; predatory sexual perpetration; high risk of serious injury to self or others due to aggressive behavior; serious attempts or threats of suicide; severely inhibiting DSM-IV diagnosed mental health disorders diagnosed within the past year that limit normal social and emotional development, such as an Axis 5 GAF score under 50; or need for ongoing self contained or special education services.

(d) The regional adoption assistance committee must approve the level of need identified for the child.

(e) A child's need level may be increased in severity by one level if the adoption assistance committee determines that the child's permanency may be compromised due to financial barriers to the child's adoption and if at least one of the following circumstances apply:

(i) The child has been in state custody for longer than 24 months.

(ii) The child is nine years of age or older.

(iii) The child is part of a sibling group of three or more children being placed together for the purposes of adoption.

(5) Identifying Amount for Monthly Subsidy Based Upon the Child's Level of Need.

(a) Each level of need corresponds to a dollar range in the amount of monthly subsidy that may be paid for a child, with the specific amount based upon the individual child's needs and the family's ability to meet those needs.

(b) The monthly subsidy amount for an individual child may not exceed the maximum amount for the payment range applicable to the child's level of need. A family may choose to defer receipt of a monthly subsidy for which a child qualifies, with the option to initiate a monthly subsidy at a later date, or to receive a lesser amount than would be allowable for the level of need at a given point in time.

(c) Monthly subsidy payments for a child's needs categorized as Level One range from zero to 40 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(d) A family may choose to receive a lesser amount than would be allowable for the child's level of need at a given point in time.

(e) Monthly subsidy payments for a child's needs categorized as Level Two range from 20 to 70 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(f) Monthly subsidy payments for a child's needs categorized as Level Three range from 50 to 100 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(g) For extraordinary, infrequent, or uncommon documented needs that cannot be covered by a monthly subsidy or state medical assistance, refer to supplemental adoption assistance in R512-43-7.

(6) Funding Sources and Eligibility for Monthly Subsidy.

(a) The two funding sources for the monthly subsidy are Title IV-E Adoption Assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(b) Title IV-E Adoption Assistance shall be considered first for the monthly subsidy. To receive Title IV-E Adoption Assistance, a child with special needs shall meet at least one of the following Federal requirements:

(i) A child is determined eligible for SSI by the Social Security Administration prior to the initiation of adoption proceedings.

(ii) The removal home for the child in public foster care received, or would have been eligible to receive, AFDC prior to removal, and the child was removed from the home as a result

of a judicial determination that remaining in the home would be contrary to the child's welfare.

(iii) The child was voluntarily placed for foster care with the state and:

(A) Was or would have been AFDC eligible at the time of removal if application had been made,

(B) The child lived with a specified relative within the six months prior to the voluntary placement, and

(C) Title IV-E foster care maintenance payments were made on behalf of the child.

(iv) The child's needs were met through foster care maintenance payments made to and for the child's minor parents as provided by Subsection 475(4)(B) of the Social Security Act.

(v) The child had a previous IV-E adoption assistance agreement.

(c) State adoption assistance funds may be used for the monthly subsidy if the qualified child is not eligible for Title IV-E Adoption Assistance.

(7) Use of the monthly subsidy. The monthly subsidy may be used according to the parents' discretion. Some examples of the uses of the monthly subsidy payment are medical, dental, or mental health services not paid for by the state medical assistance or family insurance, special equipment for physically or mentally challenged children, respite care, child care, therapeutic equipment, minor renovation of the home to meet special needs of the child, damage and repairs, speech therapy, tutoring, specialized preschool based on needs of the child, private school, exceptional basic needs such as special food, clothing, and/or shelter, visitations with biological relatives, cultural and heritage activities and information.

R512-43-6. State Medical Assistance.

(1) A child qualifies for state medical assistance as a component of adoption assistance when all of the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI, or the child had a previous IV-E adoption assistance agreement or Utah state adoption assistance agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(c) The child meets state medical assistance citizenship requirements.

(2) A qualified child may receive state medical assistance through an adoption assistance agreement without also receiving a monthly subsidy payment.

(3) The adoptive family must meet all Medicaid requirements, including application, citizenship verification, and annual review requirements in order for Medicaid to be initiated and continue throughout the period of the adoption assistance agreement.

R512-43-7. Supplemental Adoption Assistance.

(1) A child meeting all qualifying criteria for a monthly subsidy and for whom an adoption assistance agreement for a monthly subsidy or state medical assistance is in effect may qualify for supplemental adoption assistance.

(2) Supplemental adoption assistance may only be used for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

(3) Supplemental adoption assistance is not an entitlement, and will be granted only when justified by unique needs of the child and when all other resources for which a child is eligible have been exhausted.

(4) Supplemental adoption assistance requests up to

\$3,000 will be considered and are subject to the approval of the regional adoption assistance committee.

(5) Supplemental adoption assistance requests from \$3,001 to \$10,000 shall be considered by the appropriate regional advisory committee established under Subsection 62A-4a-905(2).

(6) Supplemental adoption assistance requests exceeding \$10,001 shall be considered by a state level advisory committee with the same membership composition as the regional advisory committees.

(7) Recommendations from the advisory committee are subject to the approval of the Region Director or designee.

(8) Any obligation made or expense incurred by a family prior to approval shall not be reimbursed with supplemental adoption assistance funds unless approval is granted by the Region Director.

(9) A request for an amendment or extension of an existing supplemental adoption assistance agreement will be reviewed by the same committee that reviewed the initial request. If the total amount of multiple requests in a year is \$3,000 to \$10,000, the request shall be submitted to the appropriate regional advisory committee. If the request exceeds \$10,000, the request shall be submitted to the state level advisory committee.

(10) Supplemental adoption assistance is subject to the availability of state funds appropriated for adoption assistance.

R512-43-8. Regional Adoption Assistance Committee.

(1) Each region shall establish at least one regional adoption assistance committee.

(2) The regional adoption assistance committee shall be comprised of at least five members, and a minimum of three members must be present for making decisions regarding adoption assistance. Decisions shall be made by consensus.

(3) Members of the committee may include the following:

- (a) Chairperson;
- (b) Clinical consultant or casework supervisor;
- (c) Regional budget officer or fiscal representative;
- (d) Allied agency representative from agencies such as a community mental health center, private adoption agency, or other agencies within the department;

(e) Regional administrator or other staff with relevant responsibilities;

(f) Adoptive or foster parent.

(4) Responsibilities of the regional adoption assistance committee include:

(a) Verification that a child qualifies for adoption assistance,

(b) Approval for reimbursement of allowable, reasonable non-recurring costs,

(c) Approval of level of need and amount of monthly subsidy for initial requests, changes, and renewals,

(d) Approval of supplemental adoption assistance up to \$3,000,

(e) Extension of adoption assistance up to age 21 for a qualifying child,

(f) Renewal of adoption assistance, and

(g) Documentation of committee decisions.

R512-43-9. Adoption Assistance Review.

(1) The adoption assistance agreement for a monthly subsidy or state medical assistance shall continue until the month of the adopted child's 18th birthday.

(2) An agreement for supplemental adoption assistance exceeding \$3,000 shall be reviewed according to a time frame determined on a case by case basis by the appropriate regional advisory committee.

R512-43-10. Termination of Adoption Assistance.

(1) An adoption assistance agreement for a monthly

subsidy or state medical assistance shall be terminated if any of the following occur:

(a) The terms of the adoption assistance agreement are concluded.

(b) The adoptive parents request termination.

(c) The month following the child's 18th birthday, unless approval has been given by the adoption assistance committee to continue until the month following the child's 21st birthday due to mental or physical disability.

(d) The child dies.

(e) The adoptive parents die.

(f) The adoptive parents' legal responsibility for the child ceases.

(g) The state determines that the child is no longer receiving financial support from the adoptive parents.

(h) The child enters the military.

(i) The child marries.

(2) Termination of state medical assistance is subject to the policies of the Division of Health Care Financing.

(3) Supplemental adoption assistance shall terminate when an adoption assistance agreement for a monthly subsidy or state medical assistance is terminated, the terms of the agreement are concluded, the authorizing committee determines that the services funded with supplemental funds are no longer effective or appropriate based upon an independent review by a qualified provider, or if lack of availability of state funding prevents continuation. Written notice as described in R512-43-10(4) shall be provided at least 30 days before funding is discontinued due to lack of availability of state funding appropriated for adoption assistance or due to determination that services are no longer effective or appropriate.

R512-43-11. Fair Hearings.

(1) Fair Hearing Request.

A written request for a fair hearing may be submitted within 10 working days after receiving a Department of Human Services/Child and Family Services decision to the Department of Human Services if:

(a) The adoption assistance application is denied;

(b) The adoption assistance application is not acted upon with reasonable promptness;

(c) Adoption assistance or supplemental adoption assistance is reduced, terminated, or changed without the concurrence of the adoptive parents;

(d) The amount of adoption assistance or supplemental adoption assistance approved was less than the amount requested by adoptive parents;

(e) Adoption assistance was not requested prior to finalization of the adoption and one of the criteria in R512-43-11(2)(a) applies.

(2) Post Finalization Request Fair Hearing.

(a) The fair hearing officer may approve appropriate state or federal adoption assistance for post finalization requests if one of the following is met:

(i) Relevant facts regarding the child, the biological family, or child's background were known but not presented to adoptive parents prior to finalization.

(ii) A denial of assistance was based upon a means test of the adoptive family.

(iii) An erroneous state determination was utilized to find a child ineligible for assistance.

(iv) The state or adoption agency failed to advise adoptive parents of the availability of assistance.

(b) The adoptive parents bear the burden of documenting that the child meets the definition of a child with a special need and that one of the criteria in R512-43-11(2)(a) applies. The state may provide corroborating facts to the family or the fair hearing officer.

R512-43-12. Interstate Adoption Assistance.

(1) Child and Family Services is responsible to determine if a child in Utah public foster care qualifies for adoption assistance when the child is placed in an adoptive home in another state. If the child qualifies, Child and Family Services provides adoption assistance regardless of the state of residence of the adoptive family and child.

(2) If a child with a previous IV-E adoption assistance agreement enters public foster care because the adoption was dissolved or ended due to the result of the death of the parents, the state in which the child is taken into custody in public foster care is responsible to provide adoption assistance in a subsequent adoption.

(3) If a child with a previous IV-E adoption assistance agreement does not enter public foster care when the adoption dissolved or ended due to the death of both parents, the new adoptive parent is responsible to apply for adoption assistance in the new adoptive parent's state of residence.

(4) A parent desiring to adopt an out-of-state child who is not in public foster care but is receiving SSI shall apply for adoption assistance in the parent's state of residence.

(5) An adoption assistance agreement remains in effect regardless of the state of residence of the adoptive parents as long as the child continues to qualify for adoption assistance.

(6) If a needed service specified in the agreement is not funded by the new state of residence, the state making the original adoption assistance payment remains financially responsible for paying for the specific service.

KEY: adoption, child welfare, foster care

March 10, 2014

62A-4a-102

Notice of Continuation January 25, 2016

62A-4a-106

62A-4a-901 through 62-4a-907

R512. Human Services, Child and Family Services.**R512-100. In-Home Services.****R512-100-1. Purpose and Authority.**

(1) The purpose of In-Home Services is to enhance a parent's capacity to safely care for their child in their home and to safely reduce the need for out-of-home care in Utah. In-Home Services include front-end services that help prevent removal and allow a child to remain at home with their parent or caregiver. It includes cases where a child is placed with a non-custodial parent or relatives who have custody and guardianship of the child. It also includes services for when a child returns home from out-of-home care and there are continuing services with Child and Family Services and court oversight.

(2) In-Home Services are a set of evidence-based services, strategies, and tools that support the safety, permanency, and well-being of a child and the strengthening of their family.

(3) The key components of In-Home Services interventions include:

(a) Case management based on Practice Model skills of engaging, teaming, assessing, planning, and intervening.

(b) Assessing and addressing safety and risk issues to help stabilize the family, providing purposeful home visits and a private conversation with the child.

(c) The application of an evidence-based assessment to identify child and family needs and protective factors early in the case, guiding caseworkers to better target the individual needs of the family with services, and informing the development of the Child and Family Plan, and

(d) Direct services and interventions that help the family make needed changes in addition to linking the family to evidence-based services and community resources.

(4) Pursuant to Sections 62A-4a-105, 62A-4a-201, and 62A-4a-202, Child and Family Services is authorized to provide In-Home Services.

(5) This rule is authorized by Section 62A-4a-102.

R512-100-2. Definitions.

(1) "Child and Family Plan" is a written document that is developed by the Child and Family Team based on the assessment of the child and family's strengths and needs. The Child and Family Plan will guide and enable the family to make the changes that are necessary to meet their child's need for safety, permanency, and well-being.

(2) "Child and Family Services" means the Division of Child and Family Services.

(3) "Child and Family Team" is the family's identified informal supports and the service providers working with the family.

(4) "Utah Family and Children Engagement Tool (UFACET)" is an assessment tool used to identify child and family needs and guide addressing those needs with services in the Child and Family Plan.

R512-100-3. Qualifications.

(1) In-Home Services may be provided to families under the following conditions:

(a) A child has experienced abuse or neglect but can remain safely in the home with a safety plan.

(b) A child is placed with a non-custodial parent or relatives who have custody and guardianship of the child.

(c) A child is returned home from out-of-home care.

(d) An adoptive placement is at risk of disruption and intensive services are needed to maintain the child in the adoptive home.

(e) When reunification is likely within 14 days and intensive support is needed in conjunction with a current out-of-home care caseworker to prepare for and facilitate the reunification.

(2) A family may not qualify for In-Home Services under

the following conditions:

(a) A family has the ability to access resources, supports, and services on their own, and

(b) There is minimal risk of abuse/neglect to the child, and

(c) The family requires no ongoing monitoring by Child and Family Services.

(3) In-Home Services may be voluntary or court ordered. A petition may be filed for court-ordered protective supervision of the family.

(4) In-Home Services are available in all geographic regions of the state.

R512-100-5. Service Delivery.

(1) Child and Family Team:

(a) The caseworker will engage the child and family to assemble a Child and Family Team. A Child and Family Team includes informal supports identified by the family in addition to the service providers who are or will be working with the family. The Child and Family Team meets regularly and assesses the strengths and needs of the child and family and plans for the child's safety, permanency, and well-being. Teaming occurs through ongoing information sharing and collaboration.

(2) Assessing:

(a) The purpose of assessing is to inform the Child and Family Team so that they know what they need to know to do what they need to do. Assessing is a sequential process of gathering information about the family's strengths and needs, analyzing the information, drawing conclusions, and acting on those conclusions by developing a plan to meet the identified needs. These needs are met through the provision of effective interventions that help the family achieve enduring safety, permanency, and well-being. Assessing is an ongoing and evolving process throughout the case.

(3) Planning:

(a) A Child and Family Plan shall be developed for each family receiving In-Home Services in accordance with Section 62A-4a-205. The Child and Family Plan guides the provision of services/interventions and is tracked and adapted throughout the case.

(b) Members of the Child and Family Team, including the parents and the child, if age appropriate, shall assist in developing the Child and Family Plan.

(c) A copy of the completed Child and Family Plan shall be provided to the parent or guardian. If In-Home Services are court ordered, a copy of the Child and Family Plan will be provided to the court, Assistant Attorney General, Guardian ad Litem, and legal counsel for the parent or guardian.

(4) Permanency Goals:

(a) All children receiving In-Home Services shall have a primary permanency goal and, if appropriate, a concurrent permanency goal identified by the Child and Family Team.

(b) For court-ordered In-Home Services, both primary and concurrent permanency goals, when applicable, shall be submitted to the court for approval.

(5) Duration of Services:

(a) For court-ordered services, the caseworker will continue to work with the family until the circumstances that brought the family to the attention of Child and Family Services are remedied and a ruling is made by the assigned judge to terminate Child and Family Services oversight.

(b) For voluntary services, the Child and Family Team assesses and determines when to end services with the family. This decision is staffed with the caseworker's supervisor.

KEY: child welfare

January 7, 2016

Notice of Continuation April 8, 2013

62A-4a-102

62A-4a-105

62A-4a-201

62A-4a-202

R512. Human Services, Child and Family Services.**R512-205. Child Protective Services, Investigation of Domestic Violence Related Child Abuse.****R512-205-1. Purpose and Authority.**

(1) The purpose of this rule is to establish criteria for investigation of an allegation of Domestic Violence Related Child Abuse and the basis upon which a supported finding will be made.

(2) This rule is authorized by Section 62A-4a-102.

R512-205-2. Definitions.

(1) "Cohabitant" has the same meaning as in Section 78B-7-102.

(2) "Dangerous weapon" has the same meaning as in Section 76-1-601.

(3) "Child and Family Services" means the Department of Human Services, Division of Child and Family Services.

(4) "Domestic violence" has the same meaning as in Section 77-36-1.

(5) "Domestic Violence Related Child Abuse" means domestic violence between cohabitants in the presence of a child. It may be an isolated incident or a pattern of conduct.

(6) "In the presence of a child" has the same meaning as in Section 76-5-109.1.

(7) "Serious bodily injury" has the same meaning as in Section 76-1-601.

(8) "Substantial bodily injury" has the same meaning as in Section 76-1-601.

R512-205-3. Administrative Findings.

(1) The commission of acts of domestic violence in the presence of a child is child abuse, because it results in non-accidental harm or threatened harm to the child. Such abuse is subject to the reporting statute (Section 62A-4a-403).

(2) Research establishes that exposure to domestic violence causes emotional or developmental harm or threatened harm to children, which may later be manifested in behavioral problems, increased risk of drug or alcohol abuse, increased risk of becoming perpetrators or victims of abuse, or in emotional disorders such as post-traumatic stress disorder.

(3) Exposure to domestic violence may also threaten a child with physical harm.

(4) Awaiting the manifestation of emotional or developmental harm does not protect children from such harm, and early intervention is required to mitigate and prevent further harm.

(5) Accordingly, establishing the commission of an act of domestic violence in the presence of a child shall be sufficient to establish Domestic Violence Related Child Abuse, without any further evidence of harm.

(6) The primary responsibility to investigate allegations of Domestic Violence Related Child Abuse as defined in Section 76-5-109.1 lies with law enforcement, and Child and Family Services has no responsibility to investigate domestic violence in the presence of a child as described in that section, except as provided in this rule (see Section 62A-4a-105(6)).

R512-205-4. Investigation.

(1) An allegation of Domestic Violence Related Child Abuse, that meets all other requirements for acceptance, shall be accepted by Child and Family Services for investigation if it is alleged that a child was physically present or saw or heard an incident of domestic violence and:

(a) The alleged perpetrator used or threatened to use a dangerous weapon; or

(b) The alleged perpetrator threatened to cause substantial or serious bodily injury; or

(c) The alleged perpetrator committed a sexual assault, strangulation, or other assault likely to result in substantial or

serious bodily injury; or

(d) The alleged victim sustained substantial or serious bodily injury; or

(e) There is a pattern of two or more CPS investigations of Domestic Violence Related Child Abuse within the previous two years; or

(f) Another allegation of abuse, neglect, or dependency is being accepted or is in the process of being investigated.

(2) If during an open, non-CPS case, a referral is received for Domestic Violence Related Child Abuse which does not meet the criteria for acceptance under subparagraph (1) above, the information will be sent to the ongoing caseworker for assessment.

R512-205-5. Investigation Findings.

(1) Upon completion of an investigation of Domestic Violence Related Child Abuse, a supported finding may be based upon the definitions of this rule.

KEY: child abuse, domestic violence**November 1, 2011****Notice of Continuation January 25, 2016****62A-4a-102****62A-4a-105****76-5-109.1**

R512. Human Services, Child and Family Services.**R512-301. Out-of-Home Services, Responsibilities Pertaining to a Parent or Guardian.****R512-301-1. Purpose and Authority.**

(1) The purposes of this rule are to clarify:

(a) Roles and responsibilities of Child and Family Services to a parent or guardian of a child receiving out-of-home services in accordance with Rule R512-300, and

(b) Roles and responsibilities of a parent or guardian while a child is receiving out-of-home services.

(2) Sections 62A-4a-105 and 62A-4a-106 authorize Child and Family Services to provide out-of-home services and 42 USC 672 authorizes federal foster care. 42 USC 672 as amended by Public Law 113-183 (September 29, 2014), and 45 CFR Parts 1355 and 1356 (January 6, 2012) are incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

R512-301-2. Definitions.

The following terms are defined for the purposes of this rule:

(1) Child and Family Services means the Division of Child and Family Services.

(2) Out-of-Home Services means those services defined in Rule R512-300.

(3) Child and Family Team means a group that includes the child and family and other concerned individuals involved in providing formal or informal supports or services to the family, that meet together as often as needed to assist the family in meeting their needs, providing a safe home for their children, and achieving the goals that will lead to conclusion of Child and Family Services involvement. The family is involved in identifying individuals they want included as a part of the Child and Family Team.

(4) Reunification means safely returning the child to the parent or guardian from whom the child was removed by court order or through a voluntary placement.

R512-301-3. Child and Family Services Roles and Responsibilities to a Parent or Guardian of a Child Receiving Out-of-Home Services when Reunification is the Primary Permanency Goal.

(1) Child and Family Services is responsible to make reasonable efforts to reunify a child with a parent or guardian when a court has determined that reunification is appropriate, in accordance with Section 62A-4a-203, or when a child has been placed with Child and Family Services through a voluntary placement.

(2) Child and Family Services shall actively seek to involve both the custodial and non-custodial parents or guardians in the Child and Family Team process, unless their whereabouts are unknown, including participation in establishing the Child and Family Team, completing an assessment, developing the Child and Family Plan, and selecting the child's primary and concurrent permanency goals, as described in Rule R512-300. Child and Family Services shall also involve the child's foster parents, stepparent (when appropriate), and the Guardian ad Litem, if one has been appointed by the court.

(3) The Child and Family Plan shall address the strengths and needs of both the child and the family. In accordance with Section 62A-4a-205, the plan shall identify what the parents must do in order for the child to be returned home, specifically how the requirements may be accomplished and how the requirements shall be measured. The plan shall also include the specific services needed to reduce the problems that necessitated placing the child in out-of-home care. Child and Family Services shall utilize and complete an assessment, with the input of the Child and Family Team, to identify the provisions that

will be included in the plan. Provisions of the plan shall be crafted by the Child and Family Team and designed to maintain and enhance parental functioning, improve safety, well-being, and permanency for the child, and preserve familial connections.

(4) In accordance with Section 62A-4a-205, additional weight and attention shall be given to the input of the child's parents and the foster parents in the plan development.

(5) Child and Family Services shall make a substantial effort to develop a Child and Family Plan with which the child's parents agree. If a parent does not agree with the services outlined on the Child and Family Plan, Child and Family Services shall make attempts to resolve the disagreement, and, if unsuccessful, shall inform the court of the disagreement.

(6) The parent or guardian, foster parent, Guardian ad Litem, and the parent or guardian's legal counsel shall be provided a copy of the completed Child and Family Plan upon finalization of the plan, or as soon as reasonably possible following finalization.

(7) The caseworker shall make diligent attempts to have regular face-to-face contact with the parent or guardian in order to facilitate progress towards completion of the provisions outlined in the Child and Family Plan. At a minimum, the caseworker shall visit the parent or guardian at least once per month.

(8) Child and Family Services shall make diligent efforts to engage a parent or guardian in continuing contacts with the child, whether through visitation, phone, or written correspondence, when it is not prohibited by court order. Visitation requirements specified in Rule R512-300 apply.

(9) Child and Family Services shall also make reasonable and diligent efforts to engage and involve a parent or guardian in their child's activities and appointments, such as attending school meetings, recreational activities, and health care visits, when it is determined to be safe for the child and not prohibited by court order.

(10) Child and Family Services must include the parent or guardian as fully as possible when making health care decisions for the child, as long as the child's health and well-being are not compromised by the decision.

(11) The parent or guardian has a right to reasonable notice and may participate in court and administrative reviews for the child in accordance with 42 USC 675 and Section 78A-6-317.

R512-301-4. Roles and Responsibilities of a Parent or Guardian of a Child Receiving Out-of-Home Services when Reunification is the Primary Permanency Goal.

A parent or guardian is responsible for:

(1) Complying with court orders.

(2) Participating in the Child and Family Team process.

(3) Providing input into the assessment and Child and Family Plan development process, in order to identify specific behavioral changes and actions necessary to enable the child to safely return home.

(4) Completing goals and objectives of the plan.

(5) Frequently communicating with the caseworker about their progress or inability to comply with the objectives of the plan, prior to the proposed completion time frames.

(6) Maintaining communication and frequent visitation with the child in accordance with Rule R512-300, when not prohibited by the court.

(7) Providing information to enable Child and Family Services to determine the child's eligibility for Federal benefits while in care, in accordance with Rule R512-300. Necessary information includes information on household income, assets, and household composition.

(8) Providing financial support for the child's care, in accordance with 42 USC 671, and Sections 62A-4a-114 and

78A-6-1106, unless deferred or waived as specified in Rule R495-879.

R512-301-5. Guidelines for Making Recommendations for Reunification to the Court.

(1) In accordance with Section 62A-4a-205, when considering reunification, the child's health, safety, and welfare shall be the paramount concern.

(2) The Child and Family Team shall consider the following factors in determining whether to recommend that the court order reunification:

(a) The risk factors that led to the placement were acute rather than chronic.

(b) The child and family assessments (including the safety, risk, and family functioning assessments, as well as any other pertinent assessments) conclude that the parent appears to possess or has developed the ability to ensure the child's safety and provide a nurturing environment.

(c) The parent is committed to the child and indicates a desire to have the child returned home.

(d) The child has a desire for reunification, as determined using age appropriate assessments.

(e) Members of the Child and Family Team support a reunification plan.

(f) If the parent is no longer living with the individual who severely abused the minor, reunification may be considered when the parent is able to implement a plan that ensures the child's ongoing safety.

(g) Existence of factors or exceptions that preclude reunification as specified in Section 78A-6-312.

(3) Child and Family Services shall provide additional relevant facts, when available, to assist the court in making a determination regarding the appropriateness of reunification services, such as:

(a) The parent's failure to respond to previous services or Child and Family Plans.

(b) The child being abused while the parent was under the influence of drugs or alcohol, and whether the parent's substance abuse continues to impact their ability to safely parent.

(c) Continuation of a chaotic, dysfunctional lifestyle.

(d) The parent's past history of violent behavior and whether any behavioral changes have been made to address that behavior.

(e) The testimony of a properly qualified professional or expert witness that the parent's behavior is unlikely to be successfully changed.

R512-301-6. Return Home and Trial Home Placement.

(1) When the safety issues that resulted in the child being placed in out-of-home care are remedied or eliminated and the parent has demonstrated the behavioral changes needed in order to safely enable the child to return home, Child and Family Services may recommend a trial home placement or a return home to the court. The child may return home when allowable by court order or in conjunction with provisions of a voluntary placement.

(2) Successful reunification shall be systematically considered and planned for from the earliest possible point in the life of the case. Prior to the child being physically returned home, the Child and Family Team shall discuss and have a well-defined plan for the child to transition home from out-of-home care. Good transition planning shall include identifying ongoing formal and informal supports, as well as crisis or relapse planning, in order to prevent reentry into out-of-home care.

(3) In order for all pertinent parties to adequately prepare for the child to return home, Child and Family Services shall provide reasonable notice (unless otherwise ordered by the court) of the date the child will be returning home. Parties to be notified include the child, parents, members of the Child and

Family Team, Guardian ad Litem, out-of-home care provider, school staff, therapist, and other partner agencies.

(4) Child and Family Services shall provide services directed at assisting the child and family make a successful transition of the child back into the home, and shall have supports in place to help observe and monitor that no further abuse or neglect is occurring to the child.

(5) If it is determined that the child and family require more intensive services to ensure successful reunification, intensive family reunification or In-Home Services may be utilized in accordance with Rule R512-100.

(6) A child may be returned home for a trial home visit for up to 90 days. The trial home visit shall continue until the court has returned custody to the parent or guardian.

R512-301-7. Voluntary Relinquishment of Parental Rights.

(1) When it is not in a child's best interest to be reunified with the child's parents, Child and Family Services may explore with both parents the option of voluntary relinquishment in accordance with Section 78A-6-514.

(2) If the child is Native American, provisions of the Indian Child Welfare Act (ICWA), 25 USC 1913 shall be met.

R512-301-8. Termination of Parental Rights.

(1) If a court determines that reunification services are not appropriate, Child and Family Services shall petition for termination of parental rights in accordance with 42 USC 675, 42 CFR 1356.21, and Section 62A-4a-203.5 unless exceptions specified in 42 CFR 1356.21 or Section 62A-4a-203.5 apply.

(2) Child and Family Services shall document in the Child and Family Plan and the court report when a determination is made that there are compelling reasons that filing for termination of parental rights is not in the child's best interest and shall make the plan available to the court for review.

(3) When Child and Family Services files a petition to terminate parental rights, if a permanent family has not already been identified for the child, the caseworker must concurrently begin to identify, recruit, process, and seek approval of a qualified adoptive family for the child. These efforts must be documented in the case record as specified in Rule R512-300.

(4) If the child is Native American, provisions of the ICWA, 25 USC 1913, shall be met.

(5) Child and Family Services shall not give approval to finalize an adoption until the period to appeal a termination of parental rights has expired. If an appeal has been filed, the adoption may not be finalized until the appeal is resolved.

KEY: social services, child welfare, domestic violence, child abuse

January 7, 2016

Notice of Continuation May 16, 2013

62A-4a-102

62A-4a-105

62A-4a-106

R512. Human Services, Child and Family Services.**R512-305. Out-of-Home Services, Transition to Adult Living Services.****R512-305-1. Purpose and Authority.**

(1) The purpose of Transition to Adult Living (TAL) services is to help prepare a youth who is receiving out-of-home services in accordance with Rule R512-300 to gain skills to transition to adulthood and to provide support to youth upon leaving the Division of Child and Family Services (Child and Family Services) custody. TAL is a continuum of services that begins while youth are in care and continues through post-discharge with the Young Adult Resource Network (YARN). Youth receiving In-Home Services may also receive some TAL services.

(2) TAL services, which includes the Education and Training Voucher Program, are authorized by the John H. Chafee Foster Care Independence Program, 42 USC 677 (September 2, 2015), incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

R512-305-2. Scope of Services.

(1) Qualification for and duration of services:

(a) TAL services are required for all youth receiving out-of-home services, age 14 years or older, until Child and Family Services custody is terminated regardless of permanency goal, as specified in Rule R512-300.

(b) The YARN provides services for youth if they are no longer in Child and Family Services custody and are not yet 21 years of age, and the youth:

(i) Ages out of out-of-home care, or

(ii) While in out-of-home care, after the age of 14 years, received at least 12 consecutive months of TAL services and the court terminated reunification.

(2) Service description:

(a) TAL services build on the youth's individual strengths and develop personal assets in order to help young people acquire the motivation and the means to be successful throughout their lives. The strategies are aimed at helping youth achieve five fundamental aspects of adult life, including work, career planning, and education; housing and money management; home life and daily living; self-care and health education; and communication, social relationships, family, and marriage.

(b) YARN consists of time-limited support to youth. This assistance can be provided through support, financial aid, or Basic Life Skills training. It may include housing, counseling, employment education, and other appropriate support and services to complement a youth's efforts to achieve self-sufficiency.

(3) Availability:

(a) TAL services and YARN are available in all geographic regions of the state.

(b) TAL services and YARN are available on the same basis to Native American youth who are or were formerly in Tribal custody within the boundaries of the state.

R512-305-3. Transition to Adult Living Services for a Youth in Child and Family Services Custody.

(1) The caseworker, with the assistance of the youth and Child and Family Team, ensures completion of the empirically validated life skills assessment to identify the strengths and needs of the youth.

(2) Based upon the empirically validated life skills assessment, a TAL plan is developed that identifies the youth's strengths, needs, and specific services.

(3) The youth, with the assistance of the Child and Family Team, determines the TAL plan. Youth aged 14 years or older are required to have a TAL plan, with youth taking the lead in setting goals and facilitating the Child and Family Team with

staff guidance. Youth 14 years and older must be given the opportunity to have at least two individuals of their own choosing as members of the Child and Family Team.

(4) The TAL plan includes a continuum of training and services to be completed by the youth and designated team members in such settings as at the foster home, with a therapist, at school, or through other community-based resources and programs.

(5) Basic Life Skills training shall be offered to each youth who attains age 17 years. The training may include training in daily living skills, budgeting, career development and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention).

(6) Each youth who completes Basic Life Skills training may receive a completion payment.

R512-305-4. Transition to Adult Living Placement for a Youth in Child and Family Services Custody.

(1) A TAL placement may be used as an alternative to out-of-home care when it is determined that such a placement is in the best interest of the youth. The appropriate types of living arrangements for youth in this situation include living with kin; living with former out-of-home caregivers while paying rent; living in the community with roommates; living alone; living in a group facility, YWCA, boarding house, or dorm; or living with an adult who has passed a background check or the placement was assessed and approved by the region director or designee. This recommendation will be presented to the Child and Family Team, who will work to ensure that this type of placement is appropriate and that the following Practice Guidelines are met:

(a) A TAL placement may be used as an out-of-home care placement.

(b) A youth must be at least 16 years of age to be in a TAL placement.

(c) The Child and Family Team is responsible to determine if a recommendation for a TAL placement for a youth is appropriate.

(d) The region director or designee is authorized to approve a TAL placement.

(e) The caseworker and youth shall complete a contract outlining responsibilities and expectations while in the TAL placement.

(f) The caseworker shall visit with and monitor progress of the youth at least twice monthly or at an interval determined by the Child and Family Team.

(g) The youth may receive a TAL stipend while in the TAL placement.

(h) If the TAL placement is not successful, the Child and Family Team shall meet to determine, with the youth, a more appropriate living arrangement in accordance with R512-305-4.

R512-305-5. Child and Family Services Responsibility to a Youth Leaving Out-of-Home Care.

(1) The YARN provides support to youth who leave out-of-home care, as specified in R512-305-2.

(2) A youth may access services by contacting a Child and Family Services office and being referred to a regional TAL coordinator.

(3) Services may include additional Basic Life Skills training, information and referral, mentoring, computer access for resources, and follow-up support. Funds may also assist eligible youth in the four areas listed below:

(a) Education, Training, and Career Exploration.

(b) Physical, Mental Health, and Emotional Support.

(c) Transportation.

(d) Housing Support.

(4) Funds used for room and board are subject to federal

limits.

**KEY: social services, child welfare, out-of-home care,
Transition to Adult Living**

January 21, 2016

62A-4a-102

Notice of Continuation May 16, 2013

62A-4a-105

R512. Human Services, Child and Family Services.
R512-309. Out-of-Home Services, Foster Parent Reimbursement of Motor Vehicle Insurance Coverage for Youth in Foster Care.

R512-309-1. Purpose and Authority.

(1) The purpose of this rule is to establish parameters and a process in which Child and Family Services may, within amounts appropriated for this specific purpose, reimburse a foster parent for providing owner's or operator's security covering a youth in foster care's operation of a vehicle if the youth is in the legal custody of Child and Family Services.

(2) Section 62A-4a-121 provides Child and Family Services the authority to provide reimbursement to a foster parent who is willing to provide motor vehicle insurance for a youth in their care to operate a motor vehicle.

(3) This rule is authorized by Section 62A-4a-102.

R512-309-2. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) "Child and Family Services" means the Division of Child and Family Services.

(b) "Foster parent" means a licensed resource family, also known as a licensed foster family, and may also include a kinship provider or proctor provider. Foster parent does not include a group home or residential facility that provides Out-of-Home Services under contract with Child and Family Services.

(c) "Guardianship" has the same meaning as defined in Section 78A-6-105.

(d) "Minor" has the same meaning as defined in Section 53-3-211.

(e) "Owner's or operator's security" is described in Section 41-12a-301.

R512-309-3. Eligibility Requirements.

(1) The child has been placed in the home of a foster parent who is receiving a foster care maintenance payment from Child and Family Services.

(2) Obtaining a driver license is an objective of the Child and Family Plan that has been developed for the youth with Transition to Adult Living Services.

(3) The foster parent is willing to assume the responsibility for signing as the responsible adult for a youth in foster care to receive a driver license under Section 53-3-211.

(a) The foster parent is willing to provide the minimum insurance coverage for the youth as described in Section 31A-22-304.

(b) The foster parent will sign a liability waiver in case they do not sustain the automobile insurance.

(c) The foster parent will ensure that the vehicle in which they have insured the youth is in good operating condition.

(4) The foster parent has full knowledge that by signing to be that responsible adult, the foster parent is jointly and severally liable with the minor for civil compensatory damages caused by the minor when operating a motor vehicle upon the highway as provided under Section 53-3-211.

(a) The foster parent's liability may not exceed the greater of the minimum liability insurance policy limits established under Section 31A-22-304 or the policy limits of the foster parent's liability insurance policy issued in accordance with Section 31A-22-302 that were in effect at the time damages were caused by the minor's operation of a motor vehicle.

(5) The foster parent who signs the application of a minor for a provisional license must certify that the minor applicant, under the authority of a permit issued, has completed at least 40 hours driving in a motor vehicle, of which at least 10 hours shall be during night hours after sunset.

R512-309-4. Method for Determining Amount of Reimbursement for a Foster Parent.

(1) In accordance with Section 62A-4a-121, Child and Family Services may reimburse a foster parent for providing owner's or operator's security covering a youth's operation of a motor vehicle in amounts required under Section 31A-22-304 if the youth is in the legal custody of Child and Family Services. Reimbursement will be limited to the minimum liability insurance policy limits established under Section 31A-22-304.

(a) As allowed within the amounts appropriated to Child and Family Services for this purpose, Child and Family Services will reimburse the additional cost of the insurance premium for a youth when the foster parent has met the eligibility requirements.

(i) The foster parent will submit to Child and Family Services a current and valid statement from the insurance company that will identify the actual cost of providing insurance coverage for the youth in foster care.

R512-309-5. Child and Family Services Responsibility to Foster Parent.

(1) Child and Family Services will notify the Driver License Division of a request that the permit or license of the youth be cancelled when a person who has signed the application makes a written request to Child and Family Services that the permit or license of a youth in foster care be cancelled.

(2) Child and Family Services will verify to the foster parent upon cancellation of the permit or license for the youth that they are relieved from liability for that youth operating a motor vehicle subsequent to the cancellation.

KEY: child welfare, foster care

January 21, 2016

Notice of Continuation August 15, 2013

31A-22-302

31A-22-304

41-12a-301

53-3-211

62A-4a-102

62A-4a-105

62A-4a-121

78A-6-105

R512. Human Services, Child and Family Services.**R512-310. Reasonable and Prudent Parent Standard.****R512-310-1. Purpose and Authority.**

(1) The purpose of this rule is to establish standards for normalcy for a child who is in Child and Family Services custody, including a reasonable and prudent parent standard and normalizing activities for children.

(2) This rule is authorized by Sections 62A-4a-102, 62A-4a-105, 62A-4a-210, 62A-4a-211, and 62A-4a-212.

R512-310-2. Definitions.

As used in this part:

(1) "Activity" is defined in Section 62A-4a-210.

(2) "Age-appropriate" is defined in Section 62A-4a-210.

(3) "Caregiver" is defined in Section 62A-4a-210.

(4) "Child and Family Services" means the Division of Child and Family Services.

(5) "Out-of-home placement" is defined in Section 62A-4a-210.

(6) "Reasonable and prudent parent standard" is defined in Section 62A-4a-210.

R512-310-3. Highlights.

(1) A child who comes into care under this chapter is entitled to participate in age-appropriate activities for the child's emotional well-being and development of valuable life-coping skills.

