R13. Administrative Services, Administration.
R13-2. Access to Records.
R13-2-1. Purpose and Authority.

Under authority of Subsections 63-2-204(2)(d), and 63-2-904(2), this rule provides procedures for access and denial of access to government records.

R13-2-2. Definitions.

Terms used in this rule are defined in Section 63-2-103. Additional