(2) Child and Family Services shall make efforts to normalize the lives of children in the custody of Child and Family Services and to empower a caregiver to approve or disapprove a child's participation in activities based on the caregiver's own assessment using a reasonable and prudent parent standard, without prior approval of Child and Family Services.

(3) Child and Family Services shall allow a caregiver to make important decisions, similar to the decisions that a parent is entitled to make, regarding the child's participation in activities.

(4) Child and Family Services will verify that private agencies providing out-of-home placement under contract with Child and Family Services promote and protect the ability of a child to participate in age-appropriate activities.

(5) A caregiver is not liable for harm caused to a child in an out-of-home placement if the child participates in an activity approved by the caregiver, provided that the caregiver has acted in accordance with a reasonable and prudent parent standard.

(6) Child and Family Services will provide training to caregivers and providers regarding how to use and apply the reasonable and prudent parent standard.

R512-310-4. Requirements for Decision Making.

(1) A caregiver shall use a reasonable and prudent parent standard in determining whether to permit a child to participate in an activity.

(2) A caregiver shall consider:

(a) The child's age, maturity, and developmental level to maintain the overall health and safety of the child;

(b) Potential risk factors and the appropriateness of the activity;

(c) The best interest of the child based on the caregiver's knowledge of the child;

(d) The importance of encouraging the child's emotional and developmental growth;

(e) The importance of providing the child with the most family-like living experience possible; and

(f) The behavioral history of the child and the child's ability to safely participate in the proposed activity.

(3) Child and Family Team Meetings may be convened at any point to discuss whether the caregiver has used the

reasonable and prudent parent standard to determine what activities a child may participate in or if the child feels they are being denied the ability to participate in a normalizing activity.

R512-310-5. Participation in Activities.

(1) Caregivers shall ensure that the child has the safety equipment and any necessary permissions and training necessary to safely engage in each activity the child participates in, including but not limited to the following activities:

(a) Boating;

(b) Rock climbing;

(c) Recreational vehicle use;

(d) Sports;

(e) Camping.

R512-310-6. Group Home or Residential Setting Activities.

(1) When children are placed in a group home or residential treatment setting, the provider will incorporate normalcy activities into the program. The activities will be in-line with the reasonable and prudent parent standard and will help children with skills essential for positive development.

(2) The provider will also have the presence on-site of at least one official who, with respect to any child placed with the provider, will be the designated caregiver who is authorized to apply the reasonable and prudent parenting standard to decisions involving the participation of the child in age or developmentally-appropriate activities.

**KEY: child welfare, foster care
January 7, 2016**

62A-4a-102

62A-4a-105

62A-4a-210

62A-4a-211

62A-4a-212

R527. Human Services, Recovery Services.**R527-200. Administrative Procedures.****R527-200-1. Authority.**

This rule establishes procedures for informal adjudicative proceedings as required by Section 63G-4-203 of the Administrative Procedures Act.

R527-200-2. Definitions.

1. Terms used in this rule are defined in Sections 62A-11-303 and 63G-4-103.

2. In addition,

a. "office" means the Office of Recovery Services;

b. "participate" means

(i) in a proceeding that was initiated by a notice of agency action, present relevant information to the presiding officer within the time period described by statute or rule for requesting a hearing; and

(ii) if a hearing is scheduled, participate means attend the hearing;

c. "party" means the Office of Recovery Services and the respondent.

d. in a proceeding to determine the noncooperation of a IV-A or Non-IV-A Medicaid recipient or applicant, the recipient or applicant is the respondent and is therefore a "party".

e. "location information" means the current, verified residential address of a custodial or noncustodial parent and, if different and known to the office, the current, verified residence of any child named in a parent-time order that specifies time periods during which the child shall be with the noncustodial parent as provided in Sections 30-3-32 through 30-3-38. If a current, verified residential address is not available, "location information" means an employment address if known.

f. "other location information" means a verified, non-residential mailing address such as a Post Office Box or Rural Route, at which a party whose location information is being sought receives mail.

g. "files" on custodial and noncustodial parents means records contained in open child support services cases, in which both paper and electronic case information may be stored.

R527-200-3. Purpose.

The purpose of this rule is to:

1. establish the form of proceedings;
2. provide procedures for requesting and obtaining a hearing when a proceeding is initiated by a notice of agency action;
3. provide procedures and standards for orders resulting from the administrative process;
4. provide procedures for informal proceedings;
5. provide procedures for the conduct of hearings and other informal adjudicative proceedings;
6. provide procedures for requesting reconsideration;
7. provide procedures for a motion to set aside a default order;
8. provide procedures for amending an administrative order;
9. provide procedures for setting aside an administrative order; and
10. provide procedures for requesting judicial review.

R527-200-4. Designation of Presiding Officers.

The following persons are designated presiding officers in adjudicative proceedings:

1. agents;
2. senior agents;
3. team managers;
4. quality assurance specialists;
5. associate regional directors;
6. regional directors;

7. directors;

8. other persons designated by the director of the Office of Recovery Services.

R527-200-5. Form of Proceeding.

All adjudicative proceedings commenced by the office through a notice of agency action, or commenced by other persons affected by the office's actions through a request for agency action shall be informal adjudicative proceedings.

R527-200-6. Informal Adjudicative Proceedings.

The following adjudicative proceedings are considered to be informal:

1. proceedings to establish or modify child support orders;
2. proceedings to determine paternity;
3. proceedings to establish a judgment for genetic testing costs;
4. proceedings to establish a judgment for birth expenses;
5. proceedings to establish or modify an order regarding liability for medical and dental expenses of a dependent child;
6. proceedings to establish an order when a notice to enroll a child in a medical insurance plan is contested;
7. proceedings to establish an order against a garnishee enforcing an administrative garnishment;
8. proceedings to determine whether the information concerning a support debt which will be reported to consumer reporting agencies is accurate;
9. proceedings to establish a retained support obligation;
10. proceedings to amend an administrative order;
11. proceedings to set aside an administrative order;
12. proceedings to establish an order which determines past-due support following a request for agency action;
13. proceedings to establish an order when an office determination of noncooperation is contested by IV-A or Non-IV-A Medicaid recipients;
14. proceedings to establish a judgment against a responsible party for costs and/or fees, and to impose penalties associated with legal action taken by the office;
15. proceedings to establish an order of non-disclosure when a determination is made not to disclose a parent's identifying information to another state in an interstate case action;
16. proceedings to approve or deny requests for waiver or deferral of estate recovery for reimbursement of Medicaid;
17. proceedings to determine whether location information or other location information available in files on custodial or noncustodial parents may be released to the requesting party or to the requesting party's legal counsel in accordance with the provisions of Utah Code Title 62A, Chapter 11;
18. proceedings to establish an order when a payment schedule is contested;
19. proceedings to establish an order when a lien-levy action is contested; and
20. proceedings to establish an order when the obligation based on a change in the physical custody of a child is contested.

R527-200-7. Service of Notice and Orders.

Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Section 63G-4 may be served using methods provided by Section 63G-4 or the Utah Rules of Civil Procedure.

R527-200-8. Procedures for Informal Adjudicative Proceedings.

The procedures for informal adjudicative proceedings are as follows:

1. In proceedings initiated by a notice of agency action, the presiding officer will issue an order of default unless the

respondent does one of the following within 30 days in response to service of the notice:

- a. pays the entire amount in full; or,
- b. participates as provided in R527-200-13;
2. In proceedings initiated by a notice of agency action, the presiding officer shall schedule a hearing if available under R527-200-10 and the office receives the respondent's written request:
 - a. within 30 days of service of notice of agency action; or
 - b. before an order is issued by the presiding officer.
 3. Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing which states the following:
 - a. the decision;
 - b. the reason for the decision;
 - c. a notice of the right to request reconsideration and the right to petition for judicial review; and
 - d. the time limits for requesting reconsideration or filing a petition for judicial review.
 4. The presiding officer's order shall be based on the facts appearing in the agency's case records and on the facts presented in evidence at any hearings or other adjudicative proceedings.
 5. A copy of the presiding officer's order shall be promptly mailed to each of the parties.

R527-200-9. Response time for Proceedings Initiated by a Request for Agency Action.

The respondent may request an informal adjudicative proceeding within the following timeframes:

1. within 30 calendar days of the date of the notice when contesting the amount of past-due support in the Annual Notice of Past-due Support;
2. within 15 calendar days of the date of this notice, or within 30 calendar days of the date of this notice if the non-requesting party resides outside of Utah and intervention is required from another IV-D agency to facilitate communication with the non-requesting party, when contesting whether location information or other location information may be released; and
3. within 15 calendar days of the date of the notice when contesting the obligation based on a change in physical custody of the child.

R527-200-10. Availability of a Hearing in Informal Adjudicative Proceedings.

1. A hearing before a presiding officer in the Office of Administrative Hearings, Department of Human Services is permitted in an informal adjudicative proceeding if:
 - a. the proceeding was initiated by a notice of agency action; and
 - b. the respondent in a properly filed request for hearing or in the course of participation raises a genuine issue as to a material fact as provided in R527-200-11; and
 - c. the respondent participates in a preliminary agency conference.
2. A proceeding before a presiding officer in the Office of Recovery Services, Department of Human Services is permitted if an informal adjudicative proceeding is initiated by a request for agency action.
 - a. The presiding officer shall conduct a review of all documentation provided by the requesting party and in the agency files, and issue a Decision and Order stating the decision and the reasons for the decision.
 - b. The requesting party shall not be required to appear, either in person or through representation when the proceeding is conducted, but may choose to attend.

R527-200-11. Hearings in Informal Adjudicative Proceedings.

1. In proceedings initiated by a notice of agency action, all

hearing requests shall be referred to the presiding officer appointed to conduct hearings.

2. The presiding officer shall give timely notice of the date and time of the hearing to all parties.
3. Before granting a hearing in a case referred, the presiding officer appointed to conduct the hearing may decide whether the respondent raises a genuine issue as to a material fact. Upon determining there is no genuine issue as to a material fact, the presiding officer may deny the request for hearing, and close the adjudicative proceeding.
4. The respondent may object to the denial of a hearing as grounds for relief in a request for reconsideration.
5. There is no genuine issue as to a material fact if:
 - a. the evidence gathered by the office and the evidence presented for acceptance by the respondent are sufficient to establish the obligation of the respondent under applicable law; and
 - b. no other evidence in the record or presented for acceptance by the respondent in the course of respondent's participation conflicts with the evidence to be relied upon by the presiding officer in issuing an order.
6. Evidence upon which a presiding officer may rely in issuing an order when there has been no hearing:
 - a. documented wage information from employers or governmental sources;
 - b. failure of the respondent to produce upon request of the presiding officer canceled checks as evidence of payments made;
 - c. failure of the respondent to produce a record kept by the clerk of court, a financial institution, or the office, showing payments made;
 - d. failure of the respondent to produce a written agreement in a Non-IV-A case which was signed by both the absent parent and the custodial parent providing for an alternate means of satisfying a child support obligation;
 - e. birth certificates of the children whose support is sought from the respondent;
 - f. certified copies of the latest support orders;
 - g. other applicable documentation.

R527-200-12. Telephonic Hearings.

Telephonic hearings will be held at the discretion of the Office of Administrative Hearings, Department of Human Services.

R527-200-13. Procedures and Standards for Orders Resulting from Service of a Notice of Agency Action.

1. If the respondent agrees with the notice of agency action, he may stipulate to the facts and to the amount of the debt and current obligation to be paid. A stipulation, and judgment and order based on that stipulation is prepared by the office for the respondent's signature. Orders based on stipulation are not subject to reconsideration or judicial review.
2. If the respondent participates by attending a preliminary conference or otherwise presents relevant information to the presiding officer, but does not reach an agreement with the office or is unavailable to sign a stipulation, and does not request a hearing, the presiding officer shall issue a judgment and order based on that participation.
3. If the respondent participates in any way after receiving a notice of agency action to establish paternity and child support, but fails to appear for genetic testing or respond to the notice of test results, the presiding officer shall issue an order of paternity and child support based on existing information and circumstances.
4. If the respondent requests a hearing and participates by attending a preliminary agency conference, and after that conference the respondent does not agree with the notice of agency action, and participates by attending the hearing, the

presiding officer who conducts the hearing shall issue an order based upon the hearing.

5. If the respondent fails to participate as follows, the appropriate presiding officer may issue an order of default and default judgment:

a. the respondent fails to respond to the notice of agency action and does not request a hearing;

b. after proper notice the respondent fails to attend a preliminary conference scheduled by the presiding officer to consider matters which may aid in the disposition of the action; or

c. after proper notice the respondent fails to attend a hearing scheduled by the presiding officer pursuant to a written request for a hearing.

6. The default judgment is taken for the same amount and for the same months specified in the notice of agency action which was served on the respondent. The judgment cannot be taken for more than the amount or time periods specified in the notice of agency action. If there is no previous court order and the best available information supports the amount, the judgment may be taken for less than the amount specified in the notice of agency action. The respondent may seek to have the default order set aside, in accordance with Section 63G-4-209.

7. If a respondent's request for a hearing is denied under R527-200-11, the presiding officer issues a judgment and order based upon the information in the case record.

8. Notwithstanding any order which sets payments on arrearages, the office reserves the right to periodically report the total past-due support amount to consumer reporting agencies, intercept state and federal tax refunds, submit cases to the federal administrative offset program where permitted by federal regulation, levy upon real and personal property, and to reassess payments on arrearages.

R527-200-14. Conduct of Hearings and Other Informal Adjudicative Proceedings.

1. The hearing, or other proceeding shall be conducted by a duly qualified presiding officer. The presiding officer shall not have been involved in preparing the information alleged in the notice which is the basis of the adjudicative proceeding. No presiding officer shall conduct a hearing or other adjudicative proceeding in a contested case if it is alleged and proved that good cause exists for the removal of the presiding officer assigned to the case. The party or representative requesting the change of presiding officer shall make the request in writing, and the request shall be filed and called to the attention of the presiding officer not less than 24 hours in advance of the hearing.

2. Duties of the presiding officer when conducting a hearing:

a. Based upon the notice of agency action, objections thereto, if any, and the evidence adduced at the hearing, the presiding officer shall determine the liability and responsibility, if any, of the respondent under Section 62A-11-304.2. Following determination of liability, the presiding officer shall refer the obligor to the team handling the case for determination of acceptable periodic payment or alternative means of satisfaction of any arrearage obligation.

b. The presiding officer conducting the hearing may:

(i) regulate the course of hearing on all issues designated for hearing;

(ii) receive and determine procedural requests, rule on offers of proof and evidentiary objections, receive relevant evidence, rule on the scope and extent of cross-examination, and hear argument and make determination of all questions of law necessary to the conduct of the hearing;

(iii) request testimony under oath or affirmation administered by the presiding officer;

(iv) upon motion, amend the notice of agency action to

conform to the evidence.

3. Rules of Evidence in hearings:

a. Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence.

b. Any person who is a party to the proceedings may call witnesses and present such oral, documentary, and other evidence and comment on the issues and conduct such cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for fact hearing and as may affect the disposition of any interest which permits the person participating to be a party.

c. Any evidence may be presented by affidavit rather than by oral testimony subject to the right of any party to call and examine or cross-examine the affiant.

d. All relevant evidence shall be admitted.

e. Official notice may be taken of all facts of which judicial notice may be taken in the courts of this state.

f. All parties shall have access to information contained in the office's files and to all materials and information gathered in the investigation, to the extent permitted by law and subject to R527-5.

g. Intervention is prohibited.

h. In child support cases the hearing shall be open to the obligee and all parties, as defined in R527-200-2.

4. Rights of the parties in hearings: A respondent appearing before the presiding officer for the purpose of a hearing may be represented by a licensed attorney, or, after leave of the presiding officer, any other person designated to act as the respondent's representative for the purpose of the hearing. The office's supporting evidence for the office's claim shall be presented at a hearing before a presiding officer by an agent or representative from the office. The supporting evidence may, at the office's discretion, be presented by a representative from the office of the Attorney General or by a staff attorney.

R527-200-15. Agency Review.

Agency review shall not be allowed. Nothing in this rule prohibits a party from filing a request for reconsideration or for judicial review as provided in Sections 63G-4-302 and 63G-4-401.

R527-200-16. Reconsideration.

Either the respondent or the office may request reconsideration in accordance with Section 63G-4-302 once during an informal adjudicative proceeding.

R527-200-17. Setting Aside Administrative Orders.

1. The office may set aside an administrative order for reasons including the following:

a. A rule or policy was not followed when the order was taken.

b. The respondent was not properly served with a notice of agency action.

c. The respondent was not given due process.

d. The order has been replaced by a judicial order which covers the same time period.

2. The office shall notify the respondent of its intent to set the order aside by serving the respondent with a notice of agency action. The notice shall be signed by a presiding officer.

3. If after serving the respondent with a notice of agency action, the presiding officer determines that the order shall be set aside, the office shall notify the respondent.

R527-200-18. Amending Administrative Orders.

1. The office may amend an order for reasons including the following:

a. A clerical mistake was made in the preparation of the order.

R527. Human Services, Recovery Services.**R527-250. Emancipation.****R527-250-1. Purpose and Authority.**

1. Section 62A-11-107 authorizes the Office of Recovery Services/Child Support Services (ORS/CSS) to adopt, amend and enforce rules.

2. The purpose of this rule is to outline how ORS/CSS will apply Utah statute when determining the appropriate emancipation date for IV-D child support cases, particularly when determining the "child's normal and expected year of graduation" referenced in U.C.A. 78B-12-219 for Utah child support orders issued on or after July 1, 1994.

R527-250-2. Normal and Expected Year of Graduation.

1. For a child attending school in Utah, the normal and expected year of graduation is based on kindergarten plus twelve years of school, unless an exception is listed below.

2. For a child attending school in Utah, ORS/CSS will presume that the normal and expected month of graduation is May of the expected graduating year, unless the parents provide documentation of a specific graduation date for their child.

3. If a deviation to the "kindergarten plus twelve years" standard is known at the time of entry of the child support order, the expected year of graduation is altered accordingly. If a child has been held back a grade or experienced another delay in education before the child support order is entered, the "expected" year of graduation will be changed to extend the support obligation based on the known facts about the delay in education. If the child has been advanced a grade or experienced some other acceleration in education before the child support order is entered, the "expected" year of graduation will be changed to potentially shorten the support obligation based on the facts about the acceleration in education.

4. If a deviation to the "kindergarten plus twelve years" standard is not known until after the entry of the child support order, the "expected" year of graduation is not altered based on the new facts unless the child receives an early high school diploma or other high school equivalency diploma.

R527-250-3. Early Graduation, High School Equivalency Diploma, and General Educational Development (GED).

A child who receives a high school diploma or another documented form of high school equivalency is no longer enrolled in school or expected to graduate with the normal graduating class. The emancipation date will be determined based on when the child becomes 18 years of age or that child's high school diploma or high school equivalency date.

R527-250-4. Dropping Out of School.

A child who no longer attends school is not considered emancipated until becoming 18 years old or the graduation of the normal and expected graduating class, whichever occurs later.

R527-250-5. Burden of Proof.

1. ORS/CSS will enforce child support based on the "kindergarten plus twelve years" standard until a parent or guardian has provided appropriate documentation to support an emancipation date other than that standard.

2. A parent or guardian requesting the deviation from the standard is responsible for gathering the appropriate documentation and providing the information to ORS/CSS.

3. Changes to the child support amount due will not be effective until the month following the emancipation date based on the 18th birthday, normal and expected graduating class, or other appropriate date as described above.

4. Changes to the child support amount which are based on a date other than the 18th birthday or the "kindergarten plus twelve year" standard will not be effective until the month

following the determined date of emancipation or the month following when the parent or guardian provides sufficient documentation to support the new emancipation date, whichever occurs later. If an over collection occurs due to the parent not providing documentation, the parent will be responsible for recovering any overpaid amounts without involving ORS/CSS.

KEY: child support, emancipation

July 1, 2011

Notice of Continuation January 5, 2016

62A-11-303

62A-11-401

78B-12-102

78B-12-219

R590. Insurance, Administration.**R590-154. Unfair Marketing Practices Rule; Misleading Names.****R590-154-1. Authority.**

This rule is adopted pursuant to Subsection 31A-2-201(3) in which the commissioner is empowered to adopt rules to implement the provisions of the Utah Insurance Code, Section 31A-23a-402, which provides that the commissioner may find certain practices to be misleading, deceptive, unfairly discriminatory, or unreasonably restrain competition, and to prohibit them by rule, and Subsection 31A-23a-110(2), which provides that a licensee may do business under a name other than the licensee's legal name by notifying the commissioner.

R590-154-2. Purpose and Scope.

(1) The purpose of this rule is to provide guidance to all licensees regarding unfair marketing practices.

(2) This rule applies to all insurance producers, limited lines producers, consultants and insurers licensed under Title 31A, Utah Insurance Code.

R590-154-3. Definitions.

(1) "Licensee" means, as used in this rule, all individual producers, all agency producers, all individual limited line producers, all agency limited line producers, all individual consultants, all agency consultants, and all insurers.

R590-154-4. Findings.

The commissioner finds that each of the practices prohibited in this rule constitute misleading, deceptive or unfairly discriminatory practices or unreasonably restrain competition, except as specifically allowed in this rule.

R590-154-5. Licensee Name.

(1) A licensee licensed under the Utah Insurance Code shall not use any name that is:

- (a) misleading or deceptive;
- (b) likely to be mistaken for another licensee already in business; or
- (c) implies association or connection with any other organization where actual bona fide association or connection does not exist.

(2) "Insurance consulting," "insurance consultants" or similar words shall only be used if the licensee is licensed as a consultant.

(3) A licensee shall be licensed using the licensee's legal name.

(4)(a) Section 31A-23a-110(2) permits a licensee to use an assumed name by notifying the commissioner.

(b) In order to give notice of an assumed name as required by Section 31A-23a-110(2), the licensee shall comply with R590-244-13.

(5) A licensee may use its legal name, or an assumed name provided the commissioner is properly notified of the assumed name.

R590-154-6. Sale, Solicitation, or Negotiation of Insurance; Consultation.

(1) A licensee shall not, orally or in writing, fail to disclose that the licensee is an insurance licensee.

(2) A licensee shall not use or imply license types or lines of authority not held by the licensee.

(3) An individual licensee may only use the name of an agency licensee if the individual licensee is designated to act under the agency's license.

(4) An individual licensee may not sell, solicit, or negotiate insurance; or consult or advise for an agency licensee unless the individual licensee is designated to act under the agency's license.

R590-154-7. Claiming or Representing Department Approval.

(1) A licensee may not represent, either directly or indirectly, that the department, the commissioner, or any employee of the department, has approved, reviewed, or endorsed any marketing program, insurance product, insurance company, practice or act.

(2) A licensee may report the fact of the filing of any form, financial report, or other document with the department, or of licensure, examination or other action involving the department, or the commissioner but may not misrepresent their effect or import.

R590-154-8. Bartering for Insurance.

Any licensee bartering for the sale of insurance or an annuity contract shall fully document the receipt of goods, services or other thing of value, establishing the value of the thing received and how the value was established, from whom received, the date received, and the premium cost of the insurance or annuity contract bartered for, and shall retain said documentation for three years following the expiration of the policy period or bartering transaction, whichever is longer. Any licensee bartering for the sale of an insurance or annuity contract shall disclose at the time of application to the insurer said bartering arrangement.

R590-154-9. Prohibited Insurance Sales Tie-Ins.

Multi-level marketing programs, investment programs, memberships, or other similar programs, designed or represented to produce or provide funds to pay all or any part of the cost of insurance constitutes an illegal inducement. This does not preclude the provision of insurance through a bona fide employee benefits program.

R590-154-10. Commissions or Consulting Fees.

A licensee shall not give or offer to give a premium reduction by means of commission or consulting fee back to the insurer for any purpose, including competition, unless the reduction is for expense savings and is justified by a reasonable standard and with reasonable accuracy. The insurer's underwriting files must document the savings in order to enable the commissioner to verify compliance. This documentation must demonstrate legitimate expense savings realized by the insurer and its producer.

R590-154-11. Prohibited Financing Arrangements.

A licensee may not obtain or arrange for third party financing of premium without the knowledge and consent of the insured.

R590-154-12. Acting as A Licensee in Other Jurisdictions.

A resident licensee may not sell, solicit, or negotiate insurance or advise or consult about insurance in another jurisdiction unless licensed or permitted by law to do so in that jurisdiction.

R590-154-13. Use of Comparative Information.

(1) Every insurer marketing insurance in the State of Utah shall establish written marketing procedures to assure that any comparison of insurance contracts, annuities or insurance companies by its producers will be fair and accurate.

(2) A licensee may not use any published rating information regarding an insurer in connection with the marketing of any insurance contract or annuity unless that person also provides at the same time an explanation of what the rating means as defined by the rating service.

R590-154-14. Disclosure of Insurer in Group Insurance.

Every certificate of insurance or booklet describing

coverage of a group insurance policy shall prominently state on the cover of the certificate or booklet the legal name and address of the actual insurer.

R590-154-15. Enforcement Date.

The commissioner shall begin enforcing the revised provisions of this rule on the rule's effective date.

R590-154-16. Severability.

If any provision of this rule or the application to any person or situation is held to be invalid, that invalidity shall 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 provision of this rule are declared to be severable.

KEY: insurance, unfair marketing practices, misleading names

January 15, 2016

Notice of Continuation March 20, 2013

31A-2-201

31A-23a-402

31A-23a-110

R590. Insurance, Administration.**R590-259. Dependent Coverage to Age 26.****R590-259-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-212(5)(b) and 31A-22-605(4).

R590-259-2. Purpose and Scope.

(1) The purpose of this rule is to clarify rules relating to the coverage of children in the individual and group health benefit plan markets.

(2) This rule applies to any health insurer that provides individual or group health benefit plan coverage.

R590-259-3. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule.

(1) "Grandfathered plan coverage" means coverage provided by a health insurer in which an individual was enrolled on March 23, 2010 for as long as it maintains that status in accordance with federal regulations.

(2) "Group health insurance coverage" means, in connection with a group health plan, health insurance coverage offered in connection with such plan.

(3) "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974, ERISA, to the extent that the plan provides medical care, as defined in R590-259-3(9), and including items and services paid for as medical care to employees, including both current and former employees, or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

(4)(a) "Health benefit plan" means a policy, contract, certificate or agreement offered by an insurer to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services.

(b) "Health benefit plan" includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition.

(c) "Health benefit plan" does not include:

(i) coverage only for accident, or disability income insurance, or any combination thereof;

(ii) coverage issued as a supplement to liability insurance;

(iii) liability insurance, including general liability insurance and automobile liability insurance;

(iv) workers' compensation or similar insurance;

(v) automobile medical payment insurance;

(vi) credit-only insurance;

(vii) coverage for on-site medical clinics; and

(viii) other similar insurance coverage, specified in federal regulations issued pursuant to Pub. L. No. 104-191, under which benefits for medical care are secondary or incidental to other insurance benefits.

(d) "Health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(i) limited scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or

(iii) other similar, limited benefits specified in federal regulations issued pursuant to Pub. L. No. 104-191.

(e) "Health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of

benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:

(i) coverage only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance.

(f) "Health benefit plan" does not include the following if offered as a separate policy, certificate or contract of insurance:

(i) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(ii) coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, TRICARE; or

(iii) similar supplemental coverage added to coverage under a group health plan.

(5) "Health insurer" means an insurer that offers a health benefit plan.

(6)(a) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, which includes a health benefit plan provided to individuals through a trust arrangement, association or other discretionary group that is not an employer plan, but does not include short-term limited duration insurance.

(b) For purposes of this subsection, a health insurer offering health insurance coverage in connection with a group health plan shall not be deemed to be a health insurer offering individual health insurance coverage solely because the insurer offers a conversion policy.

(7) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

(8) "Medical care" means amounts paid for:

(a) the diagnosis, care, mitigation, treatment or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in R590-259-3(8)(a); and

(c) insurance covering medical care referred to in R590-259-3(8)(a) and (b).

(9) "Participant" adopts the meaning given under section 3(7) of ERISA.

(10) "Subscriber" means, in the case of individual health insurance contract, the person in whose name the contract is issued.

R590-259-4. Eligibility for Dependent Coverage to Age 26; Definition of Dependent; Uniformity of Plan Terms.

(1) A health insurer that makes available dependent coverage of children shall make that coverage available for children until attainment of 26 years of age.

(2) With respect to a child who has not attained 26 years of age, a health insurer shall not define dependent for purposes of eligibility for dependent coverage of children other than the terms of a relationship between a child and the plan participant, and, in the individual market, primary subscriber.

(3) A health insurer shall not deny or restrict coverage for a child who has not attained 26 years of age:

(a) based on the presence or absence of the child's financial dependency upon the participant, primary subscriber or any other person, residency with the participant and in the individual market the primary subscriber, or with any other person, student status, employment or any combination of those factors; or

(b) based on eligibility for other coverage, except as provided in R590-259-4(6).

(4) Nothing in this rule shall be construed to require a health insurer to make coverage available for the child of a child receiving dependent coverage, unless the grandparent becomes the adoptive parent of that grandchild.

(5) The terms of coverage in a health benefit plan offered by a health insurer providing dependent coverage of children cannot vary based on age except for children who are 26 years of age or older.

(6) For plan years beginning before January 1, 2014, a group health plan providing group health insurance coverage that is a grandfathered plan and makes available dependent coverage of children may exclude an adult child who has not attained 26 years of age from coverage only if the adult child is eligible to enroll in an eligible employer-sponsored health benefit plan, as defined in section 5000A(f)(2) of the Internal Revenue Code, other than the group health plan of a parent.

R590-259-5. Special Enrollment for Qualifying Events.

Nothing in this rule shall alter an applicant's ability to obtain health insurance during a special enrollment period, outside of the open enrollment period, resulting from a qualifying event as defined by the Health Insurance Portability and Accountability Act and PPACA.

R590-259-6. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-259-7. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall 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: health insurance open enrollment

December 2, 2014

Notice of Continuation January 25, 2016

31A-2-201

31A-22-605

R651. Natural Resources, Parks and Recreation.**R651-201. Definitions.****R651-201-1. Approved.**

"Approved" means approved by the commandant of the United States Coast Guard, unless the context clearly requires a different meaning. For carburetor backfire flame control devices "approved" means the device is marked with one of the following: a U.S. Coast Guard approval number; complies with Underwriters Laboratory test UL 1111; or complies with the Society of Automotive Engineers test SAE J-1928.

R651-201-2. Sailboard.

"Sailboard" means a wind-propelled vessel with a mast and sail that are held up by the operator who stands while operating the vessel.

R651-201-3. Good and Serviceable Condition.

(1) "Good and Serviceable condition" means any required equipment must be in proper operating condition; and

(a) Required labels and markings shall be intact and legible;

(b) Required equipment shall not be stored inside original packaging; and

(c) A PFD is considered to be in serviceable condition only if the following conditions are met:

(i) No PFD may exhibit deterioration that could diminish the performance of the PFD, including metal or plastic hardware used to secure the PFD on the wearer that is broken, deformed, or weakened by corrosion; webbings or straps used to secure the PFD on the wearer that are ripped, torn or which have become separated from an attachment point on the PFD; or any other rotted or deteriorated structural component that fails when tugged.

(ii) In addition to meeting the requirements of paragraph (i) of this section, no inherently buoyant PFD, including the inherently buoyant components of a hybrid inflatable PFD, may exhibit rips, tears, or open seams in fabric or coatings, that are large enough to allow the loss of buoyant material; buoyant material that has become hardened, non-resilient, permanently compressed, waterlogged, oil-soaked, or which show evidence of fungus or mildew; or loss of buoyant material or buoyant material that is not securely held in position.

(iii) In addition to meeting the requirements of paragraph (i) of this section, an inflatable PFD, including the inflatable components of a hybrid inflatable PFD, must be equipped with a properly armed inflation mechanism, complete with a full inflation medium cartridge and all status indicators showing that the inflation mechanism is properly armed, except as provided in paragraph (iv) of this section; inflatable chambers that are all capable of holding air; oral inflation tubes that are not blocked, detached or broken; a manual inflation lanyard or lever that is not inaccessible, broken or missing; and, inflator status indicators that are not broken or otherwise non-functional.

(iv) The inflation system of an inflatable PFD need not be armed when the PFD is worn inflated and otherwise meets the requirements of paragraphs (i) and (iii) of this section.

R651-201-4. Immediately Available.

"Immediately available" means stored in plain and open view in the area where it will be used; not obstructed, blocked or covered in any way and capable of being quickly deployed.

R651-201-5. Readily Accessible.

"Readily Accessible" means easily located and retrieved without searching, delay or hindrance.

R651-201-6. Tow(ed)(ing).

When used in watersports, "tow(ed)(ing)" means a person(s) who is being pulled behind a vessel either on a device

and attached to the vessel or has been pulled behind the vessel, is not currently attached and is surfing or riding the wake created by the vessel.

R651-201-7. Low Capacity Vessel.

Low Capacity Vessel means a manually propelled vessel designed or intended to carry no more than two occupants.

KEY: boating, parks

July 23, 2012

Notice of Continuation January 7, 2016

73-18

R651. Natural Resources, Parks and Recreation.**R651-202. Boating Advisory Council.****R651-202-1. Boating Advisory Council.**

A Boating Advisory Council, consisting of nine members, has been appointed by the board to represent boaters and others in boating matters. There is one member from each of the following interests: Boating safety and education organizations, sailing users, boating anglers, marine dealers, personal watercraft users, outfitting companies, paddle craft users, water sports users and motorboat users.

KEY: boating
October 27, 2009

73-18-3.5

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.**R651-203. Waterway Marking System.****R651-203-1. Regulatory Markers.**

An orange cross within an orange diamond, on end, means:
"Boats Keep Out."

An orange circle means: "Controlled Area."

An orange diamond, on end, without a cross means:
"Danger."

An orange square or rectangle: "Provides Information."

(1) The following regulatory symbols shall be international orange on a white background, and descriptive wording within or accompanying the regulatory symbols shall be in black letters.

(2) When the regulatory symbols are displayed on a buoy, an orange band should encircle the buoy near the water line and near the top.

R651-203-2. Channel Markers.

(1) White buoys with red vertical stripes mark the center of a channel and may be lettered alphabetically from downstream to upstream.

(2) Green can buoys, odd numbers, mark the left side, and red nun buoys, even numbers, mark the right side of a channel when proceeding upstream or returning from the main body of water.

R651-203-3. Mooring Buoy.

A mooring buoy is white and is designated with a blue band which is at least three inches wide and encircles the buoy halfway between the waterline and the top.

R651-203-4. Diver's Flag.

A square, red flag with a white diagonal stripe from one top corner to the opposite bottom corner should be used to indicate the presence of a diver below. A rigid replica of the International Code "A" flag not less than one meter in height may also be used. The operator of any vessel shall not approach within 150 feet of a posted diver's flag, unless the vessel is part of the equipment in use by the divers.

R651-203-5. Obeying Waterway Markers.

The operator of a vessel shall obey the markings or instructions of any official waterway marker.

KEY: boating

1993

73-18-4(1)

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.**R651-204. Regulating Waterway Markers.****R651-204-1. Placement of Waterway Markers.**

No person shall place on or near the waters of this state any waterway marker, except a diver's flag, without written authorization by a federal agency operating within federal authority or by the division.

R651-204-2. Hazards to Navigation.

(1) Definitions

(a) "Hazard to Navigation" means, any object permanently placed on or under the waters of this state that is an obstacle to navigation, including but not limited to:

- (i) pier or shoreline dock greater than 75 feet
- (ii) floating dock or inflatable recreational equipment;
- (iii) commercial fishing or scientific devices;
- (iv) navigational aids;
- (v) slalom courses, jump/rail or other recreational device;
- (vi) vessels moored outside of a designated mooring area.

(b) "Permanent" means intended to be left on the waterway overnight or unattended during the day.

(2) No person shall place any permanent or anchored objects on the waters of this state without written authorization by a federal agency operating within federal authority or by the division.

(3) All permitted water obstacles must be visibly marked with the owner's name with letters that are:

- (a) a contrasting color to the object; and
- (b) at least one inch in height with the letter width proportionate to the height.

(4) Each permitted water obstacle must be marked with lights if placed overnight. Marker lights

(a) must meet United States Coast Guard requirements;

(b) must float at least 39 inches above the water;

(c) must be an amber or white color flashing light that flashes a minimum of 30 flashes per minute and is visible for up to one-half mile; and

(d) if buoyed, the buoy must be self-righting and have a three inch silver radar reflective band around the top.

(5) Placement of water obstacles without a proper permit or failure to abide by the permit requirements constitute a violation of board rules and the water obstacles must be removed by the entity that placed the obstacle immediately upon notification. Water obstacles that create a hazard may be removed by the division at the owner's expense. Any damages incurred during removal by the division will not be the responsibility of the division.

R651-204-3. Destruction of Waterway Markers.

No person shall remove, destroy, or damage any waterway marker authorized to be placed by a federal agency or by the division; nor shall any person moor any vessel to a waterway marker, except mooring buoys.

KEY: boating

July 8, 2013

Notice of Continuation January 7, 2016

73-18-4(2)

R651. Natural Resources, Parks and Recreation.**R651-205. Zoned Waters.****R651-205-1. Obeying Zoned Waters.**

The operator of a vessel shall obey zoned water requirements or restrictions.

R651-205-2. Deer Creek Reservoir.

Vessels and all other water activities are prohibited within 1500 feet of the dam. A vessel may not be operated at a speed greater than wakeless speed at any time in Wallsberg Bay.

R651-205-3. Green River.

The use of motors is prohibited between the Flaming Gorge Dam and the confluence with Red Creek.

R651-205-4. Stansbury Park Lake.

The use of vessels over 20 feet in length and motors, except electric trolling motors, is prohibited.

R651-205-5. Lower Provo River.

The section from where it enters into Utah Lake upstream to the gas pipeline is designated as a wakeless speed area, and the use of motors is prohibited upstream from this point.

R651-205-6. Decker Lake.

The use of motors is prohibited.

R651-205-7. Palisade Lake.

The use of motors, except electric trolling motors, is prohibited.

R651-205-8. Ivins Reservoir.

The use of motors whose manufacture listed horsepower is 10 horsepower or more is prohibited.

R651-205-9. Jordan River.

The use of motors is prohibited, except motors whose manufacture listed horsepower is less than 10 horsepower. Such motors are permitted on the Utah County portion of the river.

R651-205-10. Ken's Lake.

The use of motors, except electric trolling motors, is prohibited.

R651-205-11. Pineview Reservoir.

The use of motors, except electric motors, is prohibited in the designated area in the North Arm, North Geersten Bay and the Middle Fork of the Ogden River. Vessels are prohibited in the Middle Inlet and Cemetery Point picnic areas.

R651-205-12. Jordanelle Reservoir.

The use of motorboats or sailboats is prohibited in the designated area of Hailstone Beach.

R651-205-13. Little Dell Reservoir.

The use of motors is prohibited.

R651-205-14. Bear Lake.

The use of a vessel is prohibited from July 1 through Labor Day in the area adjacent to Cisco Beach starting at the entrance station and extending approximately 1/4 mile south, when this area is marked with appropriate buoys.

R651-205-15. Lost Creek Reservoir in Morgan County.

A vessel may not be operated at a speed greater than wakeless speed at any time.

R651-205-16. Huntington Reservoir.

The use of motors whose manufacturer listed horsepower

is 10 horsepower or more is prohibited.

R651-205-17. Cutler Reservoir.

The use of motors whose manufactured listed horsepower is more than 35 horsepower is prohibited, and a vessel may not be operated at a speed greater than wakeless speed at any time in the area south of the Benson Railroad Bridge. A vessel may not be operated at a speed greater than wakeless speed from the last Saturday in September through March 31st in the Bear River, east of the confluence with the reservoir.

R651-205-18. Newton Reservoir.

A vessel may not be operated at a speed greater than wakeless speed when the reservoir is at or below 4,761 feet above sea level.

KEY: boating, parks

June 9, 2014

Notice of Continuation January 7, 2016

73-18-4(1)(c)

R651. Natural Resources, Parks and Recreation.**R651-206. Carrying Passengers for Hire.****R651-206-1. Definitions.**

(1) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying:

(a) The verification of a license or permit applicant's vessel operation experience, appropriate first aid and CPR certificates and identifying information.

(b) The verification of an annual dockside or a five-year dry dock inspection of a vessel.

(2) "Certificate of maintenance and inspection" means a document produced by the Division and signed by a marine or vessel inspector and an agent of the outfitting company that a vessel has met the requirements of a required inspection. For river trip vessels, the certificate of maintenance and inspection will be issued to the outfitting company and not an individual vessel.

(3) "Certificate of outfitting company registration" means a document produced by the Division annually, indicating that an outfitting company is registered and in good standing with the Division.

(4) "Certifying experience" means vessel operation or river running experience obtained within ten years of the date of application for the license or permit.

(5) "CFR" means U.S. Code of Federal Regulations.

(6) "Deck rail" means a guard structure at the outer edge of a vessel deck consisting of vertical solid or tubular posts and horizontal courses made of metal tubing, wood, cable, rope or suitable material.

(7) "Dockside inspection" means an annual examination of a vessel when the vessel is afloat in the water so that all of the exterior of the vessel above the waterline and the interior of the vessel may be examined. For river trip vessels, the annual dockside inspection may be performed at the company's place of business.

(8) "Dry dock inspection" means an examination of a vessel, conducted once every five years, when the vessel is out of the water and supported so all the exterior and interior of the vessel may be examined. For float trip vessels, the five-year dry dock inspection may be performed at the company's place of business.

(9) "Flatwater River Area" means all river sections defined in R651-215-10.

(10) "Good marine practices and standards" means those methods and ways of maintaining, operating, equipping, repairing and restructuring a vessel according to commonly accepted standards, including 46 CFR, the American Boat and Yacht Council, the American Bureau of Shipping, the National Marine Manufacturers Association, and other appropriate generally accepted standards as sources of reference.

(11) "License" means a Utah Carrying Passengers for Hire (CPFH) License or a U.S. Coast Guard Master's License.

(12) "Low capacity vessel" means a manually propelled vessel designed or intended to carry no more than two occupants.

(13) "Marine inspector" means a person who has been trained to perform a dry dock inspection and is registered with the Division as a person who is eligible to perform a dry dock inspection of a vessel.

(14) "Permit" means a Utah Carrying Passengers for Hire (CPFH) Crew Permit.

(15) "River trip vessel" means a vessel, or the components and equipment used to configure such a vessel that is designed to be operated on a whitewater river or section of river. A river trip vessel may be a raft with inflatable chambers or a configuration of metal and/or wood frames, straps or chains, and inflatable pontoon tubes that are integral in maintaining the flotation, structural integrity and general seaworthiness of the vessel.

(16) "Racing shell" means a long, narrow watercraft outfitted with long oars and sliding seats; and specifically designed for racing or exercise.

(17) "Sole state waters," means all waters of this state, except for the waters of Bear Lake, Flaming Gorge and Lake Powell.

(18) "Towing for hire" means the activity of towing vessels or providing on-the-water assistance to vessels for consideration.

(a) Towing for hire is considered carrying passengers for hire

(b) Towing for hire does not include a person or entity performing salvage or abandoned vessel retrieval operations.

(19) "Vessel inspector" means a person who has been trained to perform a dockside inspection and is registered with the Division as a person who is eligible to perform a dockside inspection on a vessel.

(20) "Whitewater river" all rivers not designated as a flatwater river area or other Division recognized whitewater rivers in other states.

R651-206-2. Outfitting Company Responsibilities.

(1) Each outfitting company carrying passengers for hire on waters of this state shall register with the Division annually, prior to commencement of operation. Outfitting companies include, but are not limited to, fishing guides, waterski or sailing schools, river trip companies and tour boat operators.

(a) Outfitting company registration with the Division requires the completion of the prescribed application form and providing the following:

(i) Evidence of a current and valid business license;

(ii) Evidence of a current and valid river trip authorization(s), Special Use Permit(s), or performance contract(s) issued by an appropriate federal or state land managing agency;

(iii) Evidence of general liability insurance coverage; and

(iv) Payment of a \$150 fee for an outfitting company whose place of business is physically located within the State of Utah, or

(v) Payment of a \$200 fee for an outfitting company whose place of business is physically located outside of the State of Utah.

(b) Owners and employees of a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area and operating within that Migratory Bird Production Area shall not be considered an outfitting company.

(2) Upon successful registration with the Division, the Division shall issue a certificate of outfitting company registration in the name of the outfitting company. An outfitting company shall display its certificate of outfitting company registration at its place of business in a prominent location, visible to persons and passengers who enter the place of business.

(3) An agent of an outfitting company shall certify that each license or permit applicant sponsored by the outfitting company has:

(a) Obtained the minimum levels of required vessel operation experience corresponding to the type of license or permit applied for;

(b) Obtained the appropriate first aid and CPR certificates; and

(c) Completed the prescribed application form with true and correct identifying information.

(4) An outfitting company's annual registration with the Division may be suspended, denied, or revoked for a length of time determined by the Division director, or an individual designated by the Division director, if one of the following occurs:

(a) The outfitting company's, or agent's negligence caused

personal injury or death as determined by due process of law;

(b) The outfitting company or agent is convicted of three violations of Title 73, Chapter 18, or rules promulgated thereunder during a calendar year period;

(c) False or fictitious statements were certified or false qualifications were used to qualify a person to obtain a license or permit for an employee or others;

(d) The Division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the Division;

(e) The outfitting company has utilized a private trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation;

(f) The outfitting company used a vessel operator without a valid license or permit or without the appropriate license or permit while engaging in carrying passengers for hire; or

(g) The outfitting company is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(5) An outfitting company shall have a written policy describing a program for a drug free workplace.

(6) An outfitting company shall maintain a training log for each of its vessel operators.

(7) An outfitting company shall maintain a voyage plan and a passenger manifest, on shore, for each trip or excursion the company conducts.

(8) An outfitting company shall maintain a daily or trip operations log for each of its vessels.

(9) An outfitting company shall ensure that each of its vessel operators conducts a check of the vessel he or she will be operating. The vessel check shall include:

(a) Passenger count;

(b) A discussion of safety protocols and emergency operations with passengers on board the vessel;

(c) A check of the vessel's required carriage of safety equipment;

(d) A check of the vessel's communication systems;

(e) A check of the operation and control of the vessel's steering controls and propulsion system; and

(f) A check of the vessel's navigation lights, if the vessel will be operating between sunset and sunrise.

(10) An outfitting company shall ensure that each vessel in its fleet is equipped with the required safety equipment.

(11) An outfitting company shall maintain each vessel in its fleet according to good marine practices and standards.

(a) The outfitting company shall ensure that each vessel used in the service of carrying passengers for hire meets the maintenance and inspection requirements, if such inspections are required of a vessel.

(b) The outfitting company shall maintain a file of its maintenance and inspections for each vessel, or the components and equipment that configure a river trip vessel, that is required to be inspected in its fleet. Maintenance and inspection files shall be maintained for the duration in which the vessel is in the service of carrying passengers for hire, plus one additional year.

(12) The owner of a vessel carrying passengers for hire, shall carry general liability insurance. The insurance coverage shall be determined by the permitting agency.

(13) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of the company's:

(a) Drug free workplace policy;

(b) A passenger manifest and trip voyage plan;

(c) Trip Authorization permit;

(d) A vessel's maintenance and inspection files; or

(e) A vessel operator's training log.

(14) An outfitting company that is registered to carry passengers for hire in another state and possesses a state-issued

certificate of outfitting company registration, or similar license, permit or registration accepted and recognized by the Division, where the state has similar outfitting company registration provisions, shall not be required to obtain and display a Utah certificate of outfitting company registration as required by this section when:

(a) Operating vessels on Bear Lake, Flaming Gorge, and Lake Powell where a trip embarks and disembarks from the out-of-state portion of the lake and less than 25 percent of a trip is conducted on the Utah portion of the lake.

(b) Operating vessels on rivers flowing into Utah where the river trip originates out-of-state and terminates at the first available launch ramp/take-out.

(i) For vessels operating on the Colorado River, the first available take-out is the Westwater Ranger Station launch ramp/take-out.

(ii) For vessels operating on the Dolores River, the first available take-out is the Dewey Bridge launch ramp/take-out on the Colorado River.

(iii) For vessels operating on the Green River, the first available take-out is the Split Mountain launch ramp/take-out.

(iv) For vessels operating on the San Juan River, the first available take-out is the Montezuma Creek launch ramp/take-out.

R651-206-3. Utah Carrying Passengers for Hire (CPFH) License and Utah Crew Permit.

(1) No person shall operate a vessel engaged in carrying passengers for hire on sole state waters unless that person has in his possession a valid and appropriately endorsed Utah CPFH License or Utah Crew Permit issued by the Division, or a valid and appropriately endorsed U.S. Coast Guard Master's License.

(a) When carrying passengers for hire on a motorboat on the waters of Bear Lake, Flaming Gorge or Lake Powell, the operator must have a valid and appropriately endorsed U.S. Coast Guard Master's License.

(b) A Utah CPFH License is valid on the waters of Bear Lake, Flaming Gorge, and Lake Powell when the holder is carrying or leading persons for hire on non-motorized vessels.

(c) A Utah CPFH License or Utah Crew Permit, with the appropriate river endorsement, is valid when operating a vessel exiting from a river to the first appropriate and usable take-out or launch ramp on a lake or reservoir.

(d) A boat operator, carrying passengers within a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area shall comply with the guidelines for safe boat operation adopted by the management of the Migratory Bird Production Area.

(2) License and Permit Requirements.

(a) The license or permit must be accompanied by current and appropriate first aid and CPR certificates. A photocopy of both sides of the first aid and CPR certificates is allowed when carrying passengers for hire on rivers.

(b) A license with a "Lake and Reservoir Captain" or instructor endorsement is required when carrying passengers for hire on any lake or reservoir.

(c) A license with a "Tow Vessel Captain" endorsement is required when towing or assisting other vessels for hire on waters of this state.

(d) A license with a "Whitewater River guide" endorsement is required when carrying passengers for hire on any river section, including "whitewater," and "flatwater" river designations.

(e) A license with a "Flatwater River Guide" endorsement is required when carrying passengers for hire on any Flatwater river area.

(f) A permit with a "Lake and Reservoir Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Lake and

Reservoir Captain" endorsement.

(g) A permit with a "Tow Vessel Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Tow Vessel Captain" endorsement.

(h) A permit with a "Whitewater River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with a "Whitewater River Guide" endorsement.

(i) A permit with an "Flatwater River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with either a "Whitewater River Guide" or "Flatwater River Guide" endorsement.

(j) All Boatman Permits issued by the Division are expired.

(3) Requirements to obtain a CPFH License.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first license, the application, testing, and issuance of the license shall be done in a manner accepted by the Division.

(c) The applicant shall pay a \$50 application fee for the license and first endorsement. A fee of \$10 will be charged for each additional license endorsement.

(d) The applicant shall choose from the five types of license endorsements:

(i) Lake and Reservoir Captain LRC

(ii) Lake and Reservoir Instructor (LRI)

(iii) Tow Vessel Captain TVC

(iv) Whitewater River Guide (WRG)

(v) Flatwater River Guide FRG

(e) The applicant shall provide an original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an "Emergency Response" course or an equivalent course from a reputable provider whose curriculum is in accordance with the USDOT First Responder Guidelines or the Wilderness Medical Society Guidelines for Wilderness First Responder.

(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the most current Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) A Utah Vessel Operator Permit holder, whose permit was issued prior to January 1, 2008, and who is renewing and converting their permit to a Utah CPFH License, is exempt from showing proof of completion of a National Association of State Boating Law Administrators (NASBLA) approved boating safety course.

(g) The applicant shall complete a multiple-choice, written examination administered by an agent of the Division:

(i) 80 percent correct is required to pass.

(ii) In relation to the respective endorsement, the examination will have a specific focus on the carrying passengers for hire laws and rules along with general safety, etiquette and courtesy.

(iii) If an applicant fails to pass the exam, there is a seven-day waiting period to re-test, and

(iv) Pay a \$15 fee for each re-test.

(h) The applicant shall provide documentation of vessel operation experience that has been obtained within 10 years previous to the date of application.

(i) Lake and Reservoir Captain LRC - a minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be carrying passengers for hire on the specific lake or reservoir on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Lake and Reservoir Instructor (LRI) - a minimum of at least 40 hours of actual vessel operation experience. At least 10 of these hours must be obtained through mentored coaching while operating the vessel, or a similar vessel, that will be carrying passengers for hire on the specific lake or reservoir on which the instructor will be carrying passengers for hire.

(iii) Tow Vessel Captain (TVC) - A minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iv) Whitewater River Guide (WRG) - A minimum of nine river trips on whitewater river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river section on which the operator will be carrying passengers for hire. A Whitewater River Guide endorsement meets the requirements for an Flatwater River Guide endorsement.

Flatwater River Guide (FRG) - A minimum of six river trips on any river section. At least one of these trips must be obtained while operating the vessel or similar vessel, on the respective river section on which the operator will be carrying passengers for hire.

(4) A Utah CPFH License is valid for a term of five years. The license will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah CPFH License may be renewed within the six months prior to its expiration.

(b) To renew a Utah CPFH License, the applicant must complete the prescribed application form along with adhering to the requirements described above. A current license holder may renew his license in a manner accepted by the Division

(c) The renewed license will have the same month and day expiration as the original license.

(d) A Utah License that has expired shall not be renewed and the applicant shall be required to apply for a new license.

(5) Requirements to obtain a Utah Crew Permit.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first Crew Permit, the application and issuance of the Crew Permit shall be done in a manner accepted by the Division.

(c) The applicant shall pay a \$50 application fee for the original permit and first endorsement. A \$10 fee shall be charged for each additional crew permit endorsement.

(d) The applicant shall choose from the four types of

permit endorsements:

- (i) Lake and Reservoir Crew (LRCP)
 - (ii) Tow Vessel Crew TVCP
 - (iii) Whitewater River Crew (WRCP)
 - (iv) Flatwater River Crew FRCP
- (e) The applicant shall provide original proof of current and valid first aid and CPR certifications:
- (i) The first aid certificate must be issued from a reputable provider whose curriculum is in accordance with the USDOT "Standard" First Aid.
 - (ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the most current Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).
 - (iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.
 - (f) The applicant shall provide documentation of vessel operation experience that has been obtained within the 10 years previous to the date of application.
 - (i) Lake and Reservoir Crew (LRCP) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.
 - (ii) Tow Vessel Crew (TVCP) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.
 - (iii) Whitewater River Crew (WRCP) - A minimum of three river trips on "whitewater" rivers or river sections similar to those they will be guiding on. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river or river section on which the operator will be carrying passengers for hire. A Whitewater River Crew endorsement meets the requirements for an Flatwater River Crew endorsement.
 - (iv) Flatwater River Crew (FRCP) - A minimum of three river trips on any river or river section. At least one of these trips must be obtained while operating the vessel on a respective river or river section on which the operator will be carrying passengers for hire.
- (6) A Utah Crew Permit is valid for a term of five years. The permit will expire five years from the date of issue, unless suspended or revoked.
- (a) A Utah Crew Permit may be renewed within the six months prior to its expiration.
 - (b) To renew a Utah Crew Permit, the applicant must complete the prescribed application form along with the requirements described above. A current permit holder may renew his license in a manner accepted by the Division.
 - (c) The renewed permit will have the same month and day expiration as the original permit.
 - (d) A Utah Crew Permit that has expired shall not be renewed and the applicant shall be required to apply for a new permit.
 - (e) A Utah Crew Permit holder who upgrades to a Utah License, within one year of when the permit was issued, shall receive a \$25 discount on the fee for the Utah License.
 - (7) In the event a Utah CPFH License or a Utah Crew permit is lost or stolen, a duplicate license or permit may be

issued with the same expiration date as the original license or permit.

- (a) The applicant must complete the prescribed application form.
- (b) The fee for a duplicate license or permit is \$15.
- (8) Current Utah CPFH License and Utah Crew Permit holders shall notify the Division within 30 days of any change of address.
- (9) A Utah CPFH License or Utah Crew Permit may be suspended, revoked, or denied for a length of time determined by the Division director, or individual designated by the Division director, if one of the following occurs:
 - (a) The license or permit holder is convicted of three violations of the Utah Boating Act, Title 73, Chapter 18, or rules promulgated thereunder during a three-year period.
 - (b) The license or permit holder is convicted of driving under the influence of alcohol or any drug while carrying passengers for hire, or refuses to submit to any chemical test that determines blood or breath alcohol content resulting from an incident while carrying passengers for hire;
 - (c) The license or permit holder's negligence or recklessness causes personal injury or death as determined by due process of the law;
 - (d) The license or permit holder is convicted of utilizing a private trip permit to carry passengers for hire;
 - (e) The license or permit holder is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.
 - (f) The Division determines that the license or permit holder intentionally provided false or fictitious statements or qualifications to obtain the license or permit.
- (10) A Utah CPFH License or Utah Crew Permit holder shall not carry passengers for hire while operating an unfamiliar vessel or operating on an unfamiliar lake, reservoir, or river section, unless there is a license holder aboard who is familiar with the vessel and the lake, reservoir, or river section. An exception to this rule allows a license or permit holder to lead passengers for hire on a lake, reservoir, or a flatwater river area, as long as there is a license holder who is familiar with the vessel and the lake, reservoir, or river section and remains within sight of the rest of the group.
- (11) Number of passengers carried for each license or permit holder.
 - (a) On a vessel that is carrying more than 49 passengers for hire, there shall be at least one license holder and one permit holder or two license holders on board.
 - (b) On a vessel carrying more than 24 passengers for hire, and operating more than one mile from shore, there shall be an additional license or permit holder on board.
 - (c) On a vessel carrying passengers for hire, there shall be a minimum of one license or permit holder on board for each passenger deck on the vessel.
- (12) Low capacity vessels being led requirements.
 - (a) On all river sections, except as noted in Subsection (b) below, there shall be at least one qualified license or permit holder for every four low capacity vessels being led in a group.
 - (b) On lakes, reservoirs, there shall be at least one qualified license or permit holder for every eight low capacity vessels, or racing shells being led in a group; and flatwater river area, there shall be at least one qualified license or permit holder for every six low capacity vessels or racing shells being led in a group.
- (13) A license or permit holder shall not operate a vessel carrying passengers for hire for more than 12 hours in a 24 hour period.
- (14) A license or permit holder shall conduct a safety and emergency protocols discussion with passengers prior to the vessel getting underway. This discussion shall include the

topics of water safety, use and stowage of safety equipment, wearing and usage of life jackets and initiating the rescue of a passenger(s).

(15) Vessel operators who are licensed or permitted to carry passengers for hire in another state, and possess a state-issued vessel captain's license, or similar license or permit accepted and recognized by the Division, where the state has similar vessel operator licensing provisions, shall not be required to obtain and possess a Utah CPFH License or Utah Crew Permit as required by this section.

R651-206-4. Additional PFD Requirements for Vessels Carrying Passengers for Hire.

(1) Type I PFDs are required. Each vessel shall have an adequate number of Type I PFDs on board, that meets or exceeds the number of persons on board the vessel. A Type V PFD may be used in lieu of a Type I PFD if the Type V PFD is approved for the activity in which it is going to be used.

(2) In situations where infants, children and youth are in enclosed cabin areas of vessels over 19 feet in length and not wearing PFDs, a minimum of ten percent of the wearable PFDs on board the vessel must be of an appropriate type and size for infants, children and youth passengers.

(3) Type I PFDs or Type V PFDs - used in lieu of the Type I PFD, must be listed for commercial use on the label.

(4) If PFDs are not being worn by passengers, and the PFDs are being stored on the vessel, the PFDs shall be stored in readily accessible containers that legibly and visually indicate their contents.

(5) Each PFD must be marked with the name of the outfitting company, in one-inch high letters that contrast with the color of the device.

(6) The Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length. CPFH vessels on rivers are exempt from carrying a ring life buoy and must comply with R651-215-2 and R651-215-8.

(a) Vessels that are 40 feet or more in length shall carry a minimum of two Type IV PFDs.

(b) Ring life buoys shall have a minimum of 60 feet of line attached.

(7) If U.S. Coast Guard approved Type I PFDs are not available for infants under the weight of 30 pounds, Type II PFDs may be used, provided they are the correct size for the intended wearer.

(8) On rivers, any low capacity vessel operator or a working employee of the outfitting company, may wear a Type III PFD in lieu of the Type I PFD.

(9) On lakes and reservoirs, any low capacity vessel operator or a working employee may wear or carry, a Type III PFD may be carried or worn in lieu of the required Type I PFD.

(10) All passengers and crew members shall wear a PFD when a vessel is being operated in hazardous conditions.

(11) The license or permit holder is responsible for the passengers on his vessel to be in compliance with this section and R651-215.

R651-206-5. Additional Fire Extinguisher Requirements for Vessels Carrying Passengers for Hire.

(1) Each motorboat that carries passengers for hire, must carry a minimum of one type B-1 fire extinguisher. Vessels equipped solely with an electric motor, and not carrying flammable fuels on board, are exempt from this provision.

(2) Each motorboat that carries more than six passengers for hire and is equipped with an inboard, inboard/outboard, inboard jet, or direct drive gasoline engine, and carrying passengers for hire, shall have at least one fixed U.S. Coast Guard approved fire extinguishing system mounted in the engine compartment.

(3) Portable fire extinguishers shall be mounted in a

readily accessible location, near the helm, away from the engine compartment. For motorized vessels operating on rivers, portable fire extinguishers may be stowed in a readily accessible location near the operator's position.

(4) For vessels carrying more than 12 passengers for hire or providing on board overnight passenger accommodations, smoke detectors shall be installed in each enclosed passenger area.

R651-206-6. Additional Equipment Requirements for Vessels Carrying Passengers for Hire.

(1) Emergency communications equipment.

(a) An outfitting company shall have appropriate communication equipment for contacting emergency services, or, have a policy and emergency communications protocols that describe the quickest and most efficient means of contacting emergency services, taking into consideration the remoteness of the area in which the vessel will be operated.

(b) For vessels traveling in a group, this requirement can be met by carrying one communication device in the group.

(2) Carbon monoxide detectors.

Each vessel carrying passengers for hire shall be equipped with carbon monoxide detectors in each enclosed passenger area.

(3) Survival Craft.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry an appropriate number of life rafts or other life-saving apparatus respective to the number of passengers carried on board.

(4) Visual distress signals.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry a minimum of three visual distress signal flares that are approved for day and night use.

(5) Navigation equipment.

(a) Each vessel must carry a map or chart of the water body and a compass or GPS unit that is in good and serviceable condition.

(b) For vessels traveling in a group, this requirement can be met by carrying a map or chart and a compass or GPS unit in the group.

(c) River trip vessels are only required to carry a map of the water body or river or river sections.

(6) Lines, straps and anchorage.

(a) Each vessel shall be equipped with at least one suitable anchor and an appropriate anchorage system, respective of the body of water on which the vessel will be operating. Any line, when attached to an anchor, shall be attached by an eye splice, thimble and shackle. On lakes and/or reservoirs, low capacity vessels and racing shells are exempt from this requirement.

(b) Vessels operating on rivers are exempt from carrying an anchor, but shall have sufficient lines to secure the vessel to shore.

(c) Lines and straps utilized for anchorage, mooring and maintaining vessel structural integrity shall be in good and serviceable condition.

(7) Portable lighting.

Each vessel carrying passengers for hire shall carry on board, at least one portable, battery-operated light per operator or crew member. That portable battery-operated light shall be in good and serviceable condition and readily accessible.

(8) First Aid Kit.

(a) Each vessel shall have on board, an adequate first aid kit, stocked with supplies respective to the number of passengers carried on board, and the nature of boating activity in which the vessel will be engaged.

(b) For vessels traveling in a group, this requirement can be met by carrying one first aid kit in the group.

(9) Identification of outfitting company.

(a) An outfitting company shall prominently display its name on the hull or superstructure of the vessel.

(b) The display of an outfitting company's name shall not interfere with any required numbering, registration or documentation display.

(c) If another governmental agency prohibits the display of an outfitting company's name on the exterior of a vessel, the name shall be displayed in a visible manner that does not violate the agency's requirements.

(10) Marine toilets and sanitary facilities.

(a) Each vessel carrying more than six passengers for hire shall be equipped with a minimum of one marine toilet and washbasin sanitary facilities, except for vessels where suitable privacy enclosures are not practical.

(b) The toilet and washbasin shall be connected to a permanently installed holding tank that allows for dockside pumpout at approved sanitary disposal facilities. Vessels that do not have access to dockside pumpout facilities may carry a portable marine toilet and washbasin to meet this requirement.

(c) For vessels traveling in a group, this requirement can be met by carrying one marine sanitation device in the group.

(d) Marine toilets and washbasins shall be maintained in a good and serviceable, sanitary condition.

(e) A vessel that carries more than 49 passengers shall have at least two marine toilets and washbasins, one each for men and women.

(f) A vessel operating on a trip or excursion with a duration of one hour or less, or operating on a river, is not required to be equipped with a marine toilet or washbasin.

R651-206-7. Towing Vessels for Hire Requirements.

(1) Any person or entity that provides the service of towing vessels for hire on waters of this state, shall register with the Division as an outfitting company and pay the appropriate fee.

(2) A vessel engaged in the activity of towing vessels for hire shall comply with the dockside and dry dock vessel maintenance and inspection requirements, plus the additional equipment requirements described in this section.

(3) Any conditions of a contract, special use permit, or other agreement with a person or entity that is towing vessels for hire, shall not supersede the boating safety and assistance activities of a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any other person providing "Good Samaritan" service to vessels needing or requesting assistance.

(4) Any vessel receiving assistance from a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any person providing "Good Samaritan" service need not be turned over to, or directed to a person or entity registered with the Division and authorized to tow vessels for hire, unless the operator or owner of the vessel receiving assistance specifically requests such action.

(5) A person or entity towing vessels for hire shall immediately notify a law enforcement officer of any vessel they assist, if the person reasonably believes the vessel being assisted was involved in a reportable boating accident.

(6) A person or entity towing vessels for hire shall not perform an emergency rescue unless he reasonably believes immediate emergency assistance is required to save the lives of persons, prevent additional injuries to persons onboard a vessel, or reduce damage to a vessel, and a state park ranger, other law enforcement officer, emergency and search and rescue personnel, or a member of the U.S. Coast Guard Auxiliary is not immediately available, or a state park ranger, other law enforcement officer, or emergency and search and rescue

personnel make such a request for emergency assistance.

(7) The owner of a vessel engaged towing vessels for hire shall carry general liability insurance. The insurance coverage shall be determined by the permitting agency.

(8) A vessel engaged in towing vessels for hire, shall be a minimum of 21 feet in length and have a minimum total of a 150 hp gasoline engine(s) or a 90 hp diesel engine(s). The towing vessel should be as large or larger than the average vessel it will be towing.

(9) A vessel engaged in towing vessels for hire, must have at least one Tow Vessel License holder on board.

(10) A person or entity towing vessels for hire shall provide appropriate types of training for each of its license and permit holders. Each vessel operator shall conduct a minimum of five training evolutions of towing a vessel each year, with at least one evolution being a side tow.

(11) The operator and any crew members on board a vessel engaged in towing vessels for hire, shall wear a PFD at all times. The operator of a vessel engaged in towing vessels for hire is responsible to have all occupants of a vessel being towed to wear a properly fitted PFD for the duration of the tow.

(12) A person or entity engaged in towing vessels for hire must keep a log of each tow or vessel assist. The towing vessels for hire log of activities shall include:

(a) Assisted vessel's assigned bow number.

(b) Name of assisted vessel's owner or operator, including address and phone number.

(c) Number of persons on board the assisted vessel.

(d) Nature of assistance.

(e) Date and time assistance provided.

(f) Location of the assisted vessel.

(g) The operator of the vessel towing for hire shall make appropriate radio or other communications of the above actions with a person on land preferable at the company's place of business.

(h) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of a towing vessels for hire log.

(13) Additional Equipment Requirements for Vessels Towing for Hire.

(a) PFDs.

(i) Shall carry a sufficient number of Type I PFDs for persons on board a towed vessel.

(ii) Shall carry a minimum of two Type IV PFDs, one of which must be a ring life buoy.

(b) Vessel shall be equipped with a depth finder.

(c) Tow Line.

(i) Shall have a minimum of 100 feet of 5/8" line with a tow bridle.

(ii) Towing vessel shall be equipped with a towing post or reinforced cleats.

(d) Vessel shall carry a dewatering pump with a minimum capacity of 25 gallons per minute, to be used to dewater other vessels.

(e) If a vessel is towing for hire between sunset and sunrise, the vessel shall carry the following pieces of equipment.

(i) A white spot light with a minimum brightness of 500,000 candle power.

(ii) It is recommended that a vessel be equipped with electronic RADAR equipment.

(f) Vessel shall carry a loudhailer, speaker, or other means of communicating with another vessel from a distance.

(g) Vessel shall carry the following equipment, in addition to the equipment required for vessels carrying passengers for hire.

(i) A knife capable of cutting the vessel's towline;

(ii) A boat hook;

(iii) A minimum of four six-inch fenders;

(iv) Binoculars;

- (v) A jump starting system;
- (vi) A tool kit and spare items for repairs on assisting vessel; and
- (vii) Damage control items for quick repairs to another vessel.

R651-206-8. Maintenance and Inspections of Vessels Carrying Passengers for Hire.

(1) Each outfitting company carrying passengers for hire shall have an ongoing vessel maintenance and inspection program. The vessel maintenance and inspection program shall include the structural integrity, flotation, propulsion of the vessel, and equipment associated with passenger safety.

(2) The annual vessel maintenance and inspection program certification will be required beginning January 1, 2009. The five-year vessel inspections will be required no later than January 1, 2014.

(3) The Division shall prepare and maintain a "Carrying Passengers for Hire Vessel Inspection Manual".

(a) The Division shall establish a committee to oversee, maintain, and recommend any substantive changes in the "Carrying Passengers for Hire Vessel Inspection Manual".

(i) The members of this committee shall be selected by the Boating Advisory Council and shall report directly to the Boating Advisory Council.

(ii) This committee shall consist of five members: two members who will represent the non-float trip vessel carrying passengers for hire industry in Utah; two members who will represent the float trip vessel carrying passengers for hire industry in Utah; and one member who will represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(iii) This committee shall convene when information regarding substantive changes to the "Carrying Passengers for Hire Vessel Inspection Manual" has been presented to the Boating Advisory Council.

(b) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers for Hire Vessel Inspection Manual" that do not pertain to River Trip Vessels.

(i) This committee shall consist of five members: three members who represent the carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

(c) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers For Hire Vessel Inspection Manual" that pertain to River Trip Vessels.

(i) This committee shall consist of five members: three members who represent the River Trip Vessel carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

**KEY: boating, parks
October 22, 2015**

Notice of Continuation January 7, 2016

73-18-4(4)

R651. Natural Resources, Parks and Recreation.

R651-207. Registration Fee.

R651-207-1. Yearly Registration Fee.

The registration fee shall be \$30 per year.

KEY: boating

February 11, 2015

Notice of Continuation January 7, 2016

73-18-7(2)

R651. Natural Resources, Parks and Recreation.**R651-208. Backing Plates.****R651-208-1. Backing Plates.**

On vessels where an assigned number on the hull or superstructure would not be visible or where the type of hull material used would make it impractical to attach an assigned number, the assigned number and registration decals may be mounted on a backing plate and displayed as required in Subsection 73-18-7 (4) of the Utah Code Annotated and Rule R651-212.

KEY: boating**1987****73-18-7(4)****Notice of Continuation January 7, 2016**

R651. Natural Resources, Parks and Recreation.

R651-209. Anchored and Beached Vessels.

R651-209-1. Anchored Vessels.

Unless permitted to do so by the local managing agency:

(1) an anchored vessel may not be left unattended for more than 48 hours.

(2) a vessel may not be anchored for more than 72 hours in one location.

(3) a vessel anchored for 72 hours that wishes to continue anchorage on a waterbody must move at least two miles away from the last position of anchorage.

R651-209-2. Beached Vessels.

Unless permitted to do so by the local managing agency:

(1) a beached vessel may not be left unattended for more than 48 hours.

(2) a vessel may not be beached for more than 72 hours in one location.

(3) a vessel beached for 72 hours that wishes to continue to beach on a waterbody must move at least two miles away from the last position of being beached.

KEY: boating, anchored vessels, beached vessels

December 9, 2011

73-18-4(1)(e)

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.

R651-210. Change of Address.

R651-210-1. Change of Address.

The registered owner of a motorboat or sailboat, after notifying the division or agent of the division of his change of address, shall note the new address on his current registration card.

KEY: boating

1987

73-18-7(14)

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.**R651-211. Assigned Numbers.****R651-211-1. Assigned Numbers.**

The assigned number will consist of the prefix letters, "UT", to designate the State of Utah, one to four numerals, and two suffix letters that may designate a certain type of vessel. The suffix letters that designate a certain type of vessel are: AB - Airboat; DL - marine dealer or manufacturer; EX - Exempt (for official government business only). All other suffixes shall be randomly assigned.

R651-211-2. Assigned Number Reserved for the Division.

"UT 2628 BP" shall be the assigned number reserved for Division use in boating education and law enforcement training, and shall not be assigned to any vessel.

KEY: boating

January 15, 2005

73-18-7(18)(a)

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.**R651-212. Display of Yearly Registration Decals and Month of Expiration Decals.****R651-212-1. Display of Registration Decals.**

A yearly registration decal shall be displayed three inches aft of the assigned number on each side of the vessel. On documented vessels, a yearly registration decal shall be displayed on each side of the forward half of the vessel. Only current-year registration decals may be displayed.

R651-212-2. Month of Expiration Decal.

A month of expiration decal shall be displayed immediately aft of the yearly registration decal.

KEY: boating

January 15, 2005

73-18-7(18)(b)

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.**R651-213. Dealer Numbers and Registrations.****R651-213-1. Dealer Numbers and Registrations.**

(1) Each person acting as a vessel dealer who has an established place of business and is engaged in the business of selling motorboats and/or sailboats shall make application to the Division, to obtain dealer numbers and registration decals.

(2) The application shall contain the following information:

- (a) the name of the business;
- (b) the business address;
- (c) the business owner's name (if the business is a corporation, the names of the principal officers of the corporation);
- (d) the type of vessels offered for sale; and
- (e) the manufacture line of vessels which the dealer holds franchise from the manufacturer to sell. Attached to the application shall be copies of the appropriate city, county, and state licenses required to do business in this state.

(3) Upon filing the application by the dealer, the Division may assign dealer numbers and registration decals to the dealer.

(4) Dealer numbers and registration decals are valid only when demonstrating, servicing or testing a motorboat or sailboat and the dealer or employee of the dealer is present during the demonstration.

(5) Every vessel dealer who obtains dealer numbers and registration decals is responsible to maintain the numbers and to control their use.

(6) Dealer numbers and registration decals are not valid on any vessel which is a rental or lease unit, or on a vessel which is not part of the dealer inventory and available for immediate sale.

(7) Dealer numbers and registration decals shall not be permanently attached to any vessel, but shall be mounted and displayed on a backing plate.

(8) If the Division has reasonable grounds to believe that a dealer has failed to comply with any of the above provisions, after notice to the dealer and a hearing, dealer numbers and registration decals may be suspended. Upon suspension, the dealer will surrender all of his dealer numbers and registration decals to the Division within 15 days.

(9) The dealer registration fee shall be \$25 per year.

(10) The dealer registration decals and cards shall expire annually on the last day of April.

KEY: boating

June 9, 2014

73-18-7(18)(c)

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.**R651-214. Temporary Registration.****R651-214-1. Temporary Registration.**

(1) A vessel dealer may apply to the Division of Motor Vehicles for temporary registrations to be used on motorboats or sailboats sold by his business.

(2) Each temporary registration will be valid for a period not to exceed 30 days from date of issue.

(3) A temporary registration will not be valid on any motorboat or sailboat held in the dealer's inventory for sale or any motorboat or sailboat not sold by the same dealer who issued the registration.

(4) A dealer shall not issue more than one temporary registration for any motorboat or sailboat.

(5) A dealer who obtains temporary registrations will be responsible for their issuance and is required to maintain records of each registration obtained and issued. Dealer records will contain a description of the vessel sold, the name and address of the purchaser, and the date issued.

(6) Temporary registration records kept by the dealer shall be made available for inspection and audit by authorized agents of the Division of Motor Vehicles during regular business hours.

(7) If the Division of Motor Vehicles has reasonable grounds to believe that a dealer has failed to comply with any of the above provisions, after notice to the dealer and a hearing, temporary registration issuance privileges may be canceled. Upon cancellation, the dealer will surrender all unissued temporary registrations to the Division of Motor Vehicles within 15 days.

(8) Temporary Operating Authority

(a) The division, or its authorized representatives, may grant a temporary permit to operate a vessel for which:

(i) application for registration has been made, or, in the case of a newly purchased vessel, will be made

(ii) evidence of ownership is provided; and

(iii) the proper fees have been paid.

(b) The temporary permit allows the vessel to be operated pending complete registration by displaying the temporary permit.

(c) If a vessel is operated on a temporary permit issued under this section, that vessel is subject to all other statutes, rules, and regulations intended to control the use and operation of vessels on the waterways.

(9) Relocation Permit

(a) Under rules made by the administrator, relocation permits may be issued by the division or its authorized representatives.

(b) Relocation permits allow use of the waterways for a time period not to exceed 96 hours.

(c) The division or its authorized representative may issue relocation permits without requiring a property tax clearance for the vessel on which the permit is to be used.

(d) Relocation permits allow for the purpose of testing for mechanical or seaworthiness of vessels.

(e) If a vessel is operated on a relocation permit under this section, that vessel is subject to all other statutes, rules, and regulations intended to control the use and operation of vessels on the waterways.

KEY: boating**January 22, 2015****73-18-7(18)(d)****Notice of Continuation January 7, 2016**

R651. Natural Resources, Parks and Recreation.**R651-215. Personal Flotation Devices.****R651-215-1. Definitions.**

- (1) "PFD" means personal flotation device.
- (2) "Vessel length" is the measurement of the permanent part of the hull, from bow to stern, across the deck down the centerline, excluding sheer.
- (3) "Wear" means to have the PFD properly worn with all fasteners connected.
- (4) "Whitewater canoe" means a one or two person capacity hard hulled canoe designed for white water activities and is equipped with: floatation (e.g., factory end chambers or float bags) and thigh straps or retention devices to hold the operator(s) in the vessel if it rolls.

R651-215-2. Type IV PFD Requirements.

No person shall operate or give permission for the operation of a vessel.

- (1) 16 feet to less than 40 feet in length unless there is at least one Type IV PFD on board.
- (2) 40 feet or more in length unless there is at least two Type IV PFDs on board, one shall be a minimum 18" ring buoy type with at least 30 feet of rope attached. Where reasonable, one shall be located near the bow and one shall be located near the stern of the vessel.

R651-215-4. Types of Personal Flotation Devices.

Type I - Off-shore Life Jacket - provides the most buoyancy of any type of PFD. Designed to turn the most unconscious wearers to a face-up position in the water. Effective for all waters, especially open, rough or remote waters where rescue may be delayed. Acceptable for use on all vessels.

Type II - Near Shore Buoyancy Vest - is designed to turn some unconscious wearers to a face-up position in the water. Intended for calm, inland waters where there is a good chance of quick rescue.

Type III - Flotation Aid - Good for conscious users in calm, inland waters where there is good chance of quick rescue. Designed so conscious wearers can place themselves in a face up position in the water. The wearer may have to tilt their head back to avoid turning face-down in the water.

Type IV - Throwable Device - Designed to be thrown to a person in the water and grasped and held by the user until rescued. Not designed to be worn.

Type V - Special Use Device - Intended for specific activities and may be carried instead of another PFD if used according to the approval conditions on its label.

R651-215-5. Immediately Available and Readily Accessible.

Type IV PFDs shall be immediately available; all other types of PFD shall be readily accessible, unless wearing is required.

R651-215-6. Type V PFD Carried in Lieu.

A Type V PFD may be carried or worn in lieu of another required PFD, but only if it is used according to the approval conditions on its label.

R651-215-7. Whitewater River PFD Requirements.

On whitewater rivers, as defined in Subsection R651-206-2 (1), Type I or Type III PFDs, are required and shall be used according to the approval conditions on their labels.

R651-215-8. River Throw Bag in Lieu of Type IV PFD.

On a river section where PFDs are required to be worn, or on any river section where all vessel occupants are wearing PFDs, in lieu of the Type IV PFD requirement, a throw bag with a minimum of 40 feet of line may be carried.

R651-215-9. Required Wearing of PFDs.

- (1) An inflatable PFD may not be used to meet the requirements of this section.
- (2) All persons on board a personal watercraft shall wear a PFD.
- (3) The operator of a vessel under 19 feet in length shall require each passenger 12 years of age or younger to wear a PFD. This rule is also applicable to vessels 19 feet or more in length, except when the child is inside the cabin area.
- (4) On every river, every person on board a vessel must wear a PFD, except PFDs may be loosened or removed by persons 13 years of age or older on designated flat water river section(s) as listed in Section R651-215-10.

R651-215-10. Designated Flatwater River Sections.

- (1) On the Green River:
 - (a) from Red Creek Camp below Red Creek Rapids to the Indian Crossing Boat Ramp;
 - (b) from 100 yards below Taylor Flats Bridge to the Utah/Colorado state line in Browns Park;
 - (c) within Dinosaur National Monument, from the mouth of Whirlpool Canyon to the head of Split Mountain Gorge;
 - (d) from the mouth of Split Mountain to Jack Creek in Desolation Canyon; and
 - (e) from the Green River Diversion Dam below Gray Canyon to the confluence with the Colorado River.
- (2) On the Colorado River:
 - (a) from the Colorado/Utah state line to the Westwater Ranger Station;
 - (b) from Big Hole Canyon in Westwater Canyon to Onion Creek;
 - (c) from Drinks Canyon, mile 70, to the confluence with the Green River; and
 - (d) after the last active rapid in Cataract Canyon.
- (3) On the San Juan River, after the last active rapid prior to Lake Powell.

R651-215-11. PFDs.

All Personal Flotation Devices (PFDs) must be used according to the conditions or restrictions listed on the U.S. Coast Guard Approval Label.

KEY: boating, parks**May 9, 2011****Notice of Continuation January 7, 2016****73-18-8**

R651. Natural Resources, Parks and Recreation.
R651-216. Navigation Lights - Note: Figures 1 through 7 mentioned below are on file with the Utah Division of Parks and Recreation.

R651-216-1. Navigation Lights On Motorboats Less Than 40 Feet.

Motorboats of less than 40 feet in length shall exhibit the navigation lights shown in either figure 1, 2, or 3.

R651-216-2. Navigation Lights On Motorboats 40 Feet or Greater in Length.

Motorboats 40 feet in length or greater in length shall exhibit the navigation lights shown in either figure 1 or 2.

R651-216-3. Navigation Lights On Sailboats.

Sailboats shall exhibit the navigation lights shown in either figure 4, 5, or 6.

R651-216-4. Navigation Lights On Sailboats Under Motor Power.

A sailboat under motor power shall exhibit the motorboat navigation light requirements.

R651-216-5. Navigation Lights On Manually Propelled Vessels.

A vessel manually propelled may exhibit the navigation lights required for sailboats or have ready at hand a flashlight or lighted lantern showing a white light which shall be displayed in sufficient time to prevent collision (figure 7).

R651-216-6. Displaying All Around White Anchor Light On Vessels At Anchor.

Vessels at anchor shall display an all-round white anchor light unless anchored in a designated mooring area.

R651-216-7. Visible Range.

TABLE

LOCATION	CLASS A, 1, or 2	CLASS 3	DEGREES
Masthead light	2 miles	3 miles	225
All-round light	2 miles	2 miles	360
Side lights	1 mile	2 miles	112.5
Stern light	2 miles	2 miles	135

R651-216-8. Use of Non-Navigational Lights.

Vessels may only display lights as outlined above, except: (a) a spotlight or other non-navigational light may be used intermittently to locate a hazard to navigation, or (b) non-navigational lights may be used during a federal or state permitted marine parade, or (c) a spotlight or other non-navigational light may be used when actively engaged in fishing, bow fishing or scientific research on board vessels that are not in a navigational channel and that are being operated at a wakeless speed.

KEY: boating
July 8, 2013

Notice of Continuation January 7, 2016

73-18-8(2)

R651. Natural Resources, Parks and Recreation.

R651-217. Fire Extinguishers.

R651-217-1. Fire Extinguishers On Motorboats.

All motorboats, unless exempt, must have on board a readily accessible and approved fire extinguisher as specified in Section R651-217-2.

R651-217-2. Fire Extinguishers Required.

TABLE

LENGTH OF MOTORBOAT	NUMBER/SIZE
Less than 26 feet in length*	1/B-I
26 feet to less than 40 feet in length	2/B-I or 1/B-II
40 feet to 65 feet in length	3/B-I or 1/B-I and 1/B-II

* If an outboard motorboat of open construction and not carrying passengers for hire, a fire extinguisher is not required (see Section R651-217-5).

** If no engine compartment, fixed system not required and B-11 shall be placed near stern. If no galley, B-11 shall be placed midships.

R651-217-3. Fire Extinguisher Types.

TABLE

LISTING	TYPES: FOAM	CARBON DIOXIDE	DRY CHEMICAL	HALON
B-I	1.25 gal	4 lbs	2 lbs	2.5 lbs
B-II	2.5 gal	15 lbs	10 lbs	10 lbs

R651-217-4. Engine Compartment Fire Extinguishers.

When the engine compartment is equipped with a fixed extinguishing system, one less B-I extinguisher is required.

R651-217-5. Open Construction Exemptions.

An outboard motorboat is not considered "of open construction" if any one of the following conditions exist: closed compartment under thwarts (motor well) and seats where portable fuel tanks may be stored; double bottoms not sealed to the hull or which are not completely filled with flotation material; closed living spaces; closed stowage compartments in which combustible or flammable materials are stored; or permanently installed fuel tanks.

R651-217-6. Certifying, Recharging, or Servicing a Fire Extinguisher.

Each fire extinguisher, except a disposable fire extinguisher, must show evidence of being certified, recharged, or serviced once every five years, or a current standard as described in the National Fire Protection Agency - Publication 10, by a qualified fire fighting equipment repair service.

R651-217-7. Disposable Fire Extinguishers.

(1) If a fire extinguisher is unable to be certified, recharged or serviced by a qualified fire fighting equipment repair service, it is considered disposable.

(2) The serviceability of a disposable fire extinguisher expires upon being discharged, loss of pressure or charge, or 12 years from the date of manufacture printed on the label or imprinted on the bottom of the fire extinguisher.

KEY: boating, parks

May 9, 2011

73-18-8(4)

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.

R651-218. Carburetor Backfire Flame Control.

R651-218-1. Acceptable Means Of Backfire Flame Control.

(1) The following are acceptable means of backfire flame control:

(a) an approved flame arrestor secured to the air intake with flamtight connection;

(b) an approved engine air and fuel induction system; or

(c) an attachment to the carburetor or location of the engine air induction system where a flame caused by engine backfire will be dispersed outside the vessel in a manner that the flame will not endanger the vessel or passengers. All attachments shall be of metallic construction with flamtight connections and secured to withstand vibration, shock, and engine backfire.

KEY: boating

1987

73-18-8(5)

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.

July 23, 2012

73-18-8(6)

R651-219. Additional Safety Equipment.

Notice of Continuation January 7, 2016

R651-219-1. Sound Producing Device.

(1) Vessels 16 feet to less than 40 feet in length shall have on board a means of making an efficient sound, horn or whistle, capable of a four-to-six-second blast.

(2) Vessels 40 feet and greater in length shall have on board a horn or whistle and a bell. The horn or whistle shall be capable of a four-to-six-second blast and audible for one-half mile. The bell shall be designed to give a clear tone.

R651-219-2. Bailing Device.

All vessels, not of self-bailing design, shall have on board an adequate bail bucket or be equipped with a mechanical means for pumping the bilge. For vessels 65 feet or greater in length, there shall be a bilge pump for each below deck compartment.

R651-219-3. Spare Propulsion.

Vessels less than 21 feet in length shall have on board at least one spare motor, paddle or oar capable of maneuvering the vessel when necessary. On rivers when low capacity vessels less than 16 feet in length are traveling in a group, the above requirement may be met by carrying one spare oar or paddle for every three vessels in the group. Paddles designed to be strapped to or worn on the hand meet this requirement.

R651-219-4. Airboat Requirements.

Airboats operated on the Great Salt Lake and adjacent refuges shall also have on board a compass and one of the following: approved flares, a strobe light, or other visual distress signal.

R651-219-5. Equipment Good and Serviceable.

All required safety equipment shall be in good and serviceable condition, and readily accessible, unless required to be immediately available.

R651-219-6. Law Enforcement Vessels.

No vessel operator except authorized law enforcement and emergency vessel operators may display red or blue flashing lights or sound a siren on any waters of this state.

R651-219-7. Equipment Exemptions.

(1) Sailboards, float tubes, standup paddlecraft, and personal watercraft are exempt from the following rules: Section R651-219-2 bail buckets; and Section R651-219-3 spare propulsion.

(2) Vessels owned by the Lagoon Corporation and operated by its employees or customers under the controlled use and confines of the Lagoon Amusement Park waterways are exempt from the following Sections: R651-215-9(3), R651-219-2, and R651-219-3.

(3) Vessels owned by the Salt Lake Airport Hilton Inn and operated by its employees or customers under the controlled use and confines of the Salt Lake Airport Hilton Inn waterways are exempt from the following sections: R651-219-2 and R651-219-3.

(4) Racing vessels participating in a sanctioned race may be exempted from certain equipment requirements by the division upon written request to the division. The equipment exemption shall only be in effect the day before and the day of the race if conditions of the exemption are met.

(5) Non-standard, manually propelled vessels such as air mattresses and inner tubes are required to be compliant with life jacket and equipment requirements when: (a) being used on any river, (b) being used over 50 feet from shore, except in a marked swimming area.

KEY: boating, parks, life jackets

R651. Natural Resources, Parks and Recreation.**R651-220. Registration and Numbering Exemptions.****R651-220-1. Racing Vessel Exemptions.**

Racing vessels owned by nonresidents, if not required to be registered and numbered in their resident state, are exempt from the registration and numbering requirements of this chapter. This exemption is valid only at the race site, on the day before and the day of a division authorized race.

R651-220-2. Sailboard Exemption.

A sailboard is exempt from the registration and numbering requirements of this chapter.

KEY: boating

1987

73-18-9(5)

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.**R651-221. Boat Liveries - Boat Rental Companies.****R651-221-1. Boat Livery Responsibilities.**

(1) Each boat livery shall register with the Division annually and pay the appropriate fee, prior to the commencement of the operation.

(a) The annual boat livery registration requires the following:

- (i) The completion of the prescribed application form;
- (ii) Evidence of a valid business license; and
- (iii) Payment of the prescribed fee.

(b) The annual boat livery registration fee shall be:

- (i) \$50 for boat liveries with up to 25 vessels in its fleet;
- (ii) \$75 for boat liveries with up to 50 vessels in its fleet;
- (iii) \$100 for boat liveries with more than 50 vessels in its

fleet.

(c) A boat livery that is registered with the Division as an outfitting company shall not pay the boat livery registration fee.

(d) The annual boat livery registration will be required beginning January 1, 2008.

(2) The name of the boat livery shall be displayed on the outward superstructure of each vessel in the boat livery's fleet. If another governmental agency prohibits the display of a livery's name on the exterior of a vessel, the name shall be displayed in a visible manner that does not violate the agency's requirements.

(3) A boat livery shall produce a lease or rental agreement for each vessel leased or rented from its fleet.

(a) The lease or rental agreement shall contain the following information and shall be signed by the owner of the livery or his representative and by the person leasing or renting the vessel.

- (i) The name of the person leasing or renting the vessel;
- (ii) The vessel's assigned bow number, hull identification number, or other number if the vessel is not powered by a motor or sail;

(iii) A description of the vessel's make, model, color and length;

(iv) The period of time for which the vessel is leased or rented; and

(v) A check-off list of the required safety equipment provided on the vessel.

(b) For motorboats and sailboats, a copy of the lease or rental agreement shall be carried on board.

(c) For non-motorized vessels rented or leased in a group, one rental agreement is required.

(4) Upon request of an agent of the Division, the owner of a boat livery or his representative shall provide the Division with a copy of a lease or rental agreement.

(5) The certificate of registration for a leased or rented vessel may be retained on shore by the boat livery.

(6) A recreational "equipment timeshare" business which leases or rents vessels for consideration is a boat livery.

(7) A boat livery shall have each vessel in its fleet that is equipped with a 50 hp or greater motor covered with liability insurance as required in UCA 73-18c-101 through 308, and UCA 31A-22-1501 through 1504.

KEY: boating, parks

May 9, 2011

73-18-10(2)

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.**R651-222. Muffling Requirements.****R651-222-1. Mufflers Required.**

Every motorboat operated upon the waters of this State shall at all time be equipped with a muffler or a muffler system in good working order and in constant operation and effectively installed to prevent any excessive or unusual noise.

R651-222-2. Muffler Defined.

"Muffler" means a sound suppression device or system designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and prevents excessive or unusual noise.

R651-222-3. Maximum Sound Level SAE J2005.

No person shall operate or give permission for the operation of any motorboat upon the waters of this state in such a manner as to exceed the following noise levels:

(1) For engines manufactured before January 1, 1993, a noise level of 90dB(A) when subjected to a stationary sound level test as prescribed by test SAE J2005; or

(2) for engines manufactured on or after January 1, 1993, a noise level of 88dB(A) when subjected to a stationary sound level test as prescribed by test SAE J2005.

R651-222-4. Maximum Sound Level SAE J1970.

After January 1, 1992, no person shall operate a motorboat on the waters of this state in such a manner as to exceed a noise level of 75dB(A) measured as specified in test SAE J1970. Provided, that such measurement shall not preclude a stationary sound level test as prescribed by SAE J2005.

R651-222-5. Muffler Bypass or Alteration Prohibited.

(1) No person shall operate or give permission for the operation of any motorboat upon the waters of this state that is equipped with an altered muffler, muffler cutout, muffler bypass, or other device designed or installed so that it can be used to continually or intermittently bypass; or reduce or eliminate the effectiveness of any muffler or muffler system installed on a motorboat.

(2) Rule R651-222-5 (1) shall not apply to a motorboat equipped with a muffler cutout, muffler bypass, or other device designed or installed so that it can be used to continually or intermittently bypass; or reduce or eliminate the effectiveness of any muffler or muffler system installed on a motorboat, (a) if the mechanism has been permanently disconnected or made inoperable, where it cannot be operated in the manner described in Rule R651-222-5 (1), or (b) the muffling systems operated by the bypass meet the requirements in R651-222-3.

R651-222-6. Muffler Removal Prohibited.

No person shall remove, alter, or otherwise modify in any way a muffler or muffler system on a motorboat, in a manner that will prevent the motorboat from complying with rule R651-222-3.

R651-222-7. Mufflers Required on Motorboats Sold.

(1) No person shall manufacture, sell, or offer for sale any motorboat:

(a) that is not equipped with a muffler or muffler system;

or

(b) that does not comply with rule R651-222-3.

(2) This rule shall not apply to motorboats designed, manufactured and sold for the sole purpose of competing in racing events only and for no other purpose. Any motorboat exempted under this rule shall be documented as such in the sales agreement and shall be formally acknowledged by signature of the buyer and seller and copies of the agreement shall be maintained by both parties. A copy of the agreement

shall be kept on board whenever the motorboat is operated. Any motorboat sold under this exemption may only be operated on the waters of this State in accordance with rule R651-222-8.

R651-222-8. Muffler Exemptions.

Except as outlined in rule R651-222-7, the operational provisions of this rule shall not apply to:

(1) motorboats registered in and actually participating in a racing event authorized by the Division or scheduled tuneup periods prior to the racing event; or

(2) to a motorboat being operated by a boat or engine manufacturer for the purpose of testing and/or development and the testing has been authorized by the Division.

R651-222-9. Enforcement.

A peace officer who has reason to believe that a motorboat is being operated in excess of the noise levels established in rule R651-222-3, may direct the operator of the motorboat to submit the motorboat to an on-site test to measure the noise level. If the motorboat exceeds the established decibel level, in addition to issuing a summons, the officer may direct the operator to return to the point of embarkation and prohibit operation of the motorboat until the motorboat meets the established decibel level.

KEY: boating, motorboat noise**October 18, 2005****Notice of Continuation January 7, 2016****73-18-11**

R651. Natural Resources, Parks and Recreation.**R651-224. Towed Devices.****R651-224-1. Observer Required.**

The operator of a vessel which is towing a person on water skis or other devices shall be responsible for maintaining a safe course with proper lookout. Except as provided in 73-18-16, UCA, the progress of the person under tow shall be reported to the vessel operator by the observer.

R651-224-2. Unlawful Methods of Towing.

No person shall operate a motorboat or have the engine of a motorboat run idle while a person is occupying or holding onto the swim platform, swim deck, swim step or swim ladder of the motorboat or while a person is being towed in a non-standing position within 20 feet of the vessel. These restrictions do not apply when a person is occupying the swim platform, swim deck, swim step or swim ladder while assisting with the docking or departure of the motorboat, while exiting or entering the motorboat, or when a motorboat is engaged in law enforcement activity.

R651-224-3. Flag Required.

Except as provided in 73-18-16, UCA the operator of a vessel engaged in a towed watersport shall be responsible for a flag to be displayed by the observer in a visible manner to other boaters in the area only when a person to be towed is in the water, either preparing to be towed or finishing a tow. The flag shall be international orange at least 12 inches square and mounted on a handle.

R651-224-4. PFD to be Worn.

Except as provided in 73-18-16, UCA the operator of a vessel which is towing a person(s) on water skis or other devices shall require each person who is water skiing or using other devices to wear a United States Coast Guard approved personal flotation device (PFD), except an inflatable PFD may not be used.

R651-224-5. Capacity of Towing Vessel.

The operator of a vessel which is towing a person(s) on water skis or other devices shall use a vessel with sufficient carrying capacity, as defined by the manufacturer, for the occupant(s) onboard and the person(s) being towed.

R651-224-6. No Towing in Marinas.

The operator of a vessel shall not tow a person(s) in or on any towed device within a wakeless area surrounding a developed marina or launch ramp.

KEY: boating, water skiing

April 12, 2013

Notice of Continuation January 7, 2016

73-18-15

R651. Natural Resources, Parks and Recreation.**R651-226. Regattas and Races.****R651-226-1. Authorization To Hold A Marine Event.**

Authorization to hold a marine event shall be obtained from the division as well as from any other person or agency who owns or administers the land adjacent to the marine event.

R651-226-2. Safety Vessels Permitted.

Designated safety vessels associated with permanent, long-term or short-term human powered marine events are permitted on any waterway zoned by the State Parks Board as wakeless or motor restricted and within any area marked by waterway markers as a controlled area under the following conditions:

- (1) The person responsible for the event has permission from the managing agency to hold the event.
- (2) The safety vessels used shall be:
 - (a) designed and operated to create a minimal wake.
 - (b) operated by representatives of the person responsible for the event.
 - (c) operated only for the coaching, support and safety of the event.

KEY: boating

July 23, 2012

Notice of Continuation January 7, 2016

73-18-16

R651. Natural Resources, Parks and Recreation.**R651-401. Off-Highway Vehicle and Registration Stickers.****R651-401-1. Stickers.**

Upon receipt of the application in the approved form, the Division of Motor Vehicles shall issue annual registration stickers which shall be displayed on the off-highway vehicle as follows: on snowmobiles, a sticker shall be mounted the left side of the hood, tunnel or pan; on motorcycles, a sticker shall be mounted on the left fork, or on the left side body plastic; and on all-terrain type I and type II vehicles, stickers shall be mounted on the rear of the vehicle. Vehicle types are defined in 41-22-2. In all instances, sticker shall be mounted in a visible location.

KEY: off-highway vehicles**July 23, 2012****41-22-3(4)****Notice of Continuation January 7, 2016**

R651. Natural Resources, Parks and Recreation.

R651-405. Off-Highway Implement of Husbandry Sticker Fee.

R651-405-1. Off-Highway Implement of Sticker Fee.

The sticker fee shall be \$10.

R651-405-2. Off-Highway Implement of Husbandry Sticker Display.

For all off-highway vehicle types, the implementation of husbandry stickers shall be permanently and visibly affixed on the left side of the machine. In all instances, the sticker shall be mounted in a visible location.

KEY: off-highway vehicles

November 1, 2003

41-22-5.5(1)

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.

R651-406. Off-Highway Vehicle Registration Fees.

R651-406-1. Annual Registration Fee.

The annual All-terrain Vehicle and off-highway motorcycle registration fee is \$18. The annual snowmobile registration fee is \$22.

R651-406-2. Fee For Duplicate Registration.

The fee for a duplicate certificate of registration is \$3.

R651-406-3. Fee For Duplicate Numbered Stickers.

The fee for duplicate numbered stickers is \$5.

KEY: off-highway vehicles

July 23, 2012

41-22-8

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.**R651-611. Fee Schedule.****R651-611-1. Use Fees.**

All fees for the Division of Parks and Recreation may not exceed, but may be less than, the amounts stated in the division's fee schedule.

KEY: parks, fees**July 8, 2013****Notice of Continuation January 7, 2016****79-4-203(8)**

TABLE

1. Application Fees	
Easement, Grazing permit, Construction/Maintenance, Special Use Permit, Waiting List	\$250.00
2. Assessment and Assignment Fees	
Contract Assignment	\$20.00
Fee collection, return checks, and duplicate document	\$30.00
Staff or researcher time per hour	\$50.00
Equipment and building rental per hour	\$100.00
Photo copy each	\$1.00
3. Boating Fees	
Boat Mooring	
Day Use	\$6.00
Boat Camping (2:00pm)	\$20.00
In/Off Season with or without Utilities (per foot)	\$7.00
Watercraft Launch Fee	\$25.00
Boat Storage	\$200.00
4. Dry Storage	
Boating Season, Overnight until 2:00pm, Off-Season, Unsecured	\$75.00
5. Camping Fees	
Camping Extra Vehicle Fees	\$15.00
Camping Fees	\$28.00
Group Camping Fees	\$400.00
Reservation Fee	\$10.65
6. Entrance Fees	
Bicycles and Pedestrians	\$20.00
Bicycles and Pedestrians Annual Pass	\$24.00
Motor Vehicles	
Day Use Annual Pass	\$75.00
Commercial Dealer Demo Pass	\$200.00
Commercial Groups - per person	\$3.00
Commuter Annual Pass	\$10.00
Parking Fee	\$5.00
Causeway	\$2.00
Entrance Fees	\$15.00
Group Site Day-Use Fees	\$250.00
7. Golf Course Fees	
School Teams, Tournament Fee (per player)	\$6.00
Gift Certificate Fee (per player)	\$6.00
8. Golf Course GREENS FEES	
Promotional Pass -	
Single person - Personal golf cart	\$400.00
20 Round Card Pass	\$260.00
Promotional Promotional Pass	\$1,100.00
9 holes	\$18.00
9. Golf Course Fees RENTALS	
Club Rental, per 9 holes	\$17.00
Motorized cart, per 9 holes	\$16.00
Pull carts, pre 9 holes	\$3.50
Companion Fee	\$7.00
Driving Range	\$9.00
10. Lodging Fees	
Cabins and Yurts	\$80.00
11. Repository Fees	
Curation Fee (per storage unit)	\$700.00
Annual Repository Agreement Fee (per storage unit)	\$80.00
Annual Agreement Fee	\$50.00
12. Boating Section Fees	
Statewide Boat Registration Fee	\$25.00
Carrying Passengers for Hire Fee	\$200.00
Boat Livery Registration Fee	\$100.00
13. Boating Education Fee	
Division's Personal Watercraft Course	\$12.00
State Issued and Replacement Boating Education certificate	\$5.00
14. OHV Program Fee	
Statewide OHV Registration Fee	\$22.00
State issued permit to non-resident OHVs, in which there is no reciprocity	\$30.00
15. OHV Education Fee	
Division's Off-highway Vehicle Program Safety Certificate	\$30.00
State Issued and Replacement OHV Safety Certificate	\$2.00

R651. Natural Resources, Parks and Recreation.

R651-801. Swimming Prohibited.

R651-801-1. Swimming Prohibited.

No person shall engage in swimming activity in any of the following:

- (1) a designated "No Swimming" area;
- (2) a vessel launching, docking, mooring, or harbor area;

or

- (3) near or in spillways or outlets.

KEY: water safety rules

1987

73-18b-1

Notice of Continuation January 7, 2016

R651. Natural Resources, Parks and Recreation.

R651-802. Scuba Diving.

R651-802-1. Rules And Restrictions.

(1) A scuba diver shall display a diver's flag prior to diving activity and shall dive and surface in close proximity to the flag.

(2) No person shall place a diver's flag on the waters of this state unless diving activity is in progress in that area.

(3) If a diver's flag is placed after sunset or before sunrise, it shall be lighted.

(4) No person shall place a diver's flag in any area where boating activity might be unduly restricted.

(5) No scuba diver shall dive in a congested boating or fishing area such as narrow channels, launching or docking areas, or near reservoir outlets.

(6) No person shall scuba dive in any waters of this state unless he holds a valid certificate from an accredited scuba diving school or is in the company of a certified scuba diving instructor.

KEY: water safety rules

1987

73-18b-1

Notice of Continuation January 7, 2016

R652. Natural Resources; Forestry, Fire and State Lands.**R652-2. Sovereign Land Management Objectives.****R652-2-100. Authority.**

This rule implements Sections 65A-1-2 and 65A-10-1 which authorize the Division of Forestry, Fire and State Lands to prescribe the general land management objectives for sovereign lands.

R652-2-200. Sovereign Land Management Objectives.

The state of Utah recognizes and declares that the beds of navigable waters within the state are owned by the state and are among the basic resources of the state, and that there exists, and has existed since statehood, a public trust over and upon the beds of these waters. It is also recognized that the public health, interest, safety, and welfare require that all uses on, beneath or above the beds of navigable lakes and streams of the state be regulated, so that the protection of navigation, fish and wildlife habitat, aquatic beauty, public recreation, and water quality will be given due consideration and balanced against the navigational or economic necessity or justification for, or benefit to be derived from, any proposed use.

KEY: rules and procedures

1991

Notice of Continuation January 14, 2016

65A-1-2

65A-10-1

R652. Natural Resources; Forestry, Fire and State Lands.**R652-8. Adjudicative Proceedings.****R652-8-100. Authority.**

This rule implements Sections 63G-4-102(5), 63G-4-202, 63G-4-203 which authorizes the Division of Forestry, Fire and State Lands to designate adjudicative proceedings as informal and provides procedures for informal adjudicative proceedings. Leases, sales and exchanges are treated as contracts for purchase or sale of interests in real property. Therefore, management and administrative actions concerning specific leases, sales or exchanges are not governed by the procedural requirements of this rule pursuant to 63G-4-102(2)(g).

R652-8-200. Initial Designation of All Adjudicative Proceedings as Informal.

1. All requests for agency adjudications are initially designated as informal adjudications. Requests for action include applications for leases, permits, easements, sale of sovereign lands, exchange of sovereign lands, sale of forest products and any other disposition of resources under the authority of the agency or other matter where the law applicable to the agency permits parties to initiate adjudicative proceedings.

2. All adjudications commenced by the agency shall be initially designated as informal adjudications. Agency adjudications include actions relating to leases, permits, easements, sales contracts and other agreements and contracts under the authority of the agency.

R652-8-300. Procedures for Informal Adjudicative Proceedings.

1. Procedures for all categories of informal adjudicative proceedings shall comply with applicable provisions of Section 63G-4-203.

2. Procedures governing requests for agency action shall be as follows:

(a) requests for agency action shall include the information prescribed in Section 63G-4-201(3);

(b) the division shall review requests for agency action for completeness and sufficiency of information. Parties submitting requests with insufficient information shall be allowed 30 days to cure the deficiencies, but may make a written request for additional time based on good cause shown;

(c) inadequate requests not remedied within the prescribed time shall be considered on the merits of the information provided;

(d) the division may prescribe one or more printed forms as provided by Section 63G-4-201(3) which may include standard leases, permits, easements, patents, certificates of sale, and the applications for such, or any other agreement, contract, conveyance or instrument.

3. Notice of agency action shall be provided to parties as provided in Section 63G-4-201(2).

R652-8-400. Hearings.

1. Hearings shall be conducted as prescribed in Section 63G-4-203.

2. Hearings shall be scheduled by the presiding officer. All matters relating to the conduct and regulation of the hearing, including testimony, examination, issues, evidence, argument, parties, jurisdiction and standing of parties shall be in the discretion of the presiding officer or a designee.

3. A hearing on a notice of agency action may be requested when applicable under R652-8-400(2) by any party to the action. A request for hearing must be received by the division within 30 days after the mailing of the notice of agency action. A request for hearing shall include any response to the information contained in the notice of agency action.

R652-8-500. Presiding Officer or Designee.

The division director is the presiding officer at all adjudicative proceedings unless at the discretion of the director a designee is appointed as the presiding officer.

KEY: administrative procedures, adjudicative proceedings
1989 **63G-4-102(5)**

Notice of Continuation January 14, 2016 **63G-4-202**

R652. Natural Resources; Forestry, Fire and State Lands.**R652-9. Consistency Review.****R652-9-100. Authority.**

This rule establishes the procedure through which any party aggrieved by a division action directly determining the rights, obligations, or legal interests of specific persons may petition the executive director of the Department of Natural Resources to review the action for consistency with statutes, rules, and division policy pursuant to Subsection 65A-1-4(6).

the modification in a manner consistent with statutes, rules, or policy.

**KEY: right of petition, administrative procedure
February 15, 1996
Notice of Continuation January 14, 2016** 65A-1-4(6)

R652-9-200. Consistency Review.

1. For all division actions directly determining the rights, obligations, or legal interests of specific persons outside of the division, any party aggrieved by such a division action may petition the director to review the division action for consistency with statutes, rules, and policy.

2. All division actions directly determining the rights, obligations, or legal interests of a party shall be accompanied by a written record of decision which states the division actions and the findings of fact, legal authority, and conclusions of law for the decision.

3. The record of decision shall state the rights of any aggrieved party to consistency review pursuant to this rule.

R652-9-300. The Petition.

The petition shall state:

1. the statute, rule, or policy with which the division action is alleged to be inconsistent;

2. the nature of the inconsistency of the division action with the statute, rule, or policy;

3. the action the petitioner feels would be consistent under the circumstances with statute, rule, or policy; and

4. the injury realized by the party that is specific to the party arising from division action. If the injury identified by the petition is not peculiar to the petitioner as a result of the division action, the director will decline to undertake consistency review.

R652-9-400. Filing Procedure.

1. The petition shall be submitted to the director of the Division of Forestry, Fire and State Lands. The petition must be received at the director's office within 20 calendar days of the date the record of decision was mailed as evidenced by the certified mail posting receipt (Postal Service Form 3800).

2. The director shall review the petition form as soon as reasonably possible to assure completeness and, upon determination that the petition is complete, shall promptly forward the petition to the executive director.

3. Incomplete petitions shall be returned with written notice of the deficiencies in the petition. If an incomplete petition is not completed and resubmitted within ten working days of the mailing of notice of incompleteness to the petitioner, the petition will be denied.

4. Upon receipt of a petition, the director shall suspend division actions with respect to the matter for which consistency review is being sought by the petitioner.

R652-9-500. Petition Review.

The executive director may:

1. decline to review the petition;

2. schedule a hearing for consideration of the petition within 20 days unless the petitioner and the executive director agree to a different schedule;

3. conduct a review of the petition.

4. If the executive director reviews the petition and finds that the action of the division was not reasonably consistent with applicable statutes and rules, then the executive director may cause an Order to be drafted stating whether the division action shall be rescinded or modified; and, if the division action is to be modified, the executive director shall state the character of

R652. Natural Resources; Forestry, Fire and State Lands.**R652-41. Rights of Entry.****R652-41-100. Authority.**

This rule implements Section 65A-7-1 which authorizes the Division of Forestry, Fire and State Lands to establish criteria by rule for the sale, exchange, lease or other disposition or conveyance of sovereign lands including procedures for determining fair-market value of those lands.

R652-41-200. Rights of Entry on Sovereign Lands.

1. The division may issue non-exclusive right of entry permits on sovereign lands when the division deems it consistent with division rules.

2. Commercial use of sovereign lands: a right of entry permit shall be required for any person to use, occupy, or travel upon sovereign land in conjunction with any commercial enterprise without regard to the incidental nature of the use, occupancy, or travel, except that a right of entry permit shall not be necessary when the use, occupancy, or travel is across authorized public roads or permitted under some other land use authorization issued by the division and currently in effect.

3. Non-commercial use of sovereign land shall not require a permit provided that the use shall not exceed 15 consecutive days and shall not conflict with an applicable land use or with a management plan. At the conclusion of the 15-day period, any personal property, garbage, litter, and associated debris must be removed by the user. The use may not be relocated on any other sovereign land within a distance of at least two miles from the original site or be allowed to reestablish at the original site for 20 consecutive days. If, for any reason, a non-commercial, incidental user desires a document authorizing the use, the division may issue a Letter of Authorization upon payment of an administrative charge.

4. Non-commercial uses of sovereign land exceeding 15 consecutive days will require a right of entry permit.

R652-41-300. Rights of Entry Acquired by Application.

Rights of entry on sovereign lands may be acquired only by application and grant made in compliance with the rules and laws applicable thereto. All applications shall be made on division forms. The filing of an application form is deemed to constitute the applicant's offer to purchase a right-of-entry under the conditions contained in these rules.

R652-41-400. Valuable Consideration for Right of Entry Permits.

The consideration for any right of entry permit granted under these rules, including those granted to municipal or county governments or agencies of the state or federal government, shall be determined pursuant to R652-41-600.

R652-41-500. Division Contractors.

Any person doing work for the division under a contract or other permit may enter upon sovereign lands for the purpose and period of time authorized by the contract or other permit without obtaining a right of entry.

R652-41-600. Right of Entry Fees.

The division shall establish minimum fees for right of entry permits which may be based on the cost incurred by the division in administering the right of entry permit and the fair-market value of a proposed land use.

R652-41-700. Application Procedures.

1. Time of Filing. Applications for right of entry permits are received for filing in the office of the division during office hours. Except as provided, all applications received, whether by U.S. Mail or delivery over the counter, are immediately stamped with the exact date of filing.

2. Non-refundable Application Fees. All applications must be accompanied with a non-refundable application fee as specified in R652-4. After review of the application, the division shall notify the applicant of the fee pursuant to R652-41-600. Failure to pay the fee within 15 days of mailing of notification shall cause the denial of the application.

3. Refunds and Withdrawals of Applications

(a) If an application for a right of entry permit is rejected, all monies tendered by the applicant, except the application fee, will be refunded.

(b) Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received prior to the time that the application is approved, all monies tendered by the applicant, except the application fee, will be refunded. If the request for withdrawal is received after the application is approved, all monies tendered are forfeited to the division, unless otherwise ordered by the director for a good cause shown.

4. Application Review.

(a) Upon receipt of an application, the division shall review the application for completeness. The division shall allow all applicants submitting incomplete applications at least 15 days from the date of mailing of notice as evidenced by the certified mailing posting receipt (Postal Service form 3800), within which to cure any deficiencies. Incomplete applications not remedied within the designated time period may be denied.

(b) Application approval by the director constitutes acceptance of the applicant's offer.

R652-41-800. Term of Rights of Entry.

Rights of entry granted under these rules shall normally be for no greater than a one year term. Longer terms may be granted upon application based on a written finding that such a grant is in the best interest of the beneficiaries.

R652-41-900. Conveyance Documents.

Each right of entry shall contain provisions necessary to ensure responsible surface management, including the following provisions: the rights and responsibilities of the permittee, rights reserved to the permitter; the term of the right of entry; payment obligations; and protection of the state from liability for all action of the permittee.

R652-41-1000. Bonding Provisions.

1. Prior to the issuance of a right of entry, or for good cause shown at any time during the term of the right of entry, upon 15 days' written notice, the applicant or permittee may be required to post with the division a bond in the form and amount as may be determined by the division to assure compliance with all terms and conditions of the right of entry.

2. Bonds posted on rights of entry may be used for payment of all monies, rentals, royalties due to the permitter, reclamation costs, and for compliance with all other terms, conditions, and rules pertaining to the right of entry.

3. Bonds may be increased or decreased in reasonable amounts, at any time as the division may decide, provided the division first gives permittee 15 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the division:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the state will not be responsible for any investment returns on cash deposits.

(c) Certificates of deposit in the name of "Utah Division of Forestry, Fire and State Lands and Permittee, c/o Permittee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be

automatically renewable, and be deposited with the division, the permittee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the permittee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the division.

(e) Due to the temporary nature of rights of entry, if the division imposes or increases the amount of a bond, a stop-work order may be issued by the division to insure the adequacy of the bond prior to the completion of work or activities authorized by the right of entry permit.

R652-41-1100. Conflicts of Use.

The division reserves the right to issue additional rights of entry or convey other interests in property on sovereign land encumbered by existing rights of entry without compensation to the permittee.

R652-41-1200. Amendments.

Any holder of an existing right of entry permit desiring to change any of the terms thereof, shall make application following the same procedure as is used to make an application for a new right of entry. An amendment fee pursuant to R652-4 must accompany the amendment request along with other appropriate fees.

R652-41-1300. Unauthorized Uses.

A right of entry permit does not authorize a permittee to cut any trees or remove or extract any natural, cultural, or historical resources unless authorized by the permit's specific terms.

R652-41-1400. Right of Entry Assignments.

1. A right of entry may be assigned to any person, firm, association, or corporation qualified under R652-3-200, provided that the assignments are approved by the division; and no assignment is effective until approval is given. Any assignment made without such approval is void.

2. An assignment shall take effect the day of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, and land involved, and the name and address of the assignee.

4. An assignment shall be executed according to division procedures.

R652-41-1500. Termination of Rights of Entry.

Any right of entry permit granted by the division on sovereign land may be terminated in whole or in part for failure to comply with any term or condition of the conveyance document or applicable laws or rules. Based on a written finding, the director shall issue an appropriate instrument when terminating the right of entry for cause.

KEY: natural resources, management, administrative procedures

June 4, 2004

65A-7-1

Notice of Continuation January 14, 2016

R652. Natural Resources; Forestry, Fire and State Lands.**R652-80. Land Exchanges.****R652-80-100. Authority.**

This rule implements Section 65A-7-1 which authorizes the Division of Forestry, Fire and State Lands to specify application procedures and review criteria for the exchange of sovereign lands.

R652-80-200. Exchange Criteria.

1. The division may exchange sovereign land for land or other assets. The criteria by which an exchange proposal will be considered follows.

(a) Asset is herein defined as personal property, including cash, which has a readily determined market value.

(b) The percentage of cash which may be included in an exchange transaction shall not exceed 25% of the value.

2. Sovereign land exchanges must be in the best interest of the public trust as documented in a record of decision by the division. The record of decision shall address:

(a) the value of the affected lands or other assets as determined by a certified general appraiser, county tax assessment records, market analysis conducted by the division, or other method approved by the director;

(b) an assessment of the degree to which the exchange of sovereign land for land or other assets to be acquired may enhance commerce, navigation, wildlife habitat, public recreation, or other public trust value;

(c) management costs and opportunities;

(d) the criterion that the exchange promotes the interest of the public without any substantial impairment of the public interest in the lands and waters remaining.

3. The record of decision shall verify that the exchange will not result in an unmanageable and uneconomical parcel of sovereign land, nor eliminate access to a remnant holding, without appropriate remuneration or compensation.

R652-80-300. Application Requirements.

This section does not apply to exchange proposals initiated by the division.

1. Preapplication review: In order to avoid unnecessary expenses, persons requesting an exchange shall be afforded the opportunity to discuss the concept of the exchange with the division prior to submitting a formal application.

2. A completed application form must be received with an application processing charge, which shall be refunded if the subject parcel is withdrawn for planning purposes. A deposit to cover applicable advertising and appraisal costs may also be required.

3. Upon receipt of an application, the division shall review the application for completeness. Applicants submitting incomplete applications shall be allowed 60 days to provide the required data. Incomplete applications not remedied within the 60 day period may be denied with the application fee forfeited to the state.

R652-80-400. Competitive Offering.

1. Upon receipt of an exchange application, the division may solicit competing exchange proposals, lease applications and sale applications. Competing applications will be solicited through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the sovereign land is located. At least 30 days prior to consummation of an exchange, sale or lease, certified notification will be sent to permittees of record, adjoining permittees/lessees and adjoining landowners. Notices will be posted in the local governmental administrative building or courthouse, and published in a newspaper of general circulation in the county in which the land is located. Lease applications shall be processed in accordance with R652-30-500(2).

2. In addition to the advertising requirements of R652-80-400(1), the division may advertise for competing applications for exchange, lease, or sale to the extent which the director has determined may reasonably increase the potential for additional competing applications.

3. The division shall allow all applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt (Postal Service form 3800), within which to submit a sealed bid containing their proposal for the subject parcel.

4. Competing proposals shall be evaluated using the criteria found in R652-30-500(2)(g) and R652-80-200.

5. The successful applicant shall be charged an amount equal to all appraisal and advertisement costs. All monies, except application fees, tendered by unsuccessful applicants will be refunded.

6. Applicants desiring reconsideration of division action relative to exchange determinations may petition for review pursuant to division rule.

R652-80-500. Existing Improvements.

1. Any exchange of sovereign land upon which authorized improvements have been made shall be subject to the reimbursement of the depreciated value of the improvements to the owner of the improvements by the person receiving the land in the exchange. Unauthorized improvements shall not be subject to reimbursement.

2. The division may require an exchange applicant to remove, repair, or clean up improvements located on land to be acquired by the division, at the applicant's expense, prior to consummation of the exchange.

R652-80-600. Mineral Estates and Leases.

1. State mineral interests may be exchanged in accordance with Section 65A-6-1(2).

2. Mineral estate exchanges must clearly be in the best interest of the beneficiaries as documented by a record of decision. The record of decision shall address those criteria listed in R652-80-200.

3. In exchanges with persons other than the federal government, all mineral estates are reserved to the state unless exceptional circumstances justify the exchange of the mineral estate.

4. Upon the exchange of state mineral estate, state mineral leases shall continue to be administered by the division until the termination, relinquishment or expiration of the lease. Upon termination of the mineral lease the administration of the mineral estate transfers to the acquiring party.

R652-80-700. Existing Rights on Acquired Lands.

Valid existing rights on lands acquired from the federal government will be managed in accordance with Section 65A-9-2(5) and 65A-7-7(2).

R652-80-800. Existing Leases and Permits.

Prior to completion of exchanges, state lessees and permittees shall be notified and leases and permits cancelled or amended in accordance with the terms of the lease or permit.

KEY: land exchange, administrative procedure**March 17, 1995****65A-7-1****Notice of Continuation January 14, 2016**

R652. Natural Resources; Forestry, Fire and State Lands.
R652-123. Exemptions to Wildland Fire Suppression Fund.
R652-123-100. Authority.

This rule implements Subsection 65A-8-207(1) which authorizes the Division of Forestry, Fire and State Lands to make rules to administer the Wildland Fire Suppression Fund, including rules to determine whether an acres or real property is eligible for the exemption provided in Subsection 65A-8-205(2)(b).

R652-123-200. Definitions.

1. "Accessible" - an area is considered accessible if the roads are paved, and are 20 feet wide, and has a overhead clearance of 13 1/2 feet and has a maximum slope of 10%. A Type I fire engine, as defined in this rule, must be able to access and negotiate the roads and work safely throughout the entire area.

2. "Hydrant system" - A water distribution system consisting of pipes, hydrants, and pumps used for fire suppression, with the following specifications:

- a. A six inch supply feed
- b. A capacity of delivering 1000 gallons per minutes at 20 pounds per square inch for two hours at each hydrant. Flow will be verified with flow test documentation.
- c. Maximum hydrant spacing is no greater than 500 lineal feet.

3. "Fire Barrier" - continuous, delineated, unbroken separation of land between the wildland and the nominated area, clear of wildland vegetation where wildland fire will not carry, and that is a permanent, definable, and substantial separation. Such barriers can include but is not limited to irrigated golf courses, lakes, highways, rivers and others deemed adequate by the Division.

4. "Predominant Vegetation" - type of vegetation that provides the majority of plant cover in an area such as woody shrubs, grass, trees.

5. "Type I fire engine" - A vehicle used for fire suppression that meets National Fire Protection Association (NFPA) 1901 Standard for Automotive Fire Apparatus.

6. "Urban Vegetation" - vegetation that is managed, maintained, and irrigated in a manner that will not allow for the propagation and spread of a fire over the landscape during anytime of the year.

7. "Wildland" - an area in which development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.

8. "Wildland Vegetation" - naturally occurring vegetation that is not managed, maintained and irrigated or vegetation that when cured (low live foliar moisture content), may be capable of carrying fire over the landscape.

9. "Wildland Urban Interface" - A geographical area where structures and other human development meets or intermingles with undeveloped wildland.

R652-123-300. Nomination of Exempt Areas.

For the covered year of 2007, a county may request that an area be exempt from its assessed payment into the Wildland Fire Suppression Fund by petitioning the Division on a Division approved form (Petition for Area Exemption) by September 1, 2006. For all subsequent years, the county's petition must be filed by July 1 of the year prior to the March 15 payment date. The petition shall include:

- a. A description of the area including:
 - i. an ortho-photo quad of the area to be considered
 - ii. A topographic map of the area to be considered
- b. An explanation with supporting documentation indicating the area meets the criteria to be exempt, with fuels, response time, access, and water availability addressed.

- c. Detailed documentation of the taxable value of real property in the area to be exempt.
- d. A signature of a county commissioner.

R652-123-400. Qualifying and Evaluating Exempt Areas.

1. The Division shall check for completeness of the Petition for Area Exemptions and acknowledge the receipt of the petition by date stamp.

2. The Division shall inspect the area in the petition and evaluate the nomination using the following criteria:

- a. The area must be in the unincorporated area of the county, and
- b. The predominant vegetation in the area is considered urban vegetation or if the predominant vegetation is wildland vegetation, there exists a fire barrier as defined in this rule between the nominated area and the wildlands, and
- c. The response time of the local fire department having jurisdiction is fifteen minutes or less, and
- d. The area is accessible as defined in this rule throughout the entire area such that a Type I fire engine can maneuver and work safely anywhere in the nominated area, and
- e. The area is serviced by a hydrant system as defined in this rule.

R652-123-500. Notification of Exempt Areas.

1. The Division will make a final determination of exempt areas.

2. For all requests made by September 1, 2006 for the following year, the Division will notify the county commission by November 30, 2006 of those areas that were determined to be exempt, and which areas were determined to be non-exempt. For all subsequent years, the Division will give such notification by September 30.

3. The county may appeal the decision as defined in R652-8 Adjudicative Proceedings.

4. County expenditures for fire suppression that occur within areas that have been designated as exempt, are not considered Normal Fire Suppressions Costs as defined in R652-121-200(2) and will not be calculated as part of the county's approved fire suppression budget.

R652-123-600. Reporting.

Counties shall provide an annual report to the Division by March first listing:

- a. A detailed listing of the taxable value of real property (land and buildings) in the exempt area of the county,
- b. The total acreage of unincorporated land and the total exempt acreage of unincorporated land.
- c. Any annexations of unincorporated lands by a town or city
- d. County expenditures for fire suppression that occur within areas that have been approved by the Division as exempt
- e. Existing exemptions from previous years

KEY: exemptions to wildland fire suppression fund, administrative procedures

August 28, 2006

65A-8-207(1)

Notice of Continuation January 14, 2016

65A-8-205(2)(b)

R655. Natural Resources, Water Rights.**R655-10. Dam Safety Classifications, Approval Procedures and Independent Reviews.****R655-10-1. Authority.**

The following rule is established under the authority of Title 73, Chapter 5a. The procedures constitute minimum requirements for dams. Additional procedures may be required to comply with any other governing statute, federal law, federal regulation, or local ordinance.

R655-10-2. Purpose.

The purpose of this rule is to outline the procedures necessary to obtain approval to design, construct, operate, and remove a dam. This rule in no way waives the right of the State Engineer to evaluate the merits of different procedures or to require additional information before approval of any project.

R655-10-3. Applicability.

These rules apply to any dam constructed in the state with the exception of those specifically exempted by Section 73-5a-102. Some dams may have an abbreviated approval process as outlined in Section 73-5a-202.

R655-10-4. Definitions.

ABUTMENT is the part of the valley side against which the dam is constructed. Right and left abutments are those on respective sides of an observer when viewed looking downstream.

ACRE-FOOT (AC-FT) of water is the volume of water required to cover one acre, one foot deep. This is the term commonly associated with reservoir storage. It is equal to 43,560 cubic feet.

ACTIVE FAULT is a fault that has exhibited one or more of the following characteristics:

- (a) movement at or near the ground surface at least once in the last 35,000 years;
- (b) instrumentally determined seismicity that demonstrates a causal relationship with the fault;
- (c) structural relationship to an active fault such that movement on one fault could be expected to cause movement on the other.

ACTIVE STORAGE CAPACITY is the amount of storage that can be released and utilized.

ANISOTROPY means having physical characteristics which vary in different directions.

APPURTENANT STRUCTURE means the outlet works, spillways, access structures, bridges, and other related structure to a dam.

AXIS OF DAM is the plane or curved surface, arbitrarily chosen by a designer, appearing as a line, in plan or in cross section, to which the horizontal dimensions of the dam can be referred.

BENCHMARK is a permanent physical mark of known horizontal coordinates and elevation.

BREACH is an opening or a breakthrough in a dam.

CALIBRATED WATERSHEDS are watersheds with sufficient precipitation and streamflow measuring devices and records to allow for computations of the relationships between precipitation and streamflow.

CAMBER is additional material placed on the dam crest to protect design freeboard from anticipated settlement.

CAPACITY is the maximum volume that can be stored in a reservoir below the primary spillway level.

CAVITATION is wear on a hydraulic structure where a high hydraulic gradient is present.

CHANGE ORDER is a document used to modify approved plans or make adjustments in pay quantities.

COLLECTION PIPE is a conduit used to collect seepage waters from drainage blankets and drains and convey the water

to a point downstream of the dam.

CONDUIT is a closed channel to convey water through, under, or around a dam.

CONDUIT FILTER DRAIN is a pervious filter drain around a conduit for the purpose of seepage control.

CONTROL SECTION is the section where flow passes through critical depth.

CONTOUR LINE is a line of constant elevation on a map or drawing.

CREST LENGTH is the developed length of the top of a dam.

CREST WIDTH is the developed width of the top of a dam.

CUBIC FEET PER SECOND (CFS) is a unit expressing rates of discharge. One cubic foot per second is equal to the discharge through a rectangular cross-section, one foot wide and one foot deep, flowing at an average velocity of one foot per second.

CUTOFF COLLAR is a projecting collar, usually of concrete, built around the outside of a pipe, tunnel, or conduit, to lengthen the seepage path along the outer surface of the conduit.

DAM is any artificial barrier or obstruction, together with appurtenant works, if any, which impounds or diverts water.

DEAD STORAGE is the storage that lies below the invert of the lowest outlet and that cannot be withdrawn from the reservoir without pumping.

DEFORMATION ANALYSIS is a study of how a dam will permanently deform as a result of strains caused by seismic loads.

DENTAL CONCRETE is concrete used to level discontinuities in dam foundations and abutments.

DESICCATION is the process of cracking of soils due to shrinkage during drying.

DIFFERENTIAL SETTLEMENT is unequal settlement of a structure or soil mass, often leading to excessive stresses or unacceptable strains.

DISPERSIVE CLAYS are clays whose particles detach in the presence of water and may be transported by the water, leading to a piping failure.

DRAINAGE AREA or watershed is the area that drains naturally to a particular point on a river, stream or creek.

DRAINAGE BLANKET is a drainage layer placed directly over the foundation material.

DRAINAGE WELLS or pressure relief wells are wells or boreholes usually downstream of impervious cores, grout curtains, or cutoffs, designed to collect and control seepage through or under a dam, so as to reduce uplift pressures under or within a dam. A line of wells forms a drainage curtain.

DRAWDOWN is the lowering of a reservoir's water surface level due to releases.

DRAWINGS are graphical details of proposed construction.

DROP STRUCTURES are permanent structures used to facilitate the vertical downward movement of water without causing erosion.

DYNAMIC ANALYSIS is an analysis which predicts the stability and/or deformation of a dam due to seismic loads.

EARLY WARNING SYSTEM is an automatic device used to alert downstream interests of existing or impending high flows caused by storms or dam failures.

EMERGENCY ACTION PLAN is a predetermined plan of action to be taken to reduce the potential for loss of life and property damage in an area affected by a dam break.

EMERGENCY SPILLWAY, or secondary spillway, is the spillway designed to convey excess water generated by unusual hydrological events through, over or around a dam.

ENLARGEMENT is any change or addition to an existing dam or its appurtenant works which increases, or may increase,

the maximum quantity of water which can be stored therein.

EPICENTER is the point on the earth's surface directly above the site of initial movement on the fault.

EXIT CHANNEL is an open channel, located downstream from any conduit or spillway, which conducts the flow to a point where it may be released without jeopardizing the dam.

FACE, in reference to a structure, is the external surface that limits the structure.

FILTER or filter zone is a band or zone that is incorporated in a dam and is graded, either naturally or by selection, so as to allow seepage to flow across or down the filter without allowing the migration of material from zones adjacent to the filter.

FLASHBOARDS are lengths of timber, concrete, or steel placed on the crest of a spillway to raise the water level but that may be quickly removed in the event of a flood, either by a tripping device or by a deliberately designed failure of the flashboards or their supports.

FLOOD ROUTING is a computation of the changes in the rise and fall in stream flow or reservoir levels as a flood moves downstream. The results provide hydrographs of flow or elevation versus time at given points on the stream or in a reservoir.

FLOOD STAGE is the stage or elevation in which overflow of the natural banks of a stream or body of water begins.

FLOWLINE or invert is the lowest point in a water conveyance structure where water can flow.

FOUNDATION OF DAM is the natural material on which the dam structure is placed.

GALLERY is a permanent accessible structure within the interior of a dam used for seepage collection, monitoring, and remedial work.

GEOLOGIST is a person with a degree in geology or a related field from an accredited college or university with at least three years of experience in engineering geology.

GEOMEMBRANE is a term for a geosynthetic which is designed to be an impermeable barrier.

GEOSYNTHETICS is a broad term used to describe manmade fabrics used in geotechnical applications.

GEOTEXTILE is a term for a geosynthetic which is designed to be a filter, a drain, act as reinforcement, or for separation.

GROIN is that area along the contact or intersection of the face of a dam with the abutments.

GROUT CURTAIN is a barrier to reduce seepage under a dam, produced by injecting grout into a vertical zone in the foundation.

HYDRAULIC FRACTURING is the fracturing of soil materials due to excessive fluid pressures.

HYDRAULIC HEIGHT is the vertical dimension of a dam as measured from the natural streambed at the downstream toe to the elevation of the water surface at the crest of the primary spillway.

HYDRAULICS is the science of the static and dynamic behavior of fluids.

HYDROGRAPH is a graphical representation of discharge, stage, volume, or other hydraulic property, with respect to time, for a particular point.

HYDROLOGY is the study of the properties, distribution and movement of water on the earth's surface, in the soil and underlying rocks.

INCREMENTAL DAMAGE ASSESSMENT (IDA) is an analysis showing the influence of a dam failure when superimposed upon an extreme hydrologic event.

INDEPENDENT CONSULTANT is a consultant used, in addition to the owner's engineer, to assess the design, construction, investigation or operation of a dam.

INFILTRATION RATE is the rate at which a given soil can accept surface water.

INFLOW DESIGN FLOOD (IDF) means the flood hydrograph which is used to size a dam's spillway.

INITIAL FILLING PLAN is a written procedure used during the first filling of a reservoir.

INLET CHANNEL is an open channel upstream from a spillway or conduit.

INTERNAL EROSION is piping.

INUNDATION MAPS show areas that would be subject to flooding due to storm conditions or failure of a dam.

LIQUEFACTION is the sudden loss of strength or stiffness of a soil resulting from dynamic loading as from earthquakes.

LOG BOOM is a floating device intended to prevent large floating debris from being carried into a spillway.

LOW-LEVEL OUTLET is a conduit from a reservoir, generally used for lowering the reservoir or for providing downstream releases.

MAGNITUDE of an earthquake is a quantity characteristic of the total energy released by an earthquake.

MAXIMUM CAPACITY is the maximum volume of water that can be stored in a reservoir when filled to the crest of the dam.

MAXIMUM CREDIBLE EARTHQUAKE (MCE) -- All active sources of seismicity with the potential to impact the stability of a dam should be assigned a maximum credible seismic event. The event which has the greatest potential to cause damage at the site will be defined as the Maximum Credible Earthquake.

NAPPE is the free-falling stream from a weir.

NORMAL FREEBOARD is the vertical distance between the primary spillway overflow crest and the top of the dam.

ONE HUNDRED YEAR FLOOD means the flood having a one percent probability of being equalled or exceeded in any given year.

ONE HUNDRED YEAR PRECIPITATION means the precipitation having a one percent probability of being equalled or exceeded in any given year.

OPERATING BASIS EARTHQUAKE (OBE) -- All active sources of seismicity with the potential to impact the stability of a dam should be assigned an operating basis seismic event. This event is considered to have a return interval of at least 200 years. The event which has the greatest potential to cause damage at the site will be defined as the Operating Basis Earthquake.

OWNER includes all who own, control, operate, maintain, manage, or propose to construct a dam; also, their agents, lessees, trustees, and receivers.

OWNER'S ENGINEER is a professional engineer, licensed in Utah, retained to design, construct, monitor, operate, or evaluate a dam.

PEAK FLOW is the maximum instantaneous discharge that occurs during a flood. It is coincident with the peak of a flood hydrograph.

PERVIOUS ZONE is a part of the cross section of an embankment dam comprising material of high permeability.

PHREATIC SURFACE is the free surface of ground water at atmospheric pressure.

PIEZOMETER is an instrument for measuring pore water pressure within soil, rock, or concrete.

PIPING is the progressive development of internal erosion by seepage, appearing downstream as a hole or seam, discharging water that contains soil particles.

PLANS are engineering drawings, specifications, and design reports supporting the design of a dam and detailing the construction of the dam.

POROUS INTERVAL is the portion of a piezometer where infiltrating water is allowed to act on the device.

PRINCIPAL SPILLWAY is the main spillway for normal operating conditions.

PROBABLE MAXIMUM FLOOD (PMF) is the flood that

may be reasonably expected from the most severe combination of critical meteorologic and hydrologic conditions that are possible in the region.

PROBABLE MAXIMUM PRECIPITATION (PMP) is the maximum amount of precipitation that could be expected to fall on a drainage under the most severe meteorologic condition.

PSEUDO STATIC ANALYSIS is an approximate method for predicting the dynamic stability of a structure using static loads.

RESERVOIR AREA is the surface area of a reservoir when filled to a given water elevation.

RESERVOIR RIM is a term used to describe the land forms around the perimeter of a reservoir which could have an adverse impact on the dam or reservoir due to movement.

RESERVOIR STAGE is the measure of the depth or elevation of water in a reservoir relative to an established datum.

RESIDUAL FREEBOARD means the vertical distance between the maximum water surface during a given hydrologic event and the top of the dam.

RESPONSE SPECTRUM is a graphical representation of actual motions, including displacement, velocity, and acceleration, caused by seismic events.

RIPRAP is a layer of large stones, broken rock, or precast blocks placed on the upstream slope of an embankment dam, on a reservoir shore, or on the sides of a channel, as a protection against waves, ice, and scour.

SEDIMENT POOL is the portion of the reservoir allotted to the accumulation of submerged sediment during the design life of the dam.

SEISMIC means pertaining to an earthquake or earth vibration.

SLOPE PROTECTION is the protection of an embankment slope against wave action or erosion.

SPECIFICATIONS are written descriptions of the proposed construction.

SPILLWAY is an open or closed channel, conduit or drop structure used to convey excess water through a reservoir. It may contain gates, either manually or automatically controlled, to regulate the discharge of the water.

SPILLWAY EVALUATION FLOOD (SEF) is the flood that may be expected at the dam from applying the SEP to a given watershed.

SPILLWAY EVALUATION PRECIPITATION (SEP) is the lowest, site specific, precipitation estimate allowed by the State Engineer, used in the analysis of new, existing, high or moderate hazard dams.

STAFF GAGE is a permanent instrument or device used to read reservoir stage.

STANDARD OPERATING PLAN is a written procedure outlining the operation and maintenance of a dam and its appurtenant structures and equipment.

STATE ENGINEER is the Director of the Utah Division of Water Rights.

STILLING BASIN is a basin constructed to dissipate excess energy of waters emerging from a spillway or outlet.

STOPLOGS are beams placed on top of each other with their ends held in guides on each side of a channel or conduit.

STORAGE CAPACITY is the volume of water which can be stored at the elevation of the primary spillway, including both active and dead storage.

STRUCTURAL HEIGHT means the vertical dimension of a dam as measured from the natural streambed at the downstream toe of a dam to the top of a dam.

SURVEY MARKER is a permanent physical mark on a dam or appurtenant structure used to measure changes in horizontal and vertical movement.

TECTONICS is a study of the broader features of the earth's crust and the causes of its deformation.

TEST BORINGS are holes drilled to determine the type

and physical properties of subsurface materials.

TEST PIT is an excavation used to evaluate and observe subsurface materials.

TOE OF DAM is the junction of a dam face with the foundation. For an embankment dam, the junction of the upstream face with ground surface is called the upstream toe, and the junction of the downstream face with the ground surface is referred to as the downstream toe.

TRANSITION ZONE is a zone of material used to provide filter requirements between two zones of material which do not meet filter requirements.

TRASH RACK is a screen located at an intake to prevent the entry of floating or submerged debris.

UNGATED OUTLET is an outlet that allows uncontrolled flow through or around a dam.

UNIT HYDROGRAPH is a hydrograph which shows the rates at which runoff occurs for one inch of storm runoff from a drainage area.

UPLIFT is the upward water pressure in the pores of a material or on the base of a structure.

WATER STOPS are strips of material used to prevent leakage through joints between adjacent sections of concrete.

WEIR is a device used to measure or control water.

R655-10-5. Hazard Classification.

Hazard classification of a dam places the dam into a category based upon the consequences of failure of the dam. The State Engineer is the ultimate authority on the hazard classification designation for a given dam.

R655-10-5A. Hazard Classification--Criteria.

The hazard classification analysis should include a determination of the threat to human life and property damage in the event of the failure of a dam. In some cases the classification can be assigned by observance of the downstream development in relationship to the location of the dam. In other cases it will be necessary to prepare inundation maps to determine the downstream consequences of failure. In preparing the inundation maps, the following criteria relative to the dam should be used.

1. No concurrent flooding conditions exist.
2. The reservoir level is at the emergency spillway crest.
3. The low level outlet is discharging at capacity.
4. The breach times and geometric parameters used to simulate the dam failure should be acceptable to the State Engineer and consistent with accepted practices.
5. The inundation study should be carried downstream to a point that the breach flows are contained within the banks of the natural channel or a downstream reservoir.

R655-10-5B. Hazard Classification--Exceptions.

It should be noted that the hazard classification as outlined in R655-10-5A may not be an absolute indicator of the hazard of the dam, since a dam failure superimposed on natural flooding conditions may cause incremental risk to life and property. Although this scenario is not normally used in the hazard classification process, it is a factor the owner should consider in determining their overall liability. Under special circumstances, as determined by the State Engineer, a hazard classification may be determined giving consideration to concurrent flooding events.

R655-10-6. Approval Processes.

There are two procedures for obtaining approval from the State Engineer to construct or modify a dam. The first procedure requires the filing of an application, while the second procedure requires the submission of plans. No approval will be given for any dam unless the water rights are in order.

R655-10-6A. Application Procedure.

For dams not requiring submission of plans as outlined in Section 73-5a-202, an application must be submitted and approved by the State Engineer. Blank applications are available upon request. Upon reviewing the application the State Engineer may approve it, reject it, return it for correction, or approve it with conditions.

R655-10-6B. Submission of Plans.

A. All projects requiring submission of plans should include a package including the drawings, specifications, design reports, and any other information which will assist in reviewing the project. The amount of information generated becomes more involved as the size and hazard rating of the structure increases. The following guidelines are included to alert the designer to the basic information required.

B. All drawings submitted should comply with the following:

1. The size of all drawings submitted for review, shall not be larger than 24 inches by 36 inches or smaller than 11 inches by 17 inches. All details on the drawings shall be clear and legible. Drawing sets with 10 sheets or less may be submitted electronically. Following approval of the project by the State Engineer, two sets of 11 inch by 17 inch drawings, reflecting all final approval conditions, shall be submitted, prior to the initiation of construction.

2. All drawings should include a bar scale to allow for accurate scaling of reductions.

3. All drawings shall have a title block in the lower right corner showing the project name, the owner's name, the sheet number, and the date of preparation of the plans.

4. All drawings shall have provisions for noting the dates of any modifications.

5. Each drawing shall include the signature and seal of the responsible engineer. Geological drawings should also be signed by the responsible geologist.

C. Drawings to be included in plans are:

1. Title sheet, including:

- a. General location map including access roads.
- b. Signature block for owner's acceptance.
- c. Index of drawings.
- d. Reference to the water rights for the reservoir.
- e. Reservoir stage/storage curve.
- f. Rating curves for outlets and spillways.

2. Plan view of reservoir, including:

- a. Existing topography.
- b. Borrow areas.
- c. Supply canals and pipelines.
- d. Suitable contour lines.
- e. Clearing limits.
- f. Waste areas.

3. Plan view of dam, including:

- a. Location of all pertinent features.
- b. A survey tie, to an outside section corner, where the longitudinal axis of the dam intersects the axis of the original stream channel or the low level outlet.
- c. Clearing limits.

4. Longitudinal profile, showing:

- a. Original ground line.
- b. Location of core trench or other cutoff features.
- c. Location of outlets and spillways.
- d. Camber and anticipated settlement.

5. Typical cross-sections of dam, showing:

- a. Embankment geometrics including internal zones.
- b. Slope protection.
- c. Cutoff.
- d. Delineation of embankment on natural ground surface.
- e. Freeboard.
- f. Internal drainage.

g. Limits of foundation excavation.

6. Plan, profile, cross sections and details of all outlets, spillways, and other structures.

7. Structural details for reinforcing steel, metal fabrication, or waterstops.

8. Site geology map of the damsite and reservoir basin including locations of all borings and test pits.

9. Longitudinal geologic profile of both the dam and reservoir, showing:

- a. Original ground line.
- b. Location and orientation of borings.
- c. Geological profile showing pertinent lithologic, hydrologic, and structural information.

10. Logs of borings with classifications of soil and rock, results of water pressure tests and other downhole material property tests, soil classification, standard penetration tests, core recovery, rock quality designations, and strength tests.

11. Any additional drawings such as instrumentation details necessary to construct the project.

D. Specification Requirements.

The State Engineer must review and approve all technical specifications for a proposed project. A partial list of specifications directly related to dam safety follows:

1. Site Preparation.

- a. Clearing and Grubbing.
- b. Soil Stripping.
- c. Structure Removal.
- d. Diversion and Care of Stream.

2. Foundation Preparation.

- a. Foundation Dewatering.
- b. Relief Wells.
- c. Grouting.
- d. Cutoffs.

e. Abutment Contacts.

f. Exploration.

g. Dental Concrete.

3. Earthwork.

- a. Excavation.
- b. Earth Fill.
- c. Drain Fill.
- d. Rock Fill.
- e. Material Handling.
- f. Testing Procedures.

4. Concrete and Reinforcement.

- a. Concrete Mixing and Placement.
- b. Steel Reinforcement.
- c. Admixtures.
- d. Curing and Curing Compounds.
- e. Joint Fillers and Waterstops.

5. Outlets.

- a. Water Control Gates and Valves.
- b. Air Vent.
- c. Operating Equipment.
- d. Bedding Requirements.

6. Aggregates and Rock.

- a. Drain Fill and Filters.
- b. Concrete Aggregates.
- c. Riprap.

7. Erosion Control.

8. Miscellaneous Structural Work.

- a. Metal Fabrication and Installation.
- b. Instrumentation.

9. All technical specifications should also include testing intervals to assure compliance with the specifications.

E. Design Report Requirements. The design report should include all information used to design the dam, including assumptions made and methodology used with sufficient documentation. Any building codes or design manuals used in the design should be referenced, including the year of

publication of the source. If the design report is a product of a team effort, the names of all persons producing the report should be included along with the sections they prepared. Examples of items to be included in the design report are as follows:

1. Hydrology calculations for determining the spillway requirements.
2. Hydraulic characteristics of the outlets and spillways.
3. Subsurface investigation including logs of test borings and geologic cross-sections.
4. Material testing results and the location and logs of test pits.
5. Foundation treatment and abutment contact design.
6. Calculations for the reinforced concrete design and the loading conditions utilized.
7. Stability analysis of the dam, abutments, and reservoir rim, including appropriate seismic loading, safety factors and embankment zone characteristics.
8. Geological investigations including:
 - a. Regional perspective of the site's geologic and seismic setting at a scale appropriate to the geologic complexity of the area.
 - b. Seismic evaluation establishing the relationship of the site to all seismic features of concern and the potential for reservoir induced seismicity.
 - c. Site geology of areas affected by construction activities and appropriate adjacent areas.
 - d. Plans to compensate for any geological weakness in the dam foundation, abutment areas, and reservoir rim.
9. Subsurface seepage considerations including the cutoff trench design and internal drainage design and filtering.
10. Post-construction monitoring or alarm systems.

R655-10-7. Independent Consultant Review.

The State Engineer may require an independent consultant review to assess the adequacy of the design, construction, or operation of a dam. For purposes of these rules, an independent consultant review is a review of the owner's engineers' work in addition to the review provided by the State Engineer.

R655-10-7A. Review of Design.

The following situations will require an independent consultant review of the design of a new dam or significant enlargement of an existing dam.

1. Any dam that in the opinion of the State Engineer warrants additional review due to the large size or complexity of the dam and/or reservoir, or to supplement the technical expertise of the design engineer.
2. Any high or moderate hazard dam which, in the opinion of the State Engineer, has a unique problem requiring additional review.
3. Any high or moderate hazard dam whose design is not typical of dams normally built in the state and is thus beyond the technical abilities of the State Engineer's dam safety staff.
4. If the owner's engineer and the State Engineer cannot reach an agreement on the design of a dam.
5. If the owner specifically requests an independent consultant review.

R655-10-7B. Review of Construction.

The State Engineer may require an independent consultant review when unusual problems are noted during construction, the dam is not being constructed as per approved plans and specifications, or to supplement the technical expertise of the project engineer.

R655-10-7C. Operation.

The State Engineer may require an independent consultant review of the operation of a dam including initial filling plans, standard operating plans, emergency action plans, and

performance of the dam if, in his opinion, conditions require a review.

R655-10-7D. Selection of Independent Consultants.

Upon notification to the owner, the owner will select independent consultants to conduct the required review. Prior to contracting with the proposed consultants, they must be approved by the State Engineer.

R655-10-7E. Qualifications of Independent Consultants.

All independent consultants must have a minimum of ten years' experience related to dams. In the case of engineers, they need to be licensed in the state where they reside, unless exempted by the State Engineer. All proposed consultants must demonstrate that they have the expertise to investigate problems identified and that they have insignificant past association with the dam in question.

R655-10-7F. Scope of Work.

In requiring the owner to obtain the services of an independent consultant, the State Engineer will include specific items needing investigation, the format for the reports submitted by the independent consultant, and a timetable for completion of the investigations.

R655-10-7G. Purpose of Independent Consultants Investigations.

The purpose of an independent consultant is to provide additional technical expertise and to insure safety issues are addressed. Conclusions generated by the independent consultants are not binding on the State Engineer.

KEY: dam safety, dams, reservoirs

October 24, 2012

Notice of Continuation January 29, 2016

73-5a

R655. Natural Resources, Water Rights.**R655-11. Requirements for the Design, Construction and Abandonment of Dams.****R655-11-1. Authority and Applicability.**

The following rule is established under the authority of Title 73, Chapter 5a. The procedures constitute minimum design requirements for dams. Additional procedures may be required to comply with any other governing statute, federal law, federal regulation, or local ordinance. These rules apply to any dam constructed in the state with the exception of those specifically exempted by Section 73-5a-102 and those dams not requiring plans as outlined in Section 73-5a-202.

R655-11-2. Purpose and Scope.

A. The following minimum design requirements will serve as a guide to the owner's engineer. It should be noted that these are minimum requirements for general conditions and may be changed when dealing with a specific structure. Designs below the minimum requirements must be approved in writing by the State Engineer prior to final design submittal of the project. The design requirements are quite rigid, allowing little latitude in the utilization of new materials and unproven construction methods. The burden to show adequate protection of public interests with the use of new materials or unproven methods rests with the owner's engineer.

B. The following minimum design requirements apply to all proposed dams where applicable. Since the vast majority of dams in the state are earthfill or rockfill dams, the focus of the design criteria is on these dams. Specific structural design criteria for concrete dams is not given. The State Engineer, upon approval in writing, will accept structural design criteria for concrete dams developed by other dam regulatory or dam design agencies, providing it reflects state-of-the-art criteria for the design of concrete dams and does not conflict with the following rules.

R655-11-3. Definitions.

Definitions are as outlined in R655-10-4.

R655-11-4. Hydrologic Design.

In order to arrive at an Inflow Design Hydrograph or Inflow Design Flood (IDF) more representative of actual conditions in Utah, the State Engineer has commissioned, or has been involved in, numerous studies to supplement the National Oceanic and Atmospheric Administration's (NOAA) Report entitled "Hydrometeorological Report No. 49 (HMR49) - "Probable Maximum Precipitation Estimates, Colorado River and Great Basin Drainages". The results of most of these studies are used to better identify soil conditions, discharge coefficients, and unit hydrograph parameters. The results of two of the studies are used directly to refine the calculation of the design rainfall values. Both studies were completed by Donald Jensen of the Utah Climate Center and are entitled, "2002 Update for Probable Maximum Precipitation, Utah 72 Hour Estimates to 5,000 sq. mi. - March 2003" (USUL) and "Probable Maximum Precipitation Estimates for Short Duration, Small Area Storms in Utah - October 1995" (USUS). All of HMR49, Table 1, page 4 of USUL, and Table 15, pages 74-75 of USUS are hereby incorporated by reference. All High Hazard and Moderate Hazard dams in Utah must use the precipitation values obtained from the use of all three publications. To avoid confusion, precipitation values obtained from HMR49 exclusively will be referred to as the Probable Maximum Precipitation (PMP), while those obtained from using HMR49 in conjunction with USUL or USUS, will be referred to as the Spillway Evaluation Precipitation (SEP). The resulting hydrographs generated will be referred to as the Probable Maximum Flood (PMF) and the Spillway Evaluation Flood (SEF) respectively.

R655-11-4A. Inflow Design Hydrograph Determination.

A) In Utah, the IDF for all High and Moderate Hazard Dams will be the SEF. It will be necessary to calculate both the 72 hour SEF using HMR49/ USUL as well as the 6 hour SEF using HMR49/ USUS. Both of these hydrographs must be routed through the reservoir to determine which one represents the most extreme event.

B) Once the critical SEF has been determined, it must be compared to a flood generated by the 100 year, 6 hour (for local storms), or 100 yr, 24 hour (for general storms) precipitation applied on a saturated watershed. If the routed 100 year event, including appropriate allowances for freeboard, is more critical than the SEF it must be used as the minimum IDF. This 100 year flood should also be used as the IDF for all Low Hazard Dams.

R655-11-4B. Freeboard Requirements.

All dams must have a normal freeboard above the crest of the principal spillway capable of containing the maximum wave action considering site wind-duration and fetch control characteristics. Wave action includes wave height and maximum runup, as well as reservoir setup against the embankment slope. Unless otherwise justified by specific data acceptable to the State Engineer, an extreme wind velocity (fastest mile) over land of 100 miles per hour should be considered. In addition, while routing the 100 year precipitation event through the spillway, sufficient residual freeboard must be available to control wave action from a fetch controlled 50 miles per hour wind. In no case will the normal freeboard be less than three feet for high and moderate hazard dams. The State Engineer may reduce the three feet minimum freeboard requirement for low hazard dams based upon a review of the relative increase in risk associated with this reduction.

R655-11-4C. Spillways.

In designing the spillway for a dam to pass the IDF, the State Engineer will consider the use of a principal spillway in conjunction with emergency spillways. The principal spillway must be designed so that no structural damage will occur during passage of the IDF. Emergency spillways, including Fuse Plug Spillways, may be designed so that some damage may be expected during use provided the anticipated damage does not represent a threat to the dam. Sunny day failure modeling of Fuse Plug Spillways may be required to determine if they are creating an additional unacceptable risk. Overtopping of the dam will not be considered as an emergency spillway on earthfill dams, unless it can be demonstrated that the dam is protected from erosion, and the duration of overtopping will not saturate the dam and reduce its stability.

R655-11-4D. Infiltration Rates.

The State Engineer will accept an IDF using SEP values in conjunction with soil moisture conditions representative of historical maximums. If the design engineer is using infiltration rates which represent something less than saturated conditions, information should be submitted to justify the lower soil moisture selection.

R655-11-4E. Flood Routing.

A. In routing the IDF through the reservoir, the initial water surface should reflect conservative estimates which would exist at the time of the flood event. Unless documentation can be provided to the contrary, it should be assumed that all low level outlets are closed during routing of the IDF. For dams receiving inflow from pipelines and supply canals, it should be assumed these additional sources are operating at capacity during the flood event. In the event the spillway is gated or has "stop logs", which are only allowed on existing dams, documentation must be provided to show the gates are

automated or operational procedures are in place to insure that the gates can be opened or the stop logs removed in a timely manner.

B. The SEF can be routed so the maximum water surface is at an elevation equal to the lowest point on the crest of the dam with no residual freeboard.

C. In generating the IDF, the basin characteristics used and the parameters used to generate the unit hydrograph should be based on the best information available. Unit hydrographs generated from historical records or calibrated watersheds should be used, where data is available, rather than using synthetic procedures.

R655-11-4F. Incremental Damage Assessment for High and Moderate Hazard Dams.

The State Engineer may, at his discretion, accept an IDF less than the SEF based on the results of an Incremental Damage Assessment (IDA) which shows that failure of the dam would cause insignificant incremental damage to property and no additional threat to human life. The State Engineer may consider the use of early warning systems in evaluating the threat to human life. In requesting the acceptance of an IDF determined from an IDA, documentation must be furnished that the owner of the dam is aware that the design reflects something less than the SEF and they are willing to accept the additional liability. In no case will the State Engineer approve an IDF generated by something less than the applicable 100 year flood event. The resulting selected IDF, based on the IDA, should be reported as a percent of the SEF.

R655-11-4G. Historical Records.

In some cases it may be appropriate to use historical streamflow records to generate a 100 year flood. If these records are used as a basis for the IDF, they should be accompanied by the Synthetic IDF established by using the 100 year precipitation. Following a review of the data, the State Engineer will make a determination of which flood will be used as the IDF.

R655-11-5. Seismic Design.

A. Because each dam site has a unique seismic and geological setting, detailed direction cannot be provided for seismic design which is applicable to all dams. Rather, an order of evaluation is presented beginning with more simplified methods and progressing, as required, to more rigorous procedures. In determining the sophistication of analysis required, the State Engineer may consider factors including consequences of failure, available freeboard, duration of reservoir pool, and site geometry. Regardless of the method of analysis, the final determination of seismic adequacy of a dam will be based on all pertinent factors involved and not strictly on the numerical analysis. The order of progression of the seismic analysis follows:

1. Undertake geological and seismological investigations to determine the potential for earthquakes and associated ground motions at the site, including the source and magnitude of the earthquakes to be considered and the selected motions, including potential fault rupture.

2. Undertake field and laboratory investigations of the dam and foundation materials to determine their properties and liquefaction potential.

3. Undertake an appropriate analysis for seismic events to predict factors of safety against slope failures, structural deformations, and liquefaction resulting from earthquake shaking or fault rupture.

4. Incorporate defensive design measures based on the analysis and proven practices.

B. In many instances, an adequate seismic analysis can be determined from the geological study and determination of the

general properties of the dam and foundation. Other projects may require more detailed investigations and analyses. Decisions as to seismic safety and risk should be made as the analysis progresses and the extent of further investigations required after each step should be determined following consultation with the State Engineer as necessary.

R655-11-5A. Geological and Seismic Study.

A review of the seismic or earthquake history of the region will be performed to establish the relationship of the site to known faults and epicenters. This will be based primarily on review of existing maps and technical literature and should include major earthquakes during historic time, epicenter locations and magnitudes, and the location of any major or regional fault traces. Geologic conditions at or near the dam site that might indicate recent fault or seismic activity should be included. Resulting design earthquakes and associated site ground motion parameters will be selected considering all available evidence including tectonic and seismological history. The ground motion parameters to be selected for the site will consist of those that are needed by the analyses that are appropriately selected for design and may include peak accelerations, velocities, displacements, response spectra, and acceleration time histories. Both the Maximum Credible Earthquake (MCE) and the Operating Basis Earthquake (OBE) will need to be investigated for all projects. The MCE should be evaluated from the following analyses:

1. A deterministic analysis from active faults in the region surrounding the dam will be performed to estimate magnitude and ground motion parameters. High and moderate hazard dams will be evaluated using ground motion parameters that are at least equal to mean plus 1 standard deviation predictions (84th percentile). At the discretion of the State Engineer, these values may be reduced to mean (50th percentile) for moderate hazard dams. Low hazard dams will be evaluated using ground motion parameters that are at least equal to mean (50th percentile) predictions. Magnitude estimates will consider the potential for multi-segment rupture for segmented faults.

2. A probabilistic analysis will be performed. The most recent United States Geological Survey (USGS) Interactive Deaggregation tool found on the USGS website, using a 5,000 year return interval, can be used to identify magnitude and peak ground motions. Site specific evaluations may be performed to define ground motions for this event if the methods used and assumptions made are acceptable to the State Engineer. Unless waived by the State Engineer, the minimum earthquake magnitude shall be 6.5. At the discretion of the State Engineer, the OBE requirement may be waived.

3. The OBE will be determined by probabilistic methods acceptable to the State Engineer and may include the use of the Deaggregation tool on the USGS website with a 200 year return interval.

R655-11-5B. Determination of Dam and Foundation Material Properties.

Results of the geological and seismological studies may be sufficient to evaluate seismic safety. However, if it appears the dam cannot safely withstand the earthquake motions or if sufficient information is not available to make an adequate determination, the next step of a phased evaluation program would be a field investigation and laboratory testing program. Field investigation should include a sufficient number of borings and test pits to accurately define the embankment, foundation, and abutment materials types, properties, and extent. Particular care and sufficient field data should be obtained where potentially liquefiable soils are present. In place and laboratory testing should be performed to adequately assess the material properties under the anticipated dynamic conditions.

R655-11-5C. Method of Analysis.

A. Procedures are available for selecting design earthquakes and associated site-specific motions and for assessing the resistance of dams to these earthquake motions. Procedures and techniques for evaluating the effects on dams from estimated earthquake ground motions range from simplified concepts to comprehensive dynamic analyses. When the degree of sophistication of analytical procedures is far advanced, however, uncertainty is produced in the results by imperfect knowledge of input parameters obtained through field exploration and laboratory testing programs.

B. The extent or scope of studies, investigations, tests and analyses which may be required to adequately determine the seismic safety of a dam will vary from site to site. In general, the following physical factors will indicate a high priority and a greater degree of investigations and analysis:

1. Proximity to known active faults.
2. Indications of low-density materials in the dam or foundation.
3. Zones of high pore pressures or potential liquefaction.
4. Indications of marginal static stability.
5. Lack of adequate construction records for existing dams.

C. Regardless of these factors, however, one of the major considerations will be the "consequences of a failure". High and moderate hazard structures with permanent pools which could result in loss of life or extensive property damage from a failure will, in general, require a greater scope of investigation and analyses.

D. Following are the general analysis requirements, unless otherwise stipulated by the State Engineer, for MCE design earthquakes:

1. Embankments, foundations, and abutments not subject to liquefaction or significant strength loss:
 - a. For a maximum acceleration of 0.2g or less, or a maximum acceleration of .35g or less if the embankment consists of clay on a clay or bedrock foundation, a pseudo-static coefficient which is at least 50 percent of the maximum peak bedrock acceleration at the site should be used in the stability analysis. The minimum factor of safety in an analysis should be 1.0.
 - b. For a maximum peak acceleration greater than indicated above, a deformation and settlement analysis should be performed to estimate anticipated total crest movement. The evaluation should consider the potential for excess pore pressure generation and be performed for both the upstream and downstream slopes of the dam. Total crest movement should consider settlement and potential accumulation of movement from both sides. The minimum factor of safety against overtopping should be 2.0.

2. Embankment, foundation, or abutment soils subject to liquefaction or significant strength loss:

- a. A liquefaction/strength loss analysis should be completed with enough detail to establish the boundaries of the liquefiable/strength loss soils and the physical characteristics of the soil during and immediately following the design earthquake.
- b. A post earthquake stability analysis should be performed to show that the embankment is stable after liquefaction/strength loss occurs with a minimum factor of safety of 1.2. The potential for excess pore pressure generation will be considered.
- c. Calculated deformation and settlement of the embankment total crest movement should result in a minimum factor of safety, against overtopping, of 3.0. Analyses will consider liquefaction/strength loss and the potential for excess pore pressure generation.

3. Other more sophisticated analytical procedures may be required at the discretion of the State Engineer, where conditions warrant greater detailed studies.

E. In addition to analysis of deformation and liquefaction, it will be necessary to assess the potential for internal erosion and cracking. Judgment must be used to decide whether or not erosion would tend to be self-healing as a result of filtering.

F. Construction of dams on active faults will not be allowed unless evidence is presented to, and approved by, the State Engineer that the dam can safely withstand the anticipated offset.

G. Evaluation of a dam under OBE conditions should be completed by similar methods to those described for the MCE. Under the OBE loading conditions the dam should experience no significant damage.

R655-11-5D. Design Measures.

Design of new dams should include measures, which provide multiple lines of defense, that enhance their performance under seismic loading. Measures may include:

1. Significantly wide transition and drainage zones in the embankment of material not vulnerable to cracking.
2. Controlled compaction of embankment zones to enhance dynamic performance.
3. Removal or treatment of foundation materials of low strength or density.
4. Enhanced ability to drain reservoir.
5. Flare the embankment core at abutment contacts.
6. Locate the core to minimize saturation of materials.
7. Stabilize slopes around the reservoir rim.

R655-11-5E. Appurtenant Structures.

The effects of seismic loading should also be considered during the design of all appurtenant structures.

R655-11-6. Embankment Requirements.

All embankment designs should meet the following criteria.

R655-11-6A. Factors of Safety.

A. All dams should meet the following criteria for factors of safety under normal loading conditions.

TABLE

Condition	Minimum Factor of Safety
End of Construction Case--upstream and downstream slopes	1.3
Steady State Seepage--upstream and downstream slopes (full pool)	1.5
Instantaneous Drawdown--upstream slope	1.2
OR	
Actual Drawdown--upstream slope	1.5

B. All factors of safety should be generated by methodology acceptable to the State Engineer. In undertaking the analysis, the effects of anisotropy should be considered and a ratio of horizontal to vertical permeability of at least nine should be used in the seepage analysis, unless otherwise justified to the satisfaction of the State Engineer. Ratios of up to 100 should be considered if the material types and construction techniques will cause excessive stratification.

C. The strengths used in the stability analysis should be obtained from tests which best model the situation being analyzed.

D. The analysis of the upstream slope stability for actual drawdown should consider drawdown rates which the low level outlets are capable of generating. Actual residual pore pressures should be used.

E. For low hazard dams the State Engineer may waive the requirements of a stability analysis, including a seismic analysis, if it can be demonstrated that conservative slopes and competent materials are used in the dam, and seismic problems (i.e.,

liquefiable materials, active faults close to the dam) are not present.

F. Stability evaluations where residual strengths are used must have a minimum factor of safety of 1.3.

R655-11-6B. Dam Crest Requirements.

A. The crest width of all dams should be, at a minimum, equal to the structural height of the dam divided by five plus five feet. The absolute minimum required shall be 12 feet and the absolute maximum required shall be 25 feet. Wider crest widths may be used at the designer's discretion.

B. All dams shall have a cross slope on the crest of 2% to 3% towards the reservoir.

C. All crests shall be protected with a wearing surface of granular material to prevent vehicular rutting.

D. Dam crests should be cambered to allow for anticipated settlement. The side slopes of the dam may be steepened to accommodate the camber.

E. For dams over 500 feet long which have a crest that dead ends, a turn-around should be provided at the abutment.

F. The impervious portion of the dam under the crest may need to be terminated at the anticipated frost line to prevent desiccation cracking and damage from frost; however, it needs to be carried high enough to prevent seepage over the core by capillary rise.

R655-11-6C. External Erosion Control.

A. All downstream slopes of dams should be protected from erosion by placing armor or seeding with grasses. No planting of any shrubs, trees, or other woody vegetation will be allowed unless it is approved in writing by the State Engineer.

B. All downstream groins of dams receiving runoff from adjacent abutments shall be protected from erosion.

C. All upstream slopes on dams which impound water for significant lengths of time shall be armored. If rock riprap is used it shall be well graded, durable, and sized to withstand wave action. If the material underlying the riprap is fine grained and subject to erosion, a properly designed filter blanket must be installed. Geotextiles may be used in lieu of the filter blanket at the discretion of the State Engineer.

R655-11-6D. Internal Erosion Control.

A. All dams should have design provisions for controlling internal erosion. In zoned dams all adjacent zones must meet filter criteria with the abutting zones and foundation soils. If filter criteria cannot be met, a transition zone must be provided.

B. All filter zones in a dam must meet criteria acceptable to the State Engineer.

C. In designing filter zones where dispersive clays or broadly-graded materials exist, special considerations may be imposed by the State Engineer.

D. All internal filter zones will have a minimum width of three feet to facilitate construction. Wider zones are encouraged especially in active seismic areas.

E. Proper filtering is essential in all dams where cracking from differential settlement, hydraulic fracturing, or earthquake shaking is possible.

R655-11-6E. Internal Drainage.

A. All underdrains and collection pipes shall be constructed using non-corrodible materials capable of withstanding the anticipated loads.

B. Underdrains and collection pipes should be designed to conduct flows several times larger than anticipated. All pipes within the dam which are not easily accessible shall have a minimum diameter of six inches.

C. All internal drain pipes should be enveloped with free draining material, meeting filter requirements with adjacent zones.

D. Where multiple pipes are used to conduct drainage from internal portions of the dam, they should be carried to the downstream toe or gallery separately without intervening connections or manifold systems. If the drain pipes are connected at their termination points, manholes should be provided to facilitate observation and measurement of the separate drain lines.

E. All underdrains and collection pipes should have provisions for measuring discharges in manholes or at their discharge points. If the anticipated discharge is in excess of 10 gallons per minute (gpm), a weir or other suitable measuring device should be provided. If the anticipated flows are less than 10 gpm, provisions should be made so the water can be discharged freely into a vessel 1.5 feet high and one foot in diameter.

F. All exposed underdrain and collection pipes shall have an appropriate rodent screen attached.

G. All underdrains and collection pipes shall be cleaned out and inspected by camera prior to the first filling of the reservoir.

H. All seepage collection systems must include a collection pipe to discharge flows.

I. All internal drains must have a sufficient cover of impermeable material to eliminate the collection of surface waters.

R655-11-7. Outlet Requirements.

All outlet designs should meet the following criteria.

R655-11-7A. Outlet Sizing.

A. All dams shall have a low level outlet capable of draining the reservoir. Exemptions to this requirement may be granted at the discretion of the State Engineer. Normally, exemptions will only be considered for low head, low hazard dams. Any dead storage must be approved by the State Engineer and must be sufficiently low to eliminate any storage hazard. The outlet should be sized to meet the project demands as well as the following criteria.

1. All outlets shall be 24 inches in diameter or larger unless exempted in writing by the State Engineer. Outlets should have valves or capped flanges which can facilitate entry into the pipe by personnel or video equipment.

2. All outlets shall have the capacity to evacuate 90% of the active storage capacity of the reservoir within 30 days neglecting reservoir inflows. The State Engineer may adjust this requirement on large reservoirs if it can be demonstrated that compliance would result in an unreasonably sized outlet or potential releases would exceed the downstream channel carrying capacity.

3. All outlets shall have the capacity to satisfy prior downstream water rights and the owners' release requirements.

R655-11-7B. Outlet Materials.

All outlets will be made of appropriate materials with due regard for loading condition, seismic forces, thermal expansion, resistance to corrosion, and potential abrasion. The use of corrugated metal pipes and other thin-walled steel pipes will not be accepted unless they serve only to provide a form for a poured-in-place concrete conduit or they are specifically accepted in writing by the State Engineer.

R655-11-7C. Outlet Details.

A. All outlets shall have a trash rack to prevent clogging.

B. All outlets connected directly to a downstream pipeline shall have an emergency bypass valve.

C. All outlets shall have a suitable energy dissipator at the discharge end to prevent erosion of the downstream channel.

D. All outlets will be placed on a concrete cradle or encased in concrete unless specifically exempted by the State

Engineer in writing.

E. All outlets, with the exception of ungated outlets, shall have an operating gate or a guard gate on the upstream end.

F. All outlets shall have seepage control measures to reduce the potential for piping along the conduit. Common methods may include locating the outlet conduit in bedrock and installing a conduit filter drain to intercept seepage.

G. Outlets encased in concrete should have battered sides to facilitate compaction against the encasement.

H. Every attempt should be made to locate the outlet on bedrock or consolidated materials. In the event this is not possible, consideration should be given to articulating the outlet to allow for settlement.

I. Outlet gates and valves can be either mechanically or hydraulically operated. In either case the hydraulic lines or mechanical stems must be adequately protected from debris, wave action, settlement, and ice damage. Buried stems should be encased in an oil-filled pipe supported on pedestals. No catwalks or similar access structures will be allowed on reservoirs where freezing occurs or significant floating debris is present. All outlets which are operated with electrical equipment must have back-up generating capability or a manual bypass system capable of being operated in a reasonable amount of time.

J. All outlets shall be properly vented. A vent pipe and air manifold around the perimeter of the conduit immediately downstream of the gate will be required unless waived by the State Engineer. The air supply lines should be conservatively sized for the anticipated flows and protected in the same manner as the outlet control lines or stems.

K. All operators and supporting equipment for outlet controls should be properly protected and secured. Particular attention needs to be given to protection from vandals and unauthorized operation. All outlet controls should be clearly marked as to which way the gates and valves operate so that overloading of a closed gate or valve should not occur.

L. Outlet controls should be accessible when the spillways are in use.

R655-11-8. Spillway Requirements.

A. On all spillway control structures, provisions should be made for aeration of the nappe.

B. All spillways excavated in soils or soft rock should include a check structure to avoid headcutting and lowering of the spillway flowline.

C. All spillway channels should have suitable armor to prevent erosion.

D. If the spillway has concrete sidewalls, adequate weepholes should be provided or the walls should be designed with full hydrostatic loads in conjunction with the soil loads.

E. For spillways in remote areas where significant snowfall occurs, efforts should be made to maximize the southern exposure of the spillway to prevent ice blockage. In many cases elimination of tall trees will be required.

F. All construction joints should be provided with adequate water stops.

G. Design provisions should be made so that downstream spillway channel flows cannot encroach on the dam.

H. All spillways draining reservoirs with large amounts of floating debris should include a log boom to avoid plugging the spillway.

I. Spillway designs should provide for energy dissipation so that waters returned to the natural channel will not cause erosion.

J. For spillways with concrete floors, provisions should be made to control uplift pressures.

K. Stop logs or flashboards which restrict the design spillway capacity will not be allowed.

R655-11-9. Other Design Requirements.

A. To facilitate inspection, all dams shall have a zone 25 feet beyond all contacts at the downstream groins and toe of the dam in which all woody vegetation is to be removed.

B. If the dam is located in an area where grazing occurs, then livestock must be restricted from the dam by suitable fencing.

C. Unless the dam crest serves as a public road, a suitable gate or other barrier should be installed to prohibit traffic.

D. Geosynthetics may not be used in a dam as the primary design feature unless specifically approved, in writing, by the State Engineer.

E. The foundation downstream of a dam should be graded to convey seepage waters and runoff away from the dam.

F. All control houses and other structures housing instrumentation and operating devices should be designed to discourage unauthorized entry and damage from vandalism.

G. If burrowing animal activity is anticipated to be excessive, design consideration should be made to prohibit their entry, or place materials as a shell which are not capable of sustaining a rodent hole.

R655-11-10. Instrumentation.

Instrumentation on a dam serves the purposes of comparing actual performance with predicted performance and to observe the long term performance for unexpected changes, indicating a safety problem. Since each dam site and design varies, considerable judgment is needed in developing an instrumentation plan. The State Engineer may require any instrumentation necessary to adequately monitor a dam to insure its safety. Where instrumentation is required threshold values should be established for field personnel. Readings which exceed threshold values will indicate that the design criteria has been exceeded and the stability analysis should be reevaluated. Some minimal instrumentation will be required on dams as outlined in the following paragraphs.

R655-11-10A. Reservoir Staff Gages.

All dams shall have a suitable staff gage to monitor reservoir levels. Staff gages should be designed to be durable and capable of resisting movement, water forces and ice. All gages shall have permanent markings at a minimum of one foot intervals with actual elevations recorded at five foot intervals. The State Engineer may allow the use of other measuring devices if it can be demonstrated that they are reliable and accurate.

R655-11-10B. Survey Markers and Bench Marks.

All moderate and high hazard dams shall have permanent survey markers on the crest of the dam to monitor vertical and horizontal movement. The survey markers should be located to prevent damage from traffic. In conjunction with the survey markers a permanent bench mark shall be installed on each abutment, sufficiently removed from the dam so any effects of the dam movement will not be felt at the bench mark. Reference markers should be established so the bench mark can be reset in the event of damage. Spacing of survey markers should not exceed 200 feet and spacing should be decreased as the height of the dam increases.

R655-11-10C. Piezometers.

A. All high hazard dams as well as moderate hazard dams, at the State Engineer's discretion, shall include piezometers. As a minimum, piezometers should be installed along two cross sections of the dam, one of which should be at or near the maximum section. Each cross section should include piezometers at critical locations in the embankment and foundation. It is preferable to have only one piezometer in each hole; however, more than one piezometer may be installed in

each hole if the intervening zone between the piezometer tips can be adequately sealed.

B. All piezometers should have a surface casing projecting beyond the ground with the surface casing adequately sealed. The surface casing should include a locking cap to prevent unauthorized access.

C. All piezometer holes should be logged during drilling and any pertinent information included on the as-constructed plans. As-built locations, designations and elevations of the top, bottom, and porous interval of the piezometers should be shown on the as-constructed plans.

R655-11-10D. Seepage Measurements.

Seepage measurements for all drains and collection pipes should be provided, as outlined in R655-11-6E, for all high and moderate hazard dams. Any significant seepage areas which develop must be provided with measuring devices and at the discretion of the State Engineer, must be collected in a filtered drainage system.

R655-11-10E. Strong Motion Instruments.

The State Engineer may require strong-motion instrumentation in seismic zones 2 and 3.

R655-11-11. Abandonment of Dams.

Abandonment of all dams requires approval by the State Engineer.

R655-11-11A. Removal of Dam.

If it is proposed to totally remove a dam, the main concern is to return the stream and reservoir basin to their pre-dam condition. Plans should be submitted showing how the original channel is to be reclaimed, how deposited silts are to be controlled, and what methods will be used to revegetate the reservoir basin and riparian areas.

R655-11-11B. Breaching of Dam.

If a dam is to be breached the following minimum criteria should be met:

1. The flowline of the breach should be excavated down to natural ground or stabilized at the top of the silt level. In most cases grade control and drop structures will be required to avoid mobilization of reservoir silts and debris.

2. The breach should be designed to pass a flood with a return interval of 100 years without backing water up in the historic reservoir more than five feet.

3. Regardless of hydraulic requirements the bottom width of the breach will be one half the structural height of the dam with an absolute minimum of 10 feet. Additional width may be required by the State Engineer in areas where beaver activity occurs.

4. Breach side slopes must be flat enough to hold the slope when saturated, with an absolute minimum of one vertical on one horizontal. In areas where there is significant human travel, the minimum side slopes should be one vertical on two horizontal.

5. The exposed banks and bottom of the breach should be protected with riprap, vegetation, or other suitable means to prevent downcutting and lateral slope erosion.

6. Barriers should be placed on the original dam crest to warn any possible traffic on the crest of the breach.

R655-11-12. Construction.

The State Engineer will monitor construction of approved projects as outlined in the following paragraphs.

R655-11-12A. Informal Construction Inspections.

During the course of constructing, enlarging, repairing, or removing a dam, the State Engineer may make periodic

inspections to determine compliance with plans and specifications, as well as to observe field conditions to see if actual conditions are consistent with those used during design. Any problems observed will be pointed out to the resident inspector or engineer for correction or change. All significant problems noted will be outlined in a letter to the owner and the owner's engineer. The engineer must respond in writing to the State Engineer as to what steps were undertaken to correct the problems.

R655-11-12B. Formal Construction Inspections.

In approving plans the State Engineer may require his approval of certain construction operations before the next phase of construction can commence. The owner's engineer or inspector must notify the State Engineer and determine a mutually acceptable time to observe and approve the work prior to continuation of the construction.

R655-11-12C. Construction Reporting Requirements.

Written documentation of all construction activities should be maintained by the owner's engineer. The documentation must be submitted weekly to the State Engineer by the owner's engineer when any work is underway. At a minimum the documentation should include:

1. All materials certifications submitted by suppliers to insure compliance with specifications.

2. Results of all material tests or any other testing undertaken during construction. Any tests not meeting the requirements of the plans must include notations indicating what was done to correct the sub-standard work.

3. All engineers' and inspectors' diaries, field notes, or other written documentation.

4. Photographs to clarify work completed or problems noted.

5. All geological logs of foundation excavations.

R655-11-12D. Change Order Approvals.

All change orders revising the plans that involve technical changes must be approved by the State Engineer. Since the State Engineer is not a party to the construction contract, change orders involving strictly payment to the contractor do not need to be approved by the State Engineer.

R655-11-12E. Final Inspection.

Before any dam can be placed in operation a final inspection of the project must be undertaken by the State Engineer and his written acceptance of the project received. The Emergency Action Plan, Standard Operating Plan, and Initial Filling Plan, if required, must be completed and approved before final acceptance and authorization for filling can be given. During rehabilitation of existing dams, at the discretion of the State Engineer, some reservoir storage may be allowed provided sufficient safety criteria are adopted. Record drawings of the project must be submitted within 60 days of the date of the final inspection. All record drawings submitted must be on a high quality reproducible medium or electronic format acceptable to the State Engineer. Record drawings shall reflect design changes made during construction, geological logs of the foundation excavation, and piezometer borings.

**KEY: dams, earthquakes, floods, reservoirs
October 24, 2012
Notice of Continuation January 29, 2016**

73-5a

**R655. Natural Resources, Water Rights.
R655-12. Requirements for Operational Dams.
R655-12-1. Authority and Applicability.**

The following rule is established under the authority of Title 73, Chapter 5a. The procedures constitute minimum operational requirements for dams. Additional procedures may be required to comply with any other governing statute, federal law, federal regulation, or local ordinance. These rules apply to any dam constructed in the state with the exception of those specifically exempted by Section 73-5a-102, and those dams not requiring plans as outlined in Section 73-5a-202.

R655-12-2. Definitions.

Definitions are as outlined in R655-10-4.

R655-12-3. Initial Filling.

All high and moderate hazard dams will require initial filling plans for their first cycle of complete filling and draining following construction, enlargement, or repairs which involve substantial excavation of the dam. The initial filling plan must be approved by the State Engineer prior to filling.

R655-12-3A. Content of Initial Filling Plans.

Initial filling plans should include the following information:

1. The rate, in vertical feet per day, that the reservoir should be filled or drawn down. Instructions on what steps should be taken in the event inflow exceeds the established rate. Rates and criteria can vary with reservoir elevation.
2. The frequency at which the dam will be observed or inspected and who is responsible. A checklist should be provided so critical features are observed.
3. The frequency at which all instrumentation is to be read and how the readings are to be distributed to interested parties. Predicted performance of instrumentation should be included and a reporting procedure established to review unexpected readings in a timely manner.
4. Reference to the Emergency Action Plan should be given so the inspector or engineer understands emergency procedures and contacts to be made when unusual conditions, or possible failure, are observed.
5. A procedure should be outlined whereby the data and observations obtained following the first cycle of filling can be included to supplement or modify the Standard Operating Plan.
6. The Initial Filling Plan should include a requirement that any project features that did not function as designed must be re-evaluated with provisions for mitigation work provided when necessary.

R655-12-3B. Reporting Requirements.

All information generated during the initial filling should be submitted to the State Engineer on a frequency to be determined by the State Engineer for each project. All analyses and reports produced as per R655-12-3A must also be submitted and approved by the State Engineer.

R655-12-4. Operation and Maintenance.

All dams that require submission of plans pursuant to Section 73-5a-202 must have a standard operating plan approved by the State Engineer. The owners of all dams shall operate and perform maintenance necessary to keep the dam and appurtenant structures in satisfactory condition. Operation and maintenance shall be performed in accordance with a Standard Operating Plan approved by the State Engineer, reports provided to the owner following safety inspections by the State Engineer, and accepted standards of the industry.

R655-12-4A. Standard Operating Plan Content.

The standard operating plan must include the following:

1. General information on the dam and reservoir including the history, a description of the project, persons responsible, agreements with other entities, and the purpose of the project.
2. Inspection list detailing what items should be inspected routinely by the owner or his agent.
3. Routine maintenance schedule and procedures such as rodent removal, vegetation control, floating debris removal, lubrication, painting, grading, riprap repair, and erosion repair.
4. Outlet and spillway operation including operation and maintenance of any mechanical, hydraulic, or electrical systems used. Emergency or back-up procedures should be included.
5. Instrumentation operation including threshold values, reading schedules, reporting procedures, and maintenance.
6. Reservoir operation including descriptions of controlling floatable debris, monitoring unstable soils, control of sediment, public access, and inundation areas.
7. Safety and health hazards and procedures to mitigate the hazards.
8. Recordkeeping and reporting procedures including necessary forms and examples.
9. A copy of the record or as-constructed drawings shall be included.

R655-12-4B. Reporting Requirement.

Dam owners shall maintain records of all operation and maintenance of the dam and appurtenant structures. Copies of these records must be submitted to the State Engineer, upon his request, within 30 days.

R655-12-4C. Instrumentation Monitoring and Reporting.

The following monitoring and reporting requirements are applicable to all instrumented dams under normal, long term operating conditions. Different monitoring and reporting requirements, for long term operation, can be implemented if deemed appropriate by the State Engineer. Instrumentation requirements for new dams should be outlined in the Initial Filling Plan as per R655-12-3A. The type of instrumentation required is presented in R655-11-10.

1. Seepage in the vicinity of any dam shall be collected in a properly designed drainage system with provisions to measure the flow rate as outlined in R655-11-6E.
2. All piezometers and drains shall be monitored at least monthly when the reservoir exceeds 50% of the hydraulic height. Readings shall be obtained on a weekly basis when the reservoir exceeds 90% of the hydraulic height. In all cases, instrumentation should be monitored at the beginning of the reservoir filling season, at the peak reservoir elevation, and at the maximum reservoir drawdown.
3. The elevation of the reservoir shall be recorded at the time of all readings as described in 2. above.
4. All dam instrumentation (including piezometers, drains, reservoir gage, survey monuments, and any other dam instrumentation) shall be monitored immediately following an earthquake where ground motions are felt in the area or the owner is informed of seismic activity in the vicinity. Results of the inspection and instrumentation readings should be immediately sent to the State Engineer.
5. Copies of all instrumentation monitoring data should be forwarded to the State Engineer, on a monthly basis, following collection of the data. It is the responsibility of those obtaining the data to know if readings are within normal historical and/or design operating parameters. Emergency conditions should be assumed if readings exceed normal historical and/or design operating parameters and immediate notification of the State Engineer is required.
6. All instrumentation shall be documented by plotting locations on a plan view of the dam and by assigning a unique, identifiable name. A table for all instruments which provides base line data shall also be prepared. Piezometer data should

include the name, location, monitoring location (e.g., zone 1, zone 2, foundation), top elevation, total depth, and depth of porous interval. Drain data should include the name, location, collection interval, and flow rate monitoring methods. Survey monuments should include the name, location, and vertical and horizontal coordinates. The reservoir storage gage should be marked in at least one foot intervals and an elevation datum provided that is consistent with all other dam instrumentation.

7. The data required for any other dam instrumentation (inclinometers, temperature probes, chemical composition), will depend on the type and purpose of the instrumentation.

R655-12-5. Minimum Standards for Existing Dams.

The following minimum standards are applicable to existing high hazard dams. In the event compliance with the following standards may not be cost effective, the State Engineer may consider other alternatives such as risk-based assessments, acquisition of habitable structures, acquisition of downstream easements, installation of early warning systems, construction of levees, or other means to diminish the threat to human life. Dams with a hazard rating upgraded to high hazards shall immediately be subject to the minimum standards for existing dams.

R655-12-5A. Hydrologic Requirements.

All sections of R655-11-4 that apply to high hazard dams shall be considered to be the minimum standards for hydrologic requirements for existing dams.

R655-12-5B. Seismic Requirements.

All sections of R655-11-5 shall be considered the minimum seismic standards for existing dams with the exception that an analysis for the Operating Basis Earthquake (OBE) will not be required.

R655-12-5C. Embankment Requirements.

Provisions of R655-11-6A shall apply to existing dams. Remaining portions of R655-11-6 shall apply to existing dams if the State Engineer feels compliance with these sections, or any part thereof, is necessary for the safety of the structure.

R655-12-5D. Outlet Requirements.

Provisions of R655-11-7C, with the exception of subsections D, G and H, shall apply to existing dams unless the State Engineer specifically exempts the dam from compliance in writing.

R655-12-5E. Spillway Requirements.

Provisions of R655-11-8, with the exception of subsections D, F and I, shall apply to existing dams.

R655-12-5F. Other Requirements.

Provisions of R655-11-9 shall apply to existing dams if, in the opinion of the State Engineer, compliance is necessary for the safety of the structure.

R655-12-5G. Instrumentation.

Provisions of R655-11-10 shall apply to existing dams unless exempted in writing by the State Engineer.

R655-12-6. Emergency Action Plans.

All owners of high hazard and moderate hazard dams that require submission of plans pursuant to section 73-5a-202 shall prepare, maintain, and exercise an emergency action plan.

R655-12-6A. Content.

A. The emergency action plan shall include the following:

1. A notification flowchart for informing emergency support agencies, downstream interests, and the State Engineer.

2. A dam failure inundation map of a suitable scale and with sufficient topographical information which can be easily used by emergency support people. The map should be understandable by the public at large since persons which may be responsible for evacuation may have minimal training in reading maps. The State Engineer may waive the requirement for inundation maps if it can be shown that written descriptions of evacuation zones are clearer and easier to follow.

3. Procedures to identify possible emergencies, at what level an emergency action is initiated, and who is responsible for making necessary contacts.

4. A list of available materials, equipment, and manpower which can be activated on short notice to deal with possible emergencies or to mitigate damage following a dam failure.

B. All emergency action plans must be approved by the State Engineer. All persons included on the notification flowchart should receive copies and understand their role in the plan.

KEY: dam safety, dams, reservoirs

September 12, 2011

Notice of Continuation January 29, 2016

73-5a

R708. Public Safety, Driver License.**R708-18. Regulatory and Administrative Fees.****R708-18-1. Authority.**

This rule is authorized by Section 53-3-104(2), 53-3-105, 53-3-808, 53-3-905 and Subsection 63J-1-301(2).

R708-18-2. Definitions as Used in this Chapter.

(1) "Accident Report" means an officer's report of an accident as described under Subsection 41-6a-402.

(2) "Accompanying data" means supplemental accident reports or addenda there to.

(3) "Driving Record", more commonly known as a Driver License Record (DLR) means a computer generated compilation of particular elements contained in the Driver License Division electronic database, consisting of:

- (a) Driver's name;
- (b) License certificate number;
- (c) Driver's date of birth;
- (d) Driver's zip code;
- (e) Member of military;
- (f) Reportable arrests and convictions;

(g) Reportable notices from courts indicating failure to comply with terms of a citation or failure to comply with terms set by the court, pursuant to UCA 53-3-221(2) and 53-3-221(3).

(h) Reportable department actions;

(i) Driving Privilege Status;

(j) License certificate issue/expiration dates; and

(k) License certificate class/type/endorsement.

(4) Driving Record - "Certified Copy" means an authenticated Driving Record and/or accident report and/or accompanying data prepared under the seal of the division. (Other records or information may be included only under order or rule of the court.)

(5) "Photocopies" means the mechanical reproduction of an original digitized or filmed document.

(6) "Recording" means a verbatim magnetic tape or digitized recording of sworn, or unsworn testimony, or information.

R708-18-3. Fees.

The Driver License Division charges user fees for some services. A schedule of these fees is available for public examination at any Driver License office location. These fees are set by the legislature in Section 53-3-105, 808, and 905, and in the annual appropriations act as recorded in "The 'Laws of Utah' as passed at the General Session of the Legislature".

R708-18-4. Exemptions.

The fees established may not be charged to any municipal, county, state or federal agency as defined in Subsection 53-3-105(33)(b).

R708-18-5. Records.

All fees charged shall be receipted and recorded under normal accounting principles established by the Driver License Division.

KEY: driver education, licensing, fees

October 27, 2005

Notice of Continuation January 19, 2016

63J-1-301(2)

41-6a-402

53-3-104(2)

53-3-105

53-3-808

53-3-905

53-3-221(2)

53-3-221(3)

R708. Public Safety, Driver License.**R708-19. Automobile No-Fault Self-Insurance.****R708-19-1. Authority.**

This rule is authorized by Section 41-12a-201.

R708-19-2. Purpose.

The purpose of this rule is to set forth the methods approved by the department for providing the security required by Sections 41-12a-301 and 407. This rule is not intended to exclude any other methods of establishing equivalent security which may be approved by the department.

R708-19-3. Amount of Deposit, Bond, or Letter of Credit.

The Department requires an insurer to submit a certificate of self-funded coverage by depositing cash, a bond or letter of credit with the Department as per Section 41-12a-407.

R708-19-4. Approved Methods.

(1) The following methods are approved by the department for meeting the requirements of providing equivalent security.

(a) Depositing with the department an amount in cash at least equal to minimum amounts specified hereinafter. The cash shall be held on deposit in accordance with Section 41-12a-406 by the Utah State Treasurer to satisfy approved claims and any executions on any judgment issued against such person making said deposit for damages or benefits provided under the Financial Responsibility of Motor Vehicle Owners and Operators Act. The deposit shall not be subject to attachment or executions except as shall arise from the enforcement of the Act.

(b) Posting with the department a bond, on a form approved by the department from a surety company authorized to do business in this state, providing for payment at least equal to minimum amounts specified hereinafter to assure payment of damages and benefits imposed by the Financial Responsibility of Motor Vehicle Owners and Operators Act.

(c) Delivering to the department a letter of credit, which is irrevocable as to beneficiary for one year, which covers the same amounts specified hereinafter to assure payment of damages and benefits imposed by the Financial Responsibility of Motor Vehicle Owners and Operators Act (41-12a-101).

R708-19-5. General Rules.

(1) Each owner providing the equivalent security shall:

(a) Complete and have notarized and file an application obtained from and approved by the department.

(b) File an application for approval each year.

(c) Submit a detailed report to the department within 15 days after each accident for which benefits are claimed under this act, and

(d) Be subject to the same requirements and entitled to the same privileges as provided for insurance companies.

(e) Maintain a fleet of not less than 25 vehicles.

(2) In lieu of the foregoing, an owner may supply a certified copy of the Decision to Grant Self-Insurance from the Interstate Commerce Commission.

KEY: self insurance plans**1992****Notice of Continuation January 19, 2016****41-12a-201****41-12a-406****41-12a-407**

R708. Public Safety, Driver License.**R708-20. Motor Vehicle Accident Prevention Course Standards.****R708-20-1. Authority and Purpose.**

Section 31A-19a-211 provides for an appropriate reduction of automobile insurance premiums for persons 55 years of age or older who successfully complete a motor vehicle accident prevention course.

The purpose of this rule is to establish procedures and standards for agencies or organizations who may conduct motor vehicle accident prevention courses as prescribed by this section.

R708-20-2. Definitions.

"Course" means a motor vehicle accident prevention course.

"Department" means the Department of Public Safety.

"Instructor" means an individual who has been approved by the course sponsor for the purpose of conducting an approved motor vehicle accident prevention course.

"Sponsor" means an organization or agency that conducts a motor vehicle accident prevention course.

R708-20-3. Motor Vehicle Accident Course Application For Approval.

Each sponsor who proposes to offer a course to the public for insurance reduction must submit a completed application to the department for approval on a form approved by the department.

A sponsor may file an application for approval at any time.

In order to be approved, a sponsor must comply with the following requirements:

1. The course must provide for a minimum of four hours classroom instruction which must be completed within a 30-day period from the date of enrollment.

2. The course curriculum shall include, but is not limited to, the following subjects:

a. How impairment of visual and audio perception affects driving performance and how to compensate for that impairment.

b. The effects of fatigue, medications, and alcohol on driving performance, when experienced alone or in combination, and precautionary measures to prevent or offset ill effects.

c. Updates on rules of the road and equipment, including but not limited to, safety belts and safe, efficient driving techniques under present day road and traffic conditions.

d. How to plan travel time and select routes for safety and efficiency.

e. How to make crucial decisions in dangerous, hazardous, and unforeseen situations.

f. The effects of physiological and physical problems that increase with age, their impact on driving, and how to compensate for these impairments, if possible.

3. Provide the department with all materials, manuals, and curriculum used in the course.

4. Provide an instructor preparation course to all instructor candidates. Only instructors who have completed this course may be employed by the sponsor.

5. Provide research documentation showing evidence of the effectiveness of the course. In the case of a course being new and having no documentation, evidence shall be submitted to the department when it becomes available.

6. Provide an address and telephone number where the course will be given and which may be disseminated to the public.

7. Designate an individual as representative of the course sponsor who is responsible for liaison with the department and include the representative's address and telephone number.

Course approval shall be valid for one year. At the end of

one year a sponsor may make a renewal application on a form approved by the department. When approval is given, a certificate will be issued by the department to the sponsor upon approval of the course.

R708-20-4. Withdrawal or Denial of Approval.

Approval to conduct a course may be denied or withdrawn if it is determined by the department that a sponsor has failed to comply with any provisions of Section 31A-19a-211 or this rule.

R708-20-5. Monitoring of Course.

The sponsor will allow and cooperate with the department's monitoring of any curriculum or course instruction conducted for insurance reduction including the scheduling of on-site visits by department representatives to perform audits of course records, course curriculum, course instruction and the inspection of classroom facilities, in order to assure compliance of standards as prescribed by this rule.

KEY: motor vehicles, accident prevention

January 2, 1997

31A-19a-211

Notice of Continuation January 19, 2016

R708. Public Safety, Driver License.

R708-38. Anatomical Gift.

R708-38-1. Purpose.

The purpose of this rule is to define the process for authenticating an applicant's intent to make an anatomical gift (organ donation) when applying for a driver license or identification card excluding renewal by mail.

R708-38-2. Authority.

This rule is authorized by Subsection 53-3-205(15)(a).

R708-38-3. Process.

An applicant who desires to make an anatomical gift shall authenticate their indication of intent by:

- (a) applying for a driver license or identification card;
- (b) marking the appropriate place on the application form indicating a desire to make an anatomical gift;
- (c) signing the application in person or by some other electronic means affirming that the information entered is true and correct; and
- (d) submitting the completed application at a driver license office or submitting the completed application by electronic means when available.

KEY: anatomical gift

July 3, 2001

Notice of Continuation January 19, 2016

53-3-205

26-28-102

26-28-105

R708. Public Safety, Driver License.**R708-42. Driver Address Record.****R708-42-1. Purpose.**

The purpose of this rule is to define the procedures, requirements and format for requesting and disclosing a Driver Address Record in accordance with Subsection 53-3-109(1)(c)(ii).

R708-42-2. Authority.

This rule is authorized by Subsection 53-3-109(7)(f).

R708-42-3. Definitions.

(1) "Driver Address Record" (DAR), means a computer generated compilation of particular elements contained in the Driver License Division electronic database, consisting of:

- (a) driver's name;
- (b) license certificate number;
- (c) driver's current residential address; and
- (d) name and license certificate of a person with a license certificate residential address that is the same as the driver requested.

R708-42-4. Procedures.

(1) Upon receipt of a request for a DAR pursuant to Subsection 53-3-109(1)(c)(ii), the division will search its driver license files to compile and furnish a DAR on any person licensed in the state of Utah. A qualified requester may only obtain a DAR for a person who has obtained motor vehicle insurance, from the qualified requester pursuant to Title 31A Chapter 22 Part 3.

(2) DAR's shall only be released to qualified requesters in accordance with the Federal Driver Privacy Protection Act of 1994 (DPPA), Subsection 53-3-109(1)(c)(ii), and Title 63G, Chapter 2.

R708-42-5. Requirements.

- (1) In order to receive a DAR, the requester must:
- (a) provide acceptable proof of identification that they are a qualified requester under Subsection 53-3-109(1)(c)(ii);
 - (b) enter into a contract with the division or its designated provider to obtain a DAR;
 - (c) provide the driver's name, Utah license certificate number and address;
 - (d) pay required fees as established by the division;
 - (e) agree to comply with state and federal laws regulating the use and further disclosure of information on an DAR; and
 - (f) comply with auditing processes and procedures as required by the division or its designated provider.

R708-42-6. Electronic Transactions.

Requests for DARs will be transacted electronically as approved by the division.

KEY: driver address record

August 8, 2006

53-3-109(1)(c)

Notice of Continuation January 19, 2016

R708. Public Safety, Driver License.**R708-43. Verification of Personal Identifying Information by Depository Institutions.****R708-43-1. Purpose.**

The purpose of this rule is to define the procedures, requirements and format for verifying personal identifying information in accordance with Subsection 53-3-109(1)(c)(iii).

R708-43-2. Authority.

This rule is authorized by Subsection 53-3-109(7)(f).

R708-43-3. Definitions.

(1) "Division" means the Utah Driver License Division.

(2) "Requestor" means a depository institution as defined in Section 7-1-103 that seeks access to verify personal identifying information contained in the Utah Driver License Division Database.

(3) "ValIDate" means the electronic web interface used to verify personal identifying information contained in the Utah Driver License Division Database.

(4) "Utah Interactive, Inc." means the entity under contract with the division to provide the ValIDate system.

R708-43-4. Application for Access to the ValIDate System.

(1) To apply for access to the ValIDate system, the requestor must:

(a) meet the qualifications stated in Subsection 53-3-109(1)(c)(iii);

(b) submit a "User Agreement for the ValIDate System" to the Division; and

(c) submit documentation to the division that establishes the requestor is a depository institution as defined in Section 7-1-103.

(2) Upon receipt of the required form and documentation, the division:

(a) shall review the materials to determine if the requestor is eligible to access the ValIDate system; and

(b) may request additional information to determine if the requestor is eligible to access the ValIDate system.

(3) If the division determines the requestor has met the requirements to access the ValIDate system, the division shall notify Utah Interactive, Inc. that the requestor is authorized to access ValIDate.

(4) If the division determines the applicant does not meet the requirements to access the ValIDate system:

(a) the division shall issue a denial letter to the requestor stating the reasons for the denial; and

(b) the requestor may seek agency review as provided by Section 63G-4-301 by filing a written request for review within 30 calendar days after the issuance of the letter.

R708-43-5. Procedures for Verification of Information.

(1) When submitting a query in ValIDate, the requestor shall enter the following information into the data fields:

(a) the subject's name as it appears on the Utah Driver License or Identification card;

(b) the subject's Utah Driver License or Identification card number; and

(c) the subject's date of birth.

(2) Upon submittal of an electronic request for verification, ValIDate will search the Utah Driver License Division Database and furnish a "YES" or "NO" response.

(3) A "YES" response verifies the name, Utah Driver License or Identification card number, and date of birth, matches the information in the Utah Driver License Division Database.

(4) A "NO" response indicates one or more data fields submitted does not match the information in the Utah Driver License Division Database.

R708-43-6. Unauthorized Use.

(1) The division may suspend or revoke a requestor's access to ValIDate for failure to comply with the user agreement, this rule, or with Section 53-3-109.

(2) The requestor may seek agency review of the suspension or revocation as provided by Section 63G-4-301 by filing a written request for review within 30 calendar days after the issuance of the suspension or revocation letter.

KEY: driver license verification**November 21, 2013****53-3-109(7)(f)****Notice of Continuation January 19, 2016 53-3-109(1)(c)(iii)**

R708. Public Safety, Driver License.**R708-44. Citation Monitoring Service.****R708-44-1. Purpose.**

The purpose of this rule is to define the procedures, requirements and format for disclosing personal identifying information in accordance with Section 53-3-109(3).

R708-44-2. Authority.

This rule is authorized by Section 53-3-109(7)(g).

R708-44-3. Definitions as Used in This Chapter.

"Citation Monitoring Service (CMS)" means an electronic service whereby the Driver License Division database is monitored on a regular basis to determine if a reportable moving violation has been entered on a specific driving record within the month prior to the date of the request. The requestor will receive a "YES or NO" response that indicates whether a reportable moving violation has been entered on the driver's record during the previous month. If the information submitted by the requestor does not match a driver's record on the database, the requestor will receive an unable to locate (UTL) response.

R708-44-4. Procedures.

(1) Upon receipt of a request for a notification pursuant to Section 53-3-109(3), the division will provide this monitoring service on any person who has a Utah license certificate.

(2) The Driver License Division database contains certain personal identifying information and is protected from public disclosure for privacy reasons in accordance with the federal Driver Privacy Protection Act of 1994 (DPPA), Section 53-3-109 and Title 63G, Chapter 2 (Government Records Access and Management Act).

R708-44-5. Requirements.

(1) CMS is only available to qualified requesters in accordance with the DPPA and Section 53-3-109(3).

(2) In order to be eligible for the CMS, the requester must:

(a) provide acceptable proof that they are an insurer as defined under Section 31A-1-301, or a designee of an insurer as defined under Section 31A-1-301;

(b) enter into a contract with the division or its designated provider to obtain this service;

(c) provide the name, date of birth, and Utah license certificate number for the person for which they are seeking monitoring and notification;

(d) pay required fees as established by the division;

(e) agree to comply with state and federal laws regulating the use and further disclosure of information on the Driver License Division database; and

(f) comply with auditing processes and procedures required by the division or its designated provider.

R708-44-6. Electronic Transactions.

The Citation Monitoring Service will be transacted electronically, as approved by the division.

KEY: driver license, motor vehicle record, citation monitoring service

August 8, 2006

53-3-109(3)

Notice of Continuation January 19, 2016

R714. Public Safety, Highway Patrol.**R714-500. Chemical Analysis Standards and Training.****R714-500-1. Authority.**

A. This rule is authorized by Section 41-6a-515 which requires the Commissioner of the Department of Public Safety to establish standards for the administration and interpretation of chemical analysis of a person's breath, including standards of training.

R714-500-2. Definitions.

A. Certification Report means document prepared by a technician detailing the results of a certification check.

B. Certification Check means analysis of instrument function and calibration performed by technician.

C. Instrument means breath alcohol concentration testing instruments employed by law enforcement officers for evidentiary purposes and approved by the department.

D. Operator means individual certified by the department to administer breath alcohol concentration tests.

E. Breath Alcohol Concentration Test Results means analytical results of a breath alcohol concentration test provided by an approved instrument. Results are deemed to be an exact representation of breath alcohol concentration at the time of test.

F. Program means all breath alcohol concentration testing techniques, methods, and programs.

G. Program Supervisor means authorized representative of the Commissioner of Public Safety for the breath alcohol concentration testing program and supervisor of said program.

H. Technician means individual certified by the department to operate, provide training on, and perform maintenance, repairs, and certification checks on breath alcohol concentration testing instruments.

I. Breath Test means test administered by an operator or technician on an instrument for the purpose of determining breath alcohol concentration.

J. Department means the Utah Department of Public Safety.

R714-500-3. Purpose.

A. It is the purpose of this rule to set forth:

(1) Procedures whereby the department may certify:

- (a) breath alcohol concentration testing programs;
- (b) breath alcohol concentration testing instruments;
- (c) breath alcohol concentration analytical results.
- (d) breath alcohol concentration testing operators;
- (e) breath alcohol concentration testing technicians; and
- (f) breath alcohol concentration testing program supervisors.

(2) Adjudicative procedure concerning:

- (a) application for and denial, suspension or revocation of the aforementioned certifications; and
- (b) appeal of initial department action concerning the aforementioned certifications.

R714-500-4. Application for Certification.

A. Application for certification shall be on forms provided by the department in accordance with Subsection 63G-4-201(3)(c).

R714-500-5. Program Certification.

A. All programs must be certified by the department.

B. Prior to initiating a program, an agency or laboratory shall submit application to the Department for certification. The application shall show the brand or model, or both, of the instrument to be used and contain a resume of the program followed. The Department shall inspect to determine compliance with all applicable provisions under R714-500.

C. Certification of a program may be denied, suspended, or revoked by the Department if, based on information obtained

by the Department, program supervisor, or technician, the agency or laboratory fails to meet the criteria as outlined by the department.

R714-500-6. Instrument Certification.

A. Criteria: To be approved, each manufacturer's brand or model of instrument shall meet the following criteria:

1. The instrument shall provide accurate and consistent analysis of breath specimen for the determination of breath alcohol concentration for law enforcement purposes;

2. Breath alcohol concentration analysis of an instrument shall be based on the principle of infra-red energy absorption or any other similarly effective procedure as specified by the Department;

3. Breath specimen analyzed shall be essentially alveolar or end expiratory in composition according to the analysis method utilized;

4. Measurement of breath alcohol concentration shall be reported in grams of alcohol per 210 liters of breath;

5. The instrument shall analyze a reference sample during certification checks, following procedures outlined in R714-500-6-D;

6. Other criteria, deemed necessary by the Department, may be required to correctly and adequately evaluate the instrument as practical and reliable for law enforcement purposes.

B. Acceptance: The Department shall approve all breath alcohol concentration testing instruments employed for law enforcement evidentiary purposes.

1. The Department shall maintain an approved list of accepted instruments. Law enforcement entities shall select instruments from this list, which list shall be available for public inspection upon request from the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

2. A manufacturer may apply for approval of an instrument by brand or model not on the list. The Department shall subsequently examine each instrument to determine if it meets criteria specified by R714-500 and applicable purchase requisitions.

3. Upon compliance with R714-500, an instrument may be approved by brand or model and placed on the list of accepted instruments.

4. Certification Reports verifying the certification of all instruments shall be kept on file by the program supervisor and made available upon request through the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

C. Initial Instrument Certification: All breath alcohol concentration testing instruments used for law enforcement evidentiary purposes shall be certified prior to being placed into service.

1. The program supervisor shall determine that each individual instrument, by serial number, conforms to the brand or model that appears on the Commissioner's accepted list.

2. Prior to an instrument being placed into service, a technician shall perform a certification check, following the standardized operating procedure and requirements outlined in R714-500-6-D.

3. Upon successful completion of these requirements, the instrument shall be deemed to be operating correctly and may be placed into service.

D. Regular Instrument Certification Checks

1. Once an instrument has been placed into service, it shall be certified by a technician on a routine basis, not to exceed 40 days between certification checks.

2. The program supervisor shall establish a standardized operating procedure for performing certification checks, following requirements set forth in R714-500 or by using such

procedures as recommended by the manufacturer of the instrument to meet its performance specifications, as derived from:

- a. electrical power check;
- b. operating temperature check;
- c. internal purge check;
- d. invalid test procedures check;
- e. diagnostic measurements check;
- f. internal calibration check;
- g. known reference sample check; and
- h. measurements of breath alcohol concentration, displayed in grams of alcohol per 210 liters of breath.

A copy of these standard operating procedures may be made available upon request through the Department, Utah Highway Patrol Training Section, 410 West 9800 South, Sandy, UT 84070.

3. For known reference sample checks set forth in R714-500-6-D-2-g, the instrument shall analyze a reference sample, such as headspace gas from a mixture of water and a known weight or volume of ethanol held at a constant temperature or a compressed inert gas and alcohol mixture from a pressurized cylinder.

a. The result of the analysis shall agree with the reference sample's predicted value, within parameters of calibration set at plus or minus 5% or 0.005, whichever is greater, or such limits as set by the Department.

i. For example, if a known reference sample has a value of 0.100, the parameters of calibration set at plus or minus 5% would equal 0.005 ($0.100 \times 5\% = 0.005$). Acceptable parameters of calibration using a known 0.100 reference sample would therefore range from 0.095 to 0.105.

b. Analytical results of the known reference sample check shall be reported to three decimal places.

1. Other checks, deemed necessary by the Department or program supervisor, may be required to correctly and adequately evaluate the instrument.

2. Technicians shall follow the standardized operating procedure as set forth by the program supervisor when performing certification checks.

3. If an instrument successfully passes all the certification checks, it shall be deemed to be operating properly.

4. A report of the certification results with the serial number of the certified instrument shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

5. Results of certification checks shall be kept in a permanent record retained by the technician or program supervisor.

E. Instrument Repair and Recertification

1. The Department may at any time determine if a specific instrument is unreliable or unserviceable. Upon such a finding, the instrument shall be removed from service and certification withdrawn.

2. A report of the certification results showing the certification has been withdrawn shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

3. Upon proper repair, the instrument may be recertified and again placed into service.

a. Minimum requirements for recertification are identical to those outlined in R714-500-6-D, sub-sections 2, 3, and 4.

4. A report of the certification results with the serial number of the recertified instrument shall be recorded on the approved Certification Report form by the technician, sent to the program supervisor, and placed in the file for certified instruments.

R714-500-7. Breath Alcohol Concentration Test Analytical Results.

A. The instrument should be operated by either a certified operator or technician.

B. Breath specimen analyzed for breath alcohol concentration shall be essentially alveolar or end expiratory in composition according to the analysis method utilized.

1. The results of tests to determine breath alcohol concentration shall be expressed as equivalent grams of alcohol per 210 liters of breath.

2. Analytical results on a breath alcohol concentration test shall be recorded using terminology established by State statute and reported to three decimal places.

a. For example, a result of 0.237g/210L shall be reported as 0.237.

C. Results of breath alcohol concentration tests will be printed by the instrument.

D. Results are deemed to be an exact representation of breath alcohol concentration at the time of test.

E. The printed results of a breath alcohol concentration test will be retained by the operator or the operator's individual agencies' designated record or evidence custodian.

F. Instrument internal standards on a breath alcohol concentration test do not have to be recorded numerically.

R714-500-8. Operator Certification.

A. All breath alcohol testing operators must be certified by the Department.

B. All training for initial and renewal certification will be conducted by a program supervisor or technician.

C. Initial Certification

(1) In order to be certified as a breath alcohol concentration testing instrument operator, an individual must successfully complete a course of instruction approved by the Department, which must consist of eight hours of training, including as a minimum the following:

- a. Effects of alcohol in the human body;
- b. Operational principles of breath testing;
- c. D.U.I. Summons and Citation, D.U.I. Report Form, and courtroom testimony;
- d. Legal aspects of chemical testing, DUI case law, and other alcohol related laws;
- e. Laboratory participation performing simulated tests on the instruments, including demonstrations under the supervision of a class instructor; and
- f. Examination and critique of course.

(2) After successful completion of the initial certification course a certificate will be issued that will be valid for three years.

D. Renewal Certification

(1) An operator seeking to renew his or her certification shall successfully complete the recertification exam prior to the expiration date of the certificate.

(2) The Department shall renew an operator's certificate for a three-year period after he or she successfully completes the recertification examination.

(3) Any operator whose certification expires shall retake and successfully complete the recertification course in order to renew his or her certification.

Four hours of training, including the following topics:

- a. Effects of alcohol in the human body;
- b. Operational principles of breath testing;
- c. D.U.I. Summons and Citation, D.U.I. Report Form, and courtroom testimony;
- d. Legal aspects of chemical testing DUI case law, and other alcohol related laws; and
- e. Successful completion of the recertification examination.

R714-500-9. Technician Certification.

- A. All technicians, must be certified by the department.
- B. The minimum qualifications for certification as a technician are:
- (1) Satisfactory completion of the operator's initial certification course and/or renewal certification course;
 - (2) Satisfactory completion of the Breath Alcohol Testing Supervisor's course offered by Indiana University or an equivalent course of instruction, as approved by the program supervisor;
 - (3) Satisfactory completion of the manufacturer's maintenance and repair technician course;
 - (4) Maintenance of technician's status through a minimum of eight hours training each calendar year. This training must be directly related to the breath alcohol testing program and must be approved by the program supervisor.

C. Any technician who fails to meet the requirements of R714-500-9-B and allows their certification to expire for more than one year, must renew their certification by meeting the minimum requirements as outlined in R714-500-9-B.

D. Only certified breath alcohol testing technicians shall be authorized to provide expert testimony concerning the certification and all other aspects of the breath testing instrument under their supervision.

R714-500-10. Program Supervisor Certification.

The program supervisor will be required to meet the minimum certification standards set forth in R714-500-9. Certification should be within one year after initial appointment or other time as stated by the department.

R714-500-11. Previously Certified Personnel.

A. This rule shall not be construed as invalidating the certification of personnel previously certified as operators under programs existing prior to the promulgation of this rule. Such personnel shall be deemed certified, provided they meet the training requirements as outlined in R714-500-8.

B. This rule shall not be construed as invalidating the certification of personnel previously certified as a technician under programs existing prior to the promulgation of this rule. Such personnel shall be deemed certified, provided they meet the training requirements in R714-500-8.

R714-500-12. Revocation or Suspension of Certification.

A. The department may, on the recommendation of the program supervisor, revoke or suspend the certification of any operator or technician:

- (1) Who fails to comply with or meet any of the criteria required in this rule; or
- (2) Who falsely or deceitfully obtained certification; or
- (3) Who fails to show proficiency in proper operation of the breath testing instrument; or
- (4) For other good cause.

R714-500-13. Adjudicative Proceedings.

A. Purpose of section. It is the purpose of this section to set forth adjudicative proceedings in compliance with Title 63G Chapter 4.

B. Designation. All adjudicative proceedings performed by the department shall proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.

C. Denial, suspension or revocation. A party who is denied certification or whose certification is suspended or revoked, will be informed within a period of 30 days by the department the reasons for denial, suspension, or revocation.

D. Appeal of denial, suspension, or revocation. A party who is denied certification or whose certification is suspended or revoked may appeal to the commissioner or designee on a form provided by the department in accordance with Subsection

63G-4-201(3)(C). The appeal must be filed within ten days after receiving notice of the department action.

E. No hearing will be granted to the party. The commissioner or designee will merely review the appeal and issue a written decision to the party within ten days after receiving the appeal.

KEY: alcohol, intoxilyzer, breath testing, operator certification
January 21, 2016
Notice of Continuation October 2, 2014

41-6a-515
63G-4

R805. Regents (Board of), University of Utah, Administration.**R805-5. Enforcement of No Smoking Areas at University of Utah Hospitals and Clinics.****R805-5-1. Purpose.**

1. To identify outdoor areas at University of Utah Hospitals and Clinics ("UUHC") facilities where smoking is prohibited.
2. To designate outdoor areas at UUHC facilities where smoking is permitted.
3. To set forth possible sanctions for persons who smoke in undesignated areas outside of UUHC facilities and the process for enforcement and discipline.

R805-5-2. Authority.

This rule is authorized by Sections 26-38-1 et seq., 53B-2-106, 63G-4-102, 76-6-206, and 76-8-701 through 76-8-718.

R805-5-3. Definitions.

1. "Designated smoking area" means an outdoor area equipped with signs indicating that smoking is permitted.
2. "Lighted tobacco" means both tobacco that is under self sustained combustion and tobacco that is heated to a point of smoking or vaporizing.
3. "Outdoor area" means the outdoor area of a UUHC facility, including parking garages, covered and uncovered parking lots, sidewalks, landscaping areas, and roadways of that UUHC facility.
4. "Smoke" or "Smoking" means the possession of any lighted tobacco product in any form.
5. "University of Utah Hospitals and Clinics facilities," "UUHC facilities," or "UUHC facility" means a facility or facilities in the University of Utah Health Care system, including, but not limited to, the University of Utah Hospital, Huntsman Cancer Hospital, University Orthopaedic Center, University Neuropsychiatric Institute, John A. Moran Eye Center, University of Utah Health Care Clinical Neurosciences Center, University of Utah Community Clinics, Utah Center for Reproductive Medicine, and the Utah Diabetes and Endocrinology Center.
6. "University property" means the University of Utah campus and any other property owned, operated, or controlled by the University of Utah and specifically includes the University of Utah's grounds, buildings, and roadways.

R805-5-4. Policy.

1. Established Utah Law
 - a. Subsection R392-510-9(1) prohibits smoking within 25 feet of any entrance-way, exit, open window, or air intake of publicly owned buildings, which includes UUHC facilities.
 - b. Section R392-510-4 authorizes UUHC facilities to prohibit smoking anywhere on their premises, including anywhere outdoors on their premises.
2. Further Prohibited Activities
 - a. No person may smoke in an outdoor area of a UUHC facility, including the 25 foot areas proscribed by current Utah law, unless the outdoor area is specifically designated by the UUHC facility as a designated smoking area.

R805-5-5. Enforcement and Sanctions.

1. Upon observing a person smoking in an outdoor area where smoking is prohibited, a UUHC official will request the person to extinguish the lighted tobacco product and, where applicable, may take one or more of the following actions:
 - a. Issue an administrative ticket to the person requiring the person to pay an administrative fee in an amount indicated on the ticket. Such administrative tickets are processed and settled through the UUHC facility.
 - b. Issue a citation to the person for criminal trespass

pursuant to Section 76-6-206.

c. Issue the person a citation and temporary eviction from, and denial of access to, University property pursuant to Sections 76-8-701 through 76-8-718.

d. Evict the person from, and deny the person access to, University property after an informal adjudicative proceeding pursuant to Rule R765-134.

e. Seek a citation to the person by the State Department of Health pursuant to Section 26-38-9.

f. University of Utah students, staff, and faculty may also be subject to disciplinary action pursuant to the applicable policies and procedures of the University of Utah Regulations Library.

KEY: smoke, smoking, public health**August 9, 2011****Notice of Continuation January 25, 2016****26-38-1 et seq.****53B-2-106****63G-4-102****76-6-206****76-8-701 through 76-8-718**

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. Assignment: the transfer or sale of a lease, permit, contract, certificate, easement, or any other interest or privilege in trust land or its resources by the holder of such interest, including lessees, permittees, and grantees. The transfer of any interest in a grazing association, either between shareholders or with an outside party, is deemed to be an assignment.

3. Beneficiary 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.

4. Board: School and Institutional Trust Lands Board of Trustees.

5. 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).

6. Carrying capacity: the maximum stocking rate possible which is consistent with maintaining or improving vegetation or related resources.

7. Commercial gain: compensation, in money, in services, or other valuable consideration rendered for products provided.

8. Cultural Resources: prehistoric and historic materials, features, artifacts.

9. 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.

10. Director: the director of the School and Institutional Trust Lands Administration.

11. Agency: School and Institutional Trust Lands Administration.

12. 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.

13. General Management Plans: plans prepared for school and institutional trust lands which guide the implementation of the school and institutional trust land management objectives.

14. 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.

15. 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.

16. Management Plans: General Management Plans, Resource Plans and Site-Specific Plans.

17. 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.

18. Paleontological Resources (fossils): the remains or traces of organisms, plant or animal, that have been preserved by various means in the earth's crust.

19. 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.

20. Paleontological Site: an exposure of a geologic formation having fossil evidence of scientific value as determined by professional consensus.

21. 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.

22. 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.

23. 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.

24. 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.

25. Range condition: the relation between current and potential condition of the range site.

26. Record of Decision: a written finding describing an agency action, relevant facts, and the basis upon which the decision for action was made.

27. Resource Plans: a plan prepared for a specific resource, such as mining, timber, grazing or real estate.

28. 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.

29. 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.

30. Significant site: any site which is designated by the Division of State History as scientifically worthy of specific management.

31. 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.

32. 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.

33. 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.

34. Sublease: a situation where a permittee or lessee has granted or allowed the use of part or all of the permitted or leased premises to another person, but with the original permittee or lessee retaining some right or interest under the original permit or lease.

35. 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.

36. Survey Report: report of the various site files and field surveys or inspections.

37. 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.

38. 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

January 21, 2016

53C-1-302(1)(a)(ii)

Notice of Continuation May 23, 2012

R850. School and Institutional Trust Lands, Administration.**R850-11. Procurement.****R850-11-100. Authorities.**

This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act; Articles X and XX of the Utah Constitution, and Subsection 53C-1-201(3)(e).

R850-11-150. Purposes.

Subsection 53C-1-201(3)(e) permits the agency to be exempted from the Utah Procurement Code upon board approval and adoption of alternative procurement procedures. This rule provides alternative procurement procedures that the agency may follow when procuring any goods and services related to the administration of the agency or the management, development, leasing or sale of trust lands. Nothing in this rule shall be deemed to prevent the agency from procuring goods and services pursuant to the Utah Procurement Code or other applicable law whenever deemed advisable by the agency, or in circumstances where this rule is not applicable.

R850-11-200. Definitions.

For the purposes of this rule:

1. Provider: means an individual or firm engaged in the business of providing goods or services deemed necessary by the agency.
2. Professional Services: any professional services related to the administration of the agency or the management, development, leasing or sale of trust lands, including management consulting, accounting, auditing, engineering, land planning, marketing, environmental, geological, mining engineering, architectural, surveying, appraisal, archaeological, real estate brokerage, planning, or such other services as needed.
3. Legal Services: a licensed professional service provided by attorneys or law firms to address issues of law, whether litigation or otherwise.

R850-11-300. Professional or Legal Services.

1. The agency may from time to time request providers of professional or legal services to submit a statement of qualifications containing information that the agency deems relevant to the provider's ability to provide quality services and the provider's hourly rates. At least once annually, the agency will advertise statewide its intent to accept statements of qualifications, and will maintain a list of qualified providers with approved rates.
2. The purpose of prequalification is to provide the agency with basic information regarding providers for the agency's convenience. The agency is not required to solicit each or any prequalified provider for a particular service when it undertakes a procurement.
3. When the procurement of professional or legal services is estimated to cost less than \$50,000, the agency may select the provider directly from either the list of providers who have submitted annual statements of qualifications, or from other qualified providers if necessary.
4. When the procurement is estimated to exceed \$50,000, a written request for proposal (RFP) shall be prepared which describes the agency's requirements and sets forth the evaluation criteria for the procurement. Consideration shall be given to publishing the RFP in a newspaper of general circulation or otherwise advertising the RFP to elicit additional responses from potential providers. The agency shall select the provider offering, as determined in the discretion of the director, the best combination of price, expertise, and other relevant factors. The director shall make a written determination, supported by the following reasons, that the selected provider is best qualified to provide the particular services being procured by the agency:
 - (a) competence to perform the services as reflected by technical training and education, general experience, experience

in providing the required services and the qualifications and competence of persons who would be assigned to perform the services;

(b) ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously;

(c) past performance as reflected by the services of the firm with respect to factors such as responsiveness, control of costs, quality of work, and an ability to meet deadlines; and

(d) a determination that the provider's fees are reasonable.

5. The agency may in its discretion issue contracts for professional or legal services by competitive bid pursuant to R850-11-400 or R850-11-500 instead of utilizing the procedures in this section.

R850-11-400. Bidding Procedures - Other Procurements.

1. Competitive bids are not required for procurements under \$3,000 unless the responsible agency staff member believes that the potential financial benefit to the trust beneficiaries from obtaining bids outweighs the staff time and costs associated with soliciting bids.

2. For procurements over \$3,000 and less than \$50,000, except for procurements of professional or legal services undertaken pursuant to R850-11-300, the responsible agency staff member shall seek to obtain no less than two competitive bids. Bids may be solicited and received by telephone or other means, but shall be noted in writing by the responsible agency staff member.

3. The provider offering the lowest bid shall be selected unless the director makes a written determination that a provider submitting a higher bid is better qualified to provide the particular services being procured by the agency.

4. Nothing in this rule shall prevent the agency from using existing statewide contracts for supplies, services and construction as set forth in R33-3-301(2).

R850-11-450. Bidding Procedures - Large Contracts.

1. For procurements anticipated to exceed \$50,000, except for procurements of professional or legal services undertaken pursuant to R850-11-300, the agency shall prepare a written request for proposals (RFP) or invitation to bid describing information required by the agency in evaluating the proposal, which may include a description of the services required, a statement of the provider's experience and qualifications, any performance schedule or deadlines, billing rates, bid specifications, and other information relevant to the particular project.

2. The responsible agency staff member shall seek to obtain at least three written responses to the RFP. Consideration shall be given to publishing the RFP in a newspaper of general circulation or otherwise advertising the RFP to elicit additional responses from potential providers.

3. The provider offering the lowest bid shall be selected unless the director makes a written determination, supported by detailed reasons, that a provider submitting a higher bid is better qualified to provide the particular services being procured by the agency.

R850-11-500. Sole Source Procurements.

Where the agency has identified a provider that has special familiarity or qualifications with respect to a project, or that has previously worked on a related project, the agency may hire the provider without soliciting bids from other providers if the director finds in writing that hiring the particular provider is in the best interests of the trust beneficiaries, and that the provider's fee is reasonable.

R850-11-600. Real Estate Brokerage Services.

1. The agency is not required to solicit bids for real estate

brokerage services, and may list trust lands with a licensed Utah broker as it sees fit.

2. Where the agency has not listed a property with a broker, but has undertaken internal marketing efforts, the agency is authorized but not obligated to pay a commission or finder's fee no greater than the prevailing market rates in the area to real estate brokers who have previously registered their client as directed by the agency, and who are the procuring cause of:

- (a) the sale of trust lands; or
- (b) a development transaction entered into by the agency pursuant to R850-140.

3. Commission amounts will be determined in the discretion of the agency based on type of transaction, prevailing market conditions, and any other relevant factors.

R850-11-700. Debt and Equity Investments.

Debt and equity investments made by the agency shall be exempt from the Utah Procurement Code, provided that such investments are part of a development transaction reviewed by the board and entered into by the agency pursuant to R850-140.

R850-11-800. Documentation.

The agency will determine, based on the type of service requested and complexity of the project, the level of contractual documentation necessary in order to adequately protect the best interests of the trust. Formal contract documentation shall be subject to approval as to form by a representative of the attorney general's office.

R850-11-900. Bonding for Construction Services.

1. For construction services costing \$50,000 or higher, the agency shall require the chosen provider to deliver to the agency a performance bond and a payment bond in amounts equal to 100% of the price specified in the contract and executed by a surety company authorized to do business in this state or in any other form satisfactory to the agency;

2. For construction services costing less than \$50,000, the agency may require a performance bond and a payment bond as described in R850-11-700(1) if it determines that requiring such bonds is in the best interests of the trust.

R850-11-1000. Conflicts of Interest.

The agency shall not enter into any contract with a provider which violates or, on account of the factual circumstances or person involved, gives the appearance of a conflict of interest or a potential violation of the Utah Public Officer's and Employee's Ethics Act.

R850-11-1100. Appeals.

Appeals of agency procurement decisions shall be governed by 63G-6. All initial appeals shall be directed to the director of the agency, with a copy to the Director of the Division of Purchasing. The disposition of any appeal shall take into account the intended purpose of Subsection 53C-1-201(3)(a)(iv), which is to provide the agency with broad discretion and flexibility in procurement to facilitate businesslike management of trust lands.

KEY: government purchasing

January 21, 2016

Notice of Continuation April 24, 2012

53C-1-201(3)

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, the qualifications of a grazing permittee, and related improvement of range resources on trust lands.

R850-50-150. Planning.

1. Pursuant to Section 53C-2-201(1)(a), the issuance of grazing permits 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 with the State Planning Coordinator, the agency shall submit the proposal for review by the Resource Development Coordinating Committee (RDCC); and

(b) evaluate and respond 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.

1. Management of trust lands used for grazing purposes is based upon carrying capacity which permits optimum forage utilization and seeks to maintain or improve range conditions.

2. Carrying capacity shall be established after consideration of historical stocking rates, forage utilization, range condition, trend, and climatic conditions.

3. In order to fulfil its constitutional mandate to its beneficiaries, the agency may set, and change, at its discretion, season of use, duration (time) of use, and intensity of use, as well as numbers, distribution, and kind of livestock which are allowed by a grazing permit.

R850-50-300. Applications.

1. Grazing permit applications may be accepted on all trust lands not otherwise subject to a grazing permit unless the land has been withdrawn from grazing or has been determined to be unsuitable for grazing.

2. Trust lands may be deemed unsuitable for grazing if it is determined that:

(a) range conditions render it incapable of supporting economic grazing practices;

(b) grazing would substantially interfere with another use that is better able to provide for the support of the beneficiaries; or

(c) the agency's management costs would be excessive.

3. The determination to accept grazing permit applications is at the sole discretion of the director.

R850-50-400. Permit Approval Process.

1. On trust lands that are unpermitted and which are available for grazing, applications may be solicited through any method the agency determines 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 and canceled grazing permits shall be posted on the agency's website by January 1 of the year in which the permit expires or the year after the permit was canceled. The website notice shall include any reimbursable investment made by an 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. A 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 must include:

(a) a non-refundable application fee;

(b) a one-time bonus bid; and

(c) 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.

5. 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.

6. 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 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 as a grazing permittee, the agency may consider:

(i) the applicant's ability to maintain any water rights appurtenant to the lands described in the application;

(ii) the applicant's ownership of private land in the area;

(iii) the applicant's ownership of grazing privileges in the BLM or Forest Service allotment where the trust land is located;

(iv) the type and number of livestock owned by the applicant; and

(v) management costs to the agency should the application be approved.

7. 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 authorized by the agency. This assessment shall be established by the board and shall be reviewed annually and adjusted if appropriate.

2. The annual assessment for lands designated as "High Value Grazing Lands" will be at a higher amount 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 annual assessment 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 annual assessment 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.

5. Failure to pay the annual assessment within the time prescribed shall automatically work a forfeiture and cancellation of the permit and all rights thereunder.

R850-50-600. Grazing Permit Terms.

1. Grazing permits shall be issued for a maximum of 15 years and shall contain the following:

(a) 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;

(b) terms, conditions, and provisions that shall protect the range resources from improper and unauthorized grazing uses; and

(c) 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.

2. The agency may cancel or suspend grazing permits, in whole or in part, after 30 days' notice by certified mail to the permittee when:

(a) a violation of the terms of the permit, or of these rules, including trespass as defined in R850-50-1400, has occurred;

(b) a lease or permit has been issued for the permitted property, the purpose of which the agency has determined to be a higher and better use;

(c) the agency has disposed of the permitted property; or

(d) any management problems arise as defined in R850-50-400(6).

R850-50-700. Reinstatements.

Trust land on which a grazing permit has been cancelled and which is ineligible for reinstatement pursuant to R850-50-500(1)(c) may be advertised as available pursuant to R850-50-400(2). 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.

R850-50-800. Grazing Permits--Legal Effect.

1. A grazing permit transfers neither right, title, or interest in any lands or resources, nor any exclusive right of possession and grants only the authorized utilization of forage.

2. 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.

R850-50-900. Non-Use Provisions.

1. The granting of non-use shall be at the discretion of the agency.

2. Applications for non-use must be submitted 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.

3. Applications for non-use must be accompanied by the application fee and by any documentation which is the basis for the request. In the event the non-use application is approved, any annual assessment paid for the year shall be applied to the permittee's next year's annual assessment.

4. Non-use shall not be approved for periods of time exceeding one year except when the director finds that a longer period of time would be in the best interests of the beneficiaries.

5. Non-use for personal convenience with no payment of the annual assessment shall not be approved.

R850-50-1000. Assignment and Subleasing of Grazing Permits.

1. Permittee shall not assign, or sublease, in whole or in part, or otherwise transfer, dispose of, or encumber any interest in a 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. The approval of a sublease shall be subject to the following restrictions:

(a) 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.

(b) Applications to sublease a grazing permit shall only be approved after a determination that the sub-lessee meets the requirements of R850-50-400(6).

(c) Sublease approvals are valid for a maximum period of five years.

3. The approval of an assignment shall be subject to the following restrictions:

(a) A determination that the assignee meets the requirements of R850-50-400(6).

(b) A payment, based on the number of AUMs transferred multiplied by \$10.00, shall be paid to the agency prior to the approval of any assignment or partial assignment. Assignments made for no consideration in money, services, or goods, to include inter vivos or testamentary assignments made to immediate family members (parents, spouse, children, grandchildren, and full siblings) and assignments from and to business entities wholly owned by an immediate family member or members, may be exempt from this additional payment. In such cases, a minimum assignment fee as listed on the Master Fee Schedule shall be assessed.

(c) For purposes of this rule, a shareholder or member of a grazing association or cooperative shall be deemed a permittee and subject to the requirements of R850-50-1000(3)(a). In order to facilitate the enforcement of this rule, each grazing association or cooperative shall submit a list of all members to the agency annually prior to June 30. This list shall include each member's contact information and the number of AUMs allowed.

4. The agency's consent to allow a mortgage agreement or collateral assignment is for the convenience of the permittee.

5. The mortgage agreement or collateral assignment shall:

(a) not exceed the remaining term of the permit; and
 (b) contain an acknowledgment by the lender that the grazing permit is cancellable pursuant to R850-50-600(2) and R850-50-1000(1) and that the agency assumes no liability in providing such consent.

R850-50-1100. Range Improvement Projects.

1. Applications for range improvement projects shall be submitted for approval on appropriate forms and shall be approved or denied by the agency based on a written finding.

2. A range improvement project 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 when the director finds that an extension of time would be in the best interests of the beneficiaries.

4. Range improvements constructed or placed upon trust land 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) unnecessary or uneconomical as determined by the agency; or

(d) determined by the agency to be ordinary maintenance.

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:

(a) 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; and

(b) do not grant any vested property interest to the permittee.

8. In the event that the property, on which an approved range improvement 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, may be allowed 90 days to remove improvements pursuant to Section 53C-4-202(6).

9. 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.

10. The agency may participate in the cost of designated range improvement projects, or maintenance of existing range improvement projects, by providing funding in amounts and at rates determined by the agency.

11. 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 mineral leases, 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 agency 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); and

9. terminate a grazing permit in order to facilitate management pursuant to R850-50-200 or for 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:

(a) the use of forage at times and at places not authorized by the use;

(b) The use of forage 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; and

(e) allowing another person to graze or trail livestock on the permitted property without the express written consent of the agency.

2. The permittee shall cooperate with the agency in taking civil action against the owners of trespass livestock to recover damages for lost forage and other damages.

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, which shall not 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 camps, corrals, feed yards, irrigated livestock pastures, or other related uses.

2. 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(2).

(c) The 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(5).

(d) Upon cancellation of the modified grazing permit, the permittee shall be allowed 90 days to remove any personal property.

(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 may be required to post a bond with the agency 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).

R850-50-1700. Supplemental Feeding.

1. Supplemental livestock feeding may be permitted subject to:

(a) written authorization by the agency;

(b) the designation of a specific area, length of time, number, and class of livestock; and

(c) a determination that this shall not inflict long term damage upon the property.

2. The agency may assess an additional fee for authorized supplemental feeding or may require the permittee to obtain a modified grazing permit.

3. Emergency supplemental feeding shall be allowed for ten days prior to notification.

4. The forage used for supplemental feeding shall be certified weed free.

KEY: administrative procedures, range management

January 21, 2016 53C-1-302(1)(a)(ii)

Notice of Continuation June 27, 2012 53C-2-201(1)(a)

53C-5-102

R909. Transportation, Motor Carrier.**R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification.****R909-19-1. Authority.**

This rule is enacted under the authority of Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6a-1405, Utah Code.

R909-19-2. Applicability.

All tow truck motor carriers and employees must comply and observe all rules, including R909-1, regulations, traffic laws and guidelines as prescribed by State Law, including Sections 41-6a-401.9, 41-6a-1404, 41-6a-1405, 41-6a-1406, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, and 72-9-703.

R909-19-3. Definitions.

(1) "Consent Tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or its legal operator, knowledge and/or approval.

(2) "Department" means the Utah Department of Transportation.

(3) "Division" means the Motor Carrier Division.

(4) "Emergency Moves" means a tow operation initiated by law enforcement to move a wrecked or disabled motor vehicle.

(5) "Gross Combination Weight Rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(6) "Gross Vehicle Weight Rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(7) "Life-Essential personal property" includes those items essential to sustain life or health including: prescription medication, medical equipment, essential clothing (e.g. shoes, coat), food and water, child safety seats, and government issued photo-identification.

(8) "Non-Consent Police Generated Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

(9) "Non-Consent Non Police Generated Tow" means towing services performed without the prior consent or knowledge of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(10) "Normal Office Hours" means hours of operation where the office or yard shall be staffed and open for public business during normal business hours Monday thru Friday, except for designated state and federal holidays.

(11) "Recovery Operation" means a towing service that may require charges in addition to the normal one-truck/one-driver towing service requirements. The additional charges may include charges for manpower, extra equipment, traffic control, and special recovery equipment and supplies.

(12) "Tow Truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(13) "Tow Truck Certification Program" means a program to authorize and approve tow truck motor carrier owners,

operators, and vehicles is the process by which the Department, acting under Section 72-9-602, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(14) "Tow Truck Motor Carrier" means any company that provides for-hire, private, salvage, or repossession towing services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervisory, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

(15) "Tow Truck Service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow Truck Service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Towed Vehicle Classifications will be used when determining authorized fees. Information regarding the GVWR to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(i) "Light Duty" means any towed vehicle with a GVWR 10,000 pounds or less;

(ii) "Medium Duty" means any towed vehicle with a GVWR between 10,001 and 26,000 pounds;

(iii) "Heavy Duty" means any towed vehicle with a GVWR or GCWR 26,001 pounds and greater.

(16) "Tow Truck Motor Carrier Steering Committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

(1) Tow Truck Motor Carriers performing emergency moves shall maintain liability insurance coverage of at least \$750,000 per occurrence. Tow Truck Motor Carriers performing non-emergency moves shall maintain liability insurance coverage of at least \$1,000,000 per occurrence.

(2) All Tow Truck Motor Carriers performing consent or non-consent tows are required to obtain a MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.

(3) Evidence of required insurance shall be maintained at the principal place of business and made available to the Department and/or Investigator upon request and prior to issuance of the Tow Truck Motor Carrier certification.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) suspension or revocation of a carrier or tow truck certification (suspension or revocation will be based upon the severity of violations to this rule, Sections 41-6a-1406 and 72-9-603);

(c) issuance of a cease-and-desist order as authorized by Section 72-9-303; and

(d) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

R909-19-7. Towing Notice Requirements.

(1) All non-consent police generated and non-consent non-police generated tows conducted by Tow Truck Motor Carriers must input required information in electronic form on the Division of Motor Vehicles Utah State Tax Commission's website, at "<https://secure.utah.gov/ivs/ivs>" as required by 41-6a-1406(11).

(2) Tow Truck Motor Carriers must notify the local enforcement agency having jurisdiction over the area from where the vehicle, vessel, or outboard motor was removed on all non-consent non-police generated tows immediately upon arrival at the impound or storage yard.

(a) For tows conducted on vehicles, vessels, and outboard motors and the owner information does not appear in the IVS or TLR (Title License Registration) systems, a Tow Truck Motor Carrier has met this requirement if they can provide proof that a letter has been sent to the Utah State Tax Commission Division of Motor Vehicle or the appropriate state where the vehicle, vessel, and outboard motor is registered, within two business days requesting the needed information to send the letter.

(3) If required notifications to the Division of Motor Vehicles and local law enforcement is not completed as required by Sections 41-6a-1406 and 72-9-603, the Tow Truck Motor Carrier or operator may not collect any fees associated with the removal or begin charging storage fees as authorized under Sections 41-6a-1406 and 72-9-603 until the removal has been reported to the Motor Vehicle Division and the local law enforcement agency.

(4) If notification to the last known owner and lien holder is not made as required by this rule, the Tow Truck Motor Carrier may be subject to penalties as outlined in this rule.

(5) The tow truck motor carrier or the tow truck driver must provide a copy of the Utah Consumer Bill of Rights Regarding Towing at first contact with the owner of a vehicle, vessel, or out board motor that was towed.

(a) The tow truck motor carrier must be able to verify that the consumer received their copy of the Utah Consumer Bill of Rights Regarding Towing.

(6) The Utah Consumer Bill of Rights Regarding Towing shall contain the language and information as published at, www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(b) The consumer has a right to receive documentation from the tow truck motor carrier showing the date and time the storage began.

(c) The tow truck motor carrier, driver(s) and vehicle(s) shall comply with 49 CFR Section 390, of the Federal Motor Carrier Safety Regulations, which are incorporated and made a part of this Rule by this reference.

(d) A consumer has the right to file a complaint alleging:

(i) Overcharges;

(ii) Inadequate certification for the driver, truck or company, and;

(iii) Violations of the Federal Motor Carrier Safety Regulations, Utah Code Annotated or Utah Administrative Code.

(e) Complaints may be filed online with the Utah Department of Transportation at <http://www.udot.utah.gov>. Click on the Motor Carrier Division tab, Motor Carrier Contacts, and click on the Tow Truck Complaint form; or by

contacting the Motor Carrier Division at (801) 965-5892.

R909-19-8. Certification.

There are three (3) certifications required by the Department.

(1) Tow Truck Driver Certification.

(a) Effective July 1, 2004 all tow truck drivers will be tested and certified in accordance with National Driver Certification Procedure (NDCP) standards and carry evidence of certification for the appropriate level of vehicle they are operating. These standards of conduct and proficiency may be tested and certified through an accepted program approved by the Department.

(i) Towing and Recovery Association of America (TRAA) Testing Program;

(ii) Wreckmaster Certification Program;

(iii) AAA Certification Program;

(iv) Utah Safety Council;

(v) North American Towing Academy; or

(vi) Other driver testing certification programs approved by the Department to meet certification requirements, however, the Tow Truck Motor Carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4892.

(b) Information on qualified certification programs may be obtained by contacting the Motor Carrier Division at (801) 965-4892.

(c) Tow Truck Motor Carriers shall ensure that all drivers are:

(i) properly trained to operate tow truck equipment;

(ii) licensed, as required under Sections 53-3-101, through 53-3-909 Uniform Driver License Act; and

(iii) properly certified.

(2) Tow Truck Vehicle Certification.

(a) All tow trucks shall be inspected and certified biannually.

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at <http://www.udot.utah.gov/index.php/m=c/tid=396> or by calling 801-965-4892.

(c) Upon vehicle certification, a UDOT certification sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT tow truck vehicle inspection certification shall be kept in the vehicle files and be available upon request by Department personnel.

(3) Tow Truck Motor Carrier Certification.

(a) Tow Truck Motor Carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, and local laws where applicable.

R909-19-9. Certification Fees.

The Department may charge Tow Truck Motor Carriers a fee biannually as authorized by Section 72-9-603 to cover costs associated with driver, vehicle, and carrier certifications.

R909-19-10. Information Required on Towing Receipt.

Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

(a) company name;

(b) address;

(c) phone number;

(d) transportation, administration, fuel surcharge, and storage fees charged;

(e) name of company driver;

(f) unit number;

(g) license plate of the towed vehicle;

(h) make, model, Vehicle Identification Number, and year of the towed vehicle;

(i) start and end time with total hours for services provided; and

(j) the date vehicle was retrieved from tow yard or other storage area.

R909-19-11. Non-Consent Towing, Storage, Administrative and Fuel Surcharge Fees.

(1) The Motor Carrier Division is required to establish the allowable maximum fees for tow truck service, storage, the tow truck carrier's administrative fee for reporting the removal, and the fuel surcharge as per Utah State Code 72-9-603. The Towing Fees Schedule is published on the Division's website at <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396>.

(2) The allowable maximum fee for tow truck service and the maximum allowable administrative fee for reporting the removal ("Allowable Maximum Fees") shall be tied to the Consumer Price Index for all Urban Wage Earners and Clerical Workers (CPI-W) in the West Urban Region of the U.S. The (CPI-W) is calculated by the U.S. Department of Labor, Bureau of Labor and Statistics (BLS), which publishes CPI Detailed Report Tables every month on its web site at <http://www.bls.gov/cpi/tables.htm>.

(3) The Motor Carrier Division shall adjust the Allowable Maximum Fees once annually as follows:

(a) The base fee schedule for each calendar year after a year in which the motor Carrier Division determines the Allowable Maximum Fees pursuant to R909-19-11(1) shall be adjusted effective January 1 of each such calendar year (the "Adjustment Date").

(b) The adjustment amount of the Allowable Maximum Fees shall be equal to the change in the CPI-W for the twelve-month period prior to the October CPI-W figure reported by the BLS immediately preceding the Adjustment Date in question.

(c) The first CPI-W based adjustment to the Allowable Maximum Fees shall be equal to the cumulative change in the CPI-W for 2014 and 2015.

(d) If the twelve month change in the CPI-W from October to October is negative, the Allowable Maximum Fees shall remain unchanged until the next Adjustment Date.

(e) The Division of Motor Carriers shall round the Allowable Maximum Fees to the nearest whole number.

(4) A Tow Truck Motor Carrier may charge up to but not exceeding the approved tow rate, based upon the type of non-consent tow, as indicated in the Towing Fee Schedule published online at <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396>.

(a) An additional 15% of the fee for tow truck service may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of and in accordance with the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(b) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck motor carrier shall be considered in possession of the vehicle.

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle is attempting to retrieve said vehicle before the tow truck motor carrier is in possession of the vehicle, no fee(s) shall be charged to the vehicle owner.

(d) If the owner, authorized operator, or authorized agent of the owner of the vehicle is attempting to retrieve the vehicle after the tow truck motor carrier is in possession of the vehicle but before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(e) Charges for recovery operations, as defined by R909-19-3, shall be coordinated with the towed vehicle owner prior to initiating the additional charges relating to the recovery

operation. Coordination with the towed vehicle owner should result in an agreement between the towed vehicle owner and Tow Truck Motor Carrier.

(f) Tow Truck Motor Carriers shall obey all applicable local municipal and county laws, pertaining to placement of signs, notification, and other towing related ordinances.

(g) Strobe lights are not allowed on Tow Trucks. The acceptable color for tow truck lights is amber.

(5) A Tow Truck Motor Carrier may charge up to but not exceeding the amount for storage per day for the type of non-consent tow as indicated in the Towing Fee Schedule as published online at <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396>.

(a) A Tow Truck Motor Carrier may charge a higher fee for inside storage per day per unit as indicated in the Towing Fees Schedule as published on the Divisions website at <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396>. Only if requested by the owner(s), or a law enforcement agency or highway authority.

(b) Vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F may be charged a higher storage fee rate based upon the Towing Fees Schedule as published online at <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396>.

(c) For the purpose of calculating storage rates, if the first six (6) hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

(6) A Tow Truck Motor Carrier may charge an administrative fee for reporting the removal of up to but not exceeding the amount indicated in the Towing Fee Schedule as published online at <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396> per vehicle notification for reporting non-consent tows to the Department of Motor Vehicles and for sending notifications to the owner and lien-holder (if applicable).

(7) A Tow Truck Motor Carrier may charge a fuel surcharge When the daily Rocky Mountain Average, as determined by the Department of Energy, for the price of fuel reaches \$3.25 per gallon, a tow truck motor carrier may charge a surcharge equal to 5% of the base tow rate. An additional 5% shall be allowed for each \$0.25 per gallon increase. Conversely, as the price of fuel drops, the fuel surcharge shall decrease by the same rate.

(a) To determine the Rocky Mountain daily average per gallon diesel cost, refer to the U.S. Energy Information Administration's website at <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.sap>.

(b) The fuel surcharge may be charged on non-consent police generated tow when the vehicle is being used in the function of a tow vehicle i.e. travel to and from the scene and during the operation of equipment for recovery operation. Non-consent non-police tows may charge a onetime fee.

(c) Surcharge fee shall be listed as a separate fee on the tow bill.

R909-19-12. Towing and Storage Rates. Public Consent Tows.

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services rendered and are not regulated by the Department.

R909-19-13. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603, a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle.

R909-19-14. Federal Motor Carrier Safety Requirements.

72-9-303
72-9-701
72-9-702
72-9-703

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

R909-19-15. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, the public can call the Motor Carrier Division at (801) 965-4892.

R909-19-16. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a Steering Committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

R909-19-17. Annual Review of Rates, Fees and Certification Process.

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in August of each year, the board may review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2) The purpose of this meeting is to provide an opportunity and forum for interested parties to submit evidence in support of or against proposed rate or fee adjustments, or issues related to procedures regarding the certification process.

(3) Interested parties must notify the Department of their desire to appear and be heard at the August Advisory Board meeting by August 1 of each year to ensure placement on the agenda.

R909-19-18. Ability to Petition for Review.

Any Tow Truck Carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code R907-1, Administrative Procedures.

R909-19-19. Record Retention.

Tow Truck Motor Carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

R909-19-20. Life Essential Property.

Property which is deemed as life essential shall be given to the vehicle owner regardless of payment for rendered services.

KEY: safety regulations, tow trucks, towing, certifications
January 21, 2016 41-6a-1404
Notice of Continuation September 19, 2011 41-6a-1405
 41-6a-1406
 53-1-106
 53-8-105
 72-9-601
 72-9-602
 72-9-603
 72-9-604
 72-9-301

R920. Transportation, Operations, Traffic and Safety.**R920-4. Special Road Use or Event.****R920-4-1. Purpose, Authority, Scope, and Definitions of Rule.**

(1) The purposes of this rule are to:

(a) Ensure the right of Utahns and visitors to speak and protest in public forums and other public places owned or maintained by the Utah Department of Transportation;

(b) Encourage and support special events such as parades, runs and walks, bicycle races, and film-related activities, recognizing their importance to Utah's economy and to the well-being of residents of and visitors to Utah;

(c) Manage limited resources and multiple requests for the use of the same roadways in a responsible and content-neutral manner;

(d) Encourage collaboration with local governments in the review and management of Special Road Uses;

(e) Provide guidelines and an appeal process for the review of applications for special road use permits; and

(f) Set reasonable time, place, and manner restrictions for the safe use of roadways for free speech events, and set reasonable requirements on other special events on highways and land under the jurisdiction of the Department to protect public safety, persons, and property, and to accommodate the interests of persons not participating in the assemblies to use the roadways for travel;

(2) This rule is intended to further the following governmental interests:

(a) The rights of Utahns to speak, protest, and peaceably assemble;

(b) The safety of all participants in, and spectators of, special events;

(c) The safety of the travelling public;

(d) The ability of emergency service providers to access and care for participants and spectators in special use events, and for residents near to such event;

(e) The management of limited resources;

(f) Utah's tourism industry and its strong economy;

(g) The ability of residents and others not participating in any special event, to travel on the roadways and to access private property without unreasonable disruption; and

(h) The protection against unreasonable financial burdens on the Department or the State.

(3) This rule is authorized by Sections 72-1-201, 72-1-212 and 41-6a-1111 of the Utah Code Annotated. This rule applies to all highways and adjacent rights-of-way under the Department's jurisdiction.

(4) Definitions.

The following definitions shall apply for purposes of Rule 920-4:

(a) The "Applicant" means an individual, corporation, unincorporated association, Local Government, or other organization, seeking a Special Event Permit. "Applicant" also includes any predecessors or successors in interest to the Applicant, and, if the Applicant is an entity, any officers and principals of the Applicant.

(b) A "Day" means a calendar day, except as otherwise expressly stated in this Rule.

(c) "Department" means the Utah Department of Transportation.

(d) A "Free Speech Road Use" means a type of Special Road Use conducted for the purpose of persons expressing their political, social, religious, or other views protected by the First Amendment to the United States Constitution and Article I, Section 15 of the Utah Constitution during the event. A "Free Speech Road Use" does not include:

(i) Solicitations or events which primarily propose a commercial transaction;

(ii) Bicycle races or events;

(iii) Foot races, including fun-runs, races, walks, and similar events;

(iv) Motorcycle rallies, parades, and similar events; or

(v) Use of highways and adjacent rights-of-way for filming.

(e) "Local Government" means a municipality as defined in Utah Code Subsection 10-1-104(5), a county, or an institution of higher education defined in Utah Code Section 53B-2-101.

(f) A "Short-Notice Free Speech Road Use" means a type of Free Speech Road Use which arises out of, or is related to, events or other public issues which cannot be reasonably anticipated far enough in advance of the occurrence to allow compliance with the deadlines otherwise required in this Rule. An Applicant bears the burden of demonstrating that a proposed Free Speech Road Use is a Short-Notice Free Speech Road Use.

(g) A "Special Event Permit" means a permit sought or granted by the Department for a Special Road Use.

(h) A "Special Road Use" means a use or event taking place on a highway or adjacent to a highway other than normal traffic or lawful pedestrian movement.

(i) A Special Road Use includes:

(A) A demonstration, rally, vigil, picket line or similar gathering;

(B) A parade or march;

(C) A bicycle race or event;

(D) A foot race, including a fun-run, race, walk, or similar event;

(E) A motorcycle rally, parade, ride or similar event; and

(F) The use of highways and adjacent rights-of-way for filming.

(ii) A "Special Road Use" does not include:

(A) Outdoor advertising, regulated by the Protection of Highways Act, Utah Code Section 72-7-501 et seq. and Utah Admin. Code R933-2;

(B) Encroachment on, or the placement, construction, or maintenance of, roads, driveways, advertising, and utilities, regulated by Utah Code Section 72-7-701 et seq., and Utah Admin. Code R930-7; and

(C) The sole display of unattended signs or banners on or appurtenant to the roadway.

R920-4-2. Permit Required for Special Road Use; Exceptions.

(1) A Special Event Permit shall be required for any Special Road Use. A Special Road Use shall not occupy the roadway until a permit is issued. A permit shall be obtained by submitting a completed application form to the Department for the particular type of Special Road Use requested, accompanied by the fees as listed within the Department fee schedule and any other documents or attachments as required by this Rule.

(2) An Applicant shall send an application to the regional office in which the Special Road Use originates. If the Special Road Use continues through multiple Department Regions, the Department may designate a regional office to coordinate the application process throughout all other affected regions.

(3) A Special Event Permit shall not be required for activities that occur entirely on a sidewalk, crosswalk, or dedicated pedestrian passageway adjacent to or nearby a roadway so long as:

(a) Pedestrians are lawfully permitted to be present in the area;

(b) Reasonable measures are taken to ensure that the activity does not encroach upon the roadway or otherwise affect normal vehicular traffic flow; and

(c) Non-participating pedestrians have access to the sidewalk or passageway.

R920-4-3. Timeline for Submitting Applications.

(1) Subject to the requirements of this section, Applicants are encouraged to submit applications for a Special Event Permit as far in advance as is practicable to allow sufficient time for the completion of the application, for the negotiation of any conditions to the application, and for appeal, if permitted.

(2) A completed application for a Special Event Permit shall be submitted at least 30 days before the proposed Special Road Use. Any applications not received by the specified deadline may be considered by the Department if:

(a) The Applicant pays the expedited review fee as defined in R920-4-4, and

(b) There is sufficient time to process the application, to coordinate with the Applicant, and to ensure that the Applicant will comply with the terms of the permit.

(3) No application may be filed more than one year before the proposed event date.

(4) Subsection (2) does not apply to:

(a) A Special Event Permit for a Short-Notice Free Speech Road Use; or

(b) A Special Event Permit sought by a Local Government for a Special Road Use if the Local Government is responsible for the supervision and safety of the Special Road Use.

R920-4-4. Fees for Filing Applications; Exceptions.

(1) An application for a Special Event Permit shall be accompanied by the appropriate nonrefundable review fees as listed within the Department fee schedule. The fees are imposed as a regulatory measure and are charged only to defray the expenses of processing the application, reviewing for acceptability, and monitoring the event to ensure conformity with the intent expressed in Section R920-4-1 above.

(2) Any Special Event Permit not received by the deadline in subsection (2) of R920-4-3 shall be accompanied with a nonrefundable expedited review fee as listed within the Department fee schedule. Payment of the expedited fee does not guarantee that the Department will process the application.

(3) Subsection (1) does not apply to:

(a) A Special Event Permit sought by a Local Government if the Local Government is responsible for the supervision and safety of the Special Road Use.

(b) An application for a Special Event Permit for Free Speech Road Use if the Applicant demonstrates, by sufficient evidence, that the payment of the fee would affect the ability of the Applicant to provide for the necessities of life. If an Applicant is an organization, the Department may require proof that the organization's membership is similarly unable to pay.

(4) Subsection (2) does not apply to a Special Event Permit for a Short-Notice Free Speech Road Use. An application for a Special Event Permit for a Short-Notice Free Speech Road Use shall pay the nonrefundable fee specified in subsection (1), unless one of the exceptions in subsection (3) also applies.

R920-4-5. Restrictions on Special Event Permits.

(1) The Region Permit Officer shall not issue a Special Event Permit if, in the two years preceding the date of the Application:

(a) The Applicant had been granted a Special Event Permit, and the Applicant

(i) Violated a condition of the Permit, or

(ii) Failed to take reasonable care in preventing the participants in the Special Road Use from violating a condition of the permit; or

(b) The Applicant engaged in a Special Road Use without first securing a Special Event Permit.

(2) The Region Permit Officer shall not issue a Special Event Permit for Special Road Use on an overpass above a highway, if the Special Road Use is intended to draw the attention of the traffic below, and is not an incidental traversing

of the overpass as part of the event path.

(3) The Region Permit Officer shall not issue a Special Event Permit for any portion of the same roadway for a period of more than 24 continuous hours, per Special Road Use.

(a) This subsection does not apply to a Special Event Permit sought by a Local Government for a Special Road Use if the Local Government is responsible for the supervision and safety of the Special Road Use.

(b) Deviations from provisions of this subsection may be allowed if they do not violate state and federal statutes, law, or regulations, and the use will be for the public good without compromising the transportation purposes of the roadway.

(c) Requests for deviations may be considered by the Department on an individual basis, upon justification submitted by the Applicant.

(d) In determining whether to grant the deviation, the Region Permit Officer shall consider the Purposes of the Rule as articulated in Rule R920-4-1(1). The Applicant shall have the burden to prove that the deviation is in the public interest and will not substantially affect the ability of residents and others not participating in any special event to travel on the roadways and to access private property without unreasonable disruption. The Region Permit Officer may require the Applicant to provide additional proof, such as a traffic impact study, to satisfy the Applicant's burden for the deviation.

R920-4-6. Applications for Special Event Permits for Non-Free Speech Road Uses.

This section governs the standards for review of all applications for Special Event Permits other than those covered in R920-4-7.

In addition to an Application for Special Event Permit, the Region Permit Officer shall require the Applicant to provide as necessary:

(a) Insurance coverage, waiver and release of damages and indemnification as described in R920-4-9;

(b) A traffic control plan as described in R920-4-10;

(c) Public notification as described in R920-4-11;

(d) A contingency plan, as described in R920-4-12;

(e) A route map as described in R920-4-13; and

(f) Proof that the applicant has obtained any applicable city, county, or other governmental agency approvals or permits as described in R920-4-14.

(2) In reviewing any Application for Special Event Permit, the Region Permit Officer may place reasonable restrictions on the Special Road Use. Except as provided by R920-4-5(1), no such restriction shall be based on the identity of the applicant or of persons expected to participate in the Special Road Use. The restrictions include, but are not limited to:

(a) A limitation of the total time the permittee may occupy a particular portion of roadway;

(b) A limitation on the particular time of day the permittee may occupy the roadway;

(c) A limitation on the number of lanes the permittee may occupy on the roadway;

(d) A limitation on the number or size of banners or signs any participants may carry on the roadway; and

(e) A prohibition on the use of a particular roadway and the requirement of an alternate route.

(3) The Region Permit Officer may place reasonable terms, conditions, and limitations on a Free Speech Road Use as allowed by this Rule and otherwise required by law. In placing restrictions on the Special Road Use, the Region Permit Officer shall consider:

(a) The annual number of other Special Use events scheduled on the roadway;

(b) Planned construction or repairs of the roadway or utilities underneath or adjacent to the roadway;

(c) The nature of the roadway requested for use, and the

volume of traffic normally occupying the roadway at the requested time of use;

- (d) The amount of time requested for use;
- (e) The safety of all participants in special events;
- (f) The safety of the travelling public;
- (g) The ability of emergency service providers to access and care for participants and spectators in special use events, and for residents near to such event; and
- (h) The ability of residents and others not participating in any special event, to travel on the roadways and to access private property without unreasonable disruption; and
- (i) The overall economic impact on nearby businesses and the traveling public resulting from the Special Road Use.

(4) Applications for Special Event Permits governed by this section shall be processed. If the Region Permit Officer determines the application is incomplete, he or she shall notify the Applicant with a notice of incomplete application once the deficiency is discovered.

(5) Once the application is complete, the Region Permit Officer shall apply best efforts to provide approval, approval with conditions, or denial of the Application:

- (a) Within 30 days of receipt of a complete application, or seven days before the scheduled event, whichever is earlier.
- (b) In the case of an application submitted along with an expedited fee, within three business days of its receipt as complete.

R920-4-7. Review of Applications for Special Event Permits for Free Speech Road Uses.

This section governs the standards for review of applications for Special Event Permits for Free Speech Road Uses.

(1) In addition to any Application for Special Event Permit for Free Speech Road Use, the Region Permit Officer shall require the Applicant to provide, as necessary:

- (a) A traffic control plan as described in R920-4-10;
- (b) Public notification as described in R920-4-11;
- (c) A contingency plan, as described in R920-4-12;
- (d) A route map as described in R920-4-13; and
- (e) Proof that the applicant has obtained any applicable city, county, or other governmental agency approvals or permits as described in R920-4-14.

(2) In reviewing any Application for Special Event Permit for Free Speech Road Use, the Region Permit Officer may place reasonable time, place, and manner restrictions on the Free Speech Road Use. No such restriction shall be based on the content of the beliefs expressed or anticipated to be expressed during the Free Speech Road Use, or on factors such as the identity or appearance of persons expected to participate in the assembly.

(3) In placing reasonable time, place, and manner restrictions on the Special Road Use, the Region Permit Officer shall consider:

- (a) The annual number of other Special Use events scheduled on the roadway;
- (b) Planned construction or repairs of the roadway or utilities underneath or adjacent to the roadway;
- (c) The nature of the roadway requested for use, and the volume of traffic normally occupying the roadway at the requested time of use;
- (d) The amount of time requested for use;
- (e) The safety of all participants in special events;
- (f) The safety of the travelling public;
- (g) The ability of emergency service providers to access and care for participants and spectators in special use events, and for residents near to such event; and
- (h) The ability of residents and others not participating in any special event, to travel on the roadways and to access other public and private property without unreasonable disruption.

(4) The Region Permit Officer may place reasonable terms, conditions, and limitations on a Free Speech Road Use as allowed by this Rule and otherwise required by law. In placing time, place, or manner restrictions on a Free Speech Road Use, the Region Permit Officer shall select restrictions that are tailored to address any identified risks of harm or other articulated governmental interests. The restrictions include, but are not limited to:

- (a) A limitation of the total time the permittee may occupy a particular portion of roadway;
- (b) A limitation on the particular time of day the permittee may occupy the roadway;
- (c) A limitation on the number of lanes the permittee may occupy on the roadway;
- (d) A limitation on the number or size of banners or signs any participants may carry on the roadway;
- (e) A prohibition on the use of a particular roadway and the requirement of an alternate route, where other restrictions will not protect the governmental interests affected by the Free Speech Road Use, and ample alternatives for speech exist.

(5) Once the application is complete, the Region Permit Officer shall apply best efforts to provide approval, approval with conditions, or denial of the Application within 30 days of receipt of a complete application, or seven days before the scheduled event, whichever is earlier.

(6) Applications for Special Event Permit for a Short-Notice Free Speech Road Use shall be processed on an expedited basis, and the Region Permit Officer shall apply best efforts to provide approval, approval with conditions, or denial of the application within three business days of its receipt as complete.

R920-4-8. Special Use Double Booking Conflict Resolution.

(1) In cases where a double booking conflict arises, the Department will encourage any secondary, or subsequent, Applicant to review the feasibility of collocating with the original Applicant. If collocating proves impracticable, the Department will encourage any secondary, or subsequent, Applicant to offer a viable alternative strategy that meets the needs of all Applicants, while also ensuring adequate public safety measures remain intact.

(2) For non-Free Speech Special Road Uses, the Department may also rely on local agency assistance with establishing special event permitting priorities and reserves the authority to exercise the discretion in giving priority consideration to an applicant based on an evaluation of historic use, potential economic benefit, and other relevant factors.

(3) In cases where none of the aforementioned conflict resolution strategies prove effective in remedying a continuing dispute between multiple applicants, and the Department determines that collocating is impracticable, the Special Event Permit will be issued based on the earliest recorded application time and date where the Department has determined the Applicant has fully completed all application requirements.

R920-4-9. Minimum Liability Coverage, Waiver and Release of Damages Form, and Indemnification Form Completion Requirements.

(1) The Applicant for a Special Event Permit governed by R920-4-7 shall obtain and provide proof of liability insurance at time of application naming the "State of Utah, the Department and its Employees" as an additional insured under the certificate, with a minimum \$1,000,000 coverage per occurrence and \$3,000,000 in aggregate. The name of the insured on the insurance policy and the name of the Applicant shall be identical.

(2) The Applicant may fulfill the requirements of Subsection (1) by providing

- (a) Sufficient proof that the Applicant has secured liability

insurance for the event required by another governmental entity which meets the minimum coverage requirements contained in Subsection (1), and

(b) The Applicant has included the "State of Utah, the Department of Transportation, and its Employees" as an additional insured on the policy.

(3) The Applicant shall complete the appropriate "Waiver and Release of Damages" and "Indemnification" forms prior to permit issuance. All event participants shall also complete the "Waiver and Release of Damages" form prior to participating in the permitted event.

(4) The Applicant is responsible for ensuring each participant completes the "Waiver and Release of Damages" form prior to participating in the event. The originating Applicant is the custodian of all signed participant waivers, as specified in subsection (3), and shall produce these upon demand for inspection and review by the Department at any time within 12 months after the completion of the event.

R920-4-10. Traffic Control Requirements and Considerations.

(1) All traffic control is the responsibility of the Applicant. A traffic control plan, in accordance with R920-1, R930-6 and Department Standard and Supplemental Drawings, shall be provided to, and approved by, the Region Traffic Engineer, or other authorized Department designee. If the Region Traffic Engineer deems it necessary, considering the nature of the Applicant's Special Road Use and the proposed event path, the Applicant may be required to perform and provide a traffic impact study for the Special Road Use.

(2) Road closures will require appropriate traffic control. Appropriate traffic control may include by uniformed state, county, or local peace officers, or a private company, identified event staff, or physical devices, as determined by the Department.

(3) The Region Permit Officer may require an alternate route, or alternative time, if the proposed Special Road Use occurs when traffic volumes are high, active road construction is present, an alternate event is already occupying the road, a safer route can accommodate the event, or the event poses a significant inconvenience to the traveling public.

(4) All railroad crossings and bridges shall be given special attention. The Applicant shall coordinate with the appropriate railroad representatives to ensure the event schedule does not conflict with the operation of the railroad.

(5) The Applicant shall restore the particular road segment to its original condition, free from litter and, other material changes.

(6) The Department may monitor and ensure compliance with the terms and conditions of any Special Event Permit, and require the Applicant to pay a monitoring and compliance fee at the rates authorized within the Department's fee schedule.

R920-4-11. Public Notification Requirements.

(1) As determined by the Region Permit Officer, the Applicant may be required to provide advance notification to the general public regarding the Special Road Use, depending on the nature of the roadway being used, the time of day of the use, and the impact on the non-participating travelling public and adjacent businesses.

(2) The Region Permit Officer may require the Applicant to inform the general public about the date, time, affected roads, traffic impacts, an estimate of the anticipated length of delay, and other information necessary to provide reasonable notice to the public of the Special Road Use. The methods of notification may include:

(a) A news release distributed to all local radio stations, television stations, and newspapers that announce the event and advise residents of alternate routes and potential delays.

(b) The posting of signs, including variable message signs, along the Special Road Use route for a reasonable period of time prior to the event;

(c) Attempts by the Applicant to personally contact residents and businesses along the Special Road Use route;

(d) The retention of a dedicated agent or public relations firm to maximize the distribution of the message.

(3) Any signs required to be posted pursuant to this rule, including any variable message signs, shall not advertise the event itself or any private products or services.

R920-4-12. Contingency Plan and Participant Notification Requirements.

(1) Considering the nature of the planned Special Road Use, the Applicant shall develop:

(a) Contingency or emergency plans,

(b) Planned rest areas, water facilities, and trash cleanup, and

(c) Plans to ensure that participants obey the conditions of the Special Event Permit and all other generally applicable traffic laws, lights, and signs.

(d) The Region Permit Officer may require that the Applicant provide notice to participants, bystanders, or the public of all plans enumerated in subsection (1) of this Rule. The amount of and method of notice shall be dependent on the circumstances of the Special Road Use.

R920-4-13. Event Route Identification and Private Property Use Requirements.

The Applicant shall provide a detailed map showing the proposed course and direction of the event. Locations of parking areas, water stations, toilet facilities, and other appropriate information shall also be included on the map if deemed necessary by the Region Permit Officer. These areas cannot be located within the state right-of-way. The applicant is responsible for obtaining appropriate permission to locate these facilities on private property.

R920-4-14. Adherence to Municipal, County, or other Governmental Agency Permitting Requirements.

The Applicant shall procure any applicable city, county, or other governmental agency approvals or permits.

R920-4-15. Appeal.

(1) An Applicant may appeal the following determinations of a Region Permit Officer:

(a) Any denial of a Special Event Permit;

(b) A denial of a deviation request as described in Rule R920-4-5(3)(b);

(c) A determination that a proposed Special Road Use is not a Free Speech Road Use or Short-Notice Free Speech Road Use; and

(d) Any time, place, or manner restriction placed on a Special Event Permit for a Free Speech Road Use that the Applicant believes is unreasonable or illegal.

(2) The following process shall be used for an appeal:

(a) An Applicant may appeal the determinations described in subsection (1) decision to the Department's Program Development Director,

(b) Any appeal to the Department's Program Development Director shall be in writing and shall include:

(i) A statement of the basis for the objection,

(ii) Any supporting documents to be used in the appeal, and

(iii) A copy of any written decision issued by the Region Permit Officer.

(c) The Department's Program Development Director shall make a decision on appeal, based on the written submissions of the Applicant, and the Department's file.

(d) The Department's Program Development Director shall concur with, modify, or overrule the decision of the Region Permit Officer. The decision shall be in writing and shall explain the reasons for the decision.

(3) Appeals shall be resolved within the following timelines:

(a) For appeals brought under subsections (1)(c) or (d), the Department's Program Development Director shall issue a decision as soon as reasonably practicable, but no later than three business days after the Department's Program Development Director receives the written appeal.

(b) For all other appeals, the Department's Program Development Director shall issue a decision no later than 14 days prior to the planned date of the Special Road Use, or within 30 days after the appeal has been lodged, whichever is later.

KEY: parades, permits, road races, special events

January 7, 2016

41-6a-1111

Notice of Continuation August 1, 2012

41-22-15

72-1-201

72-1-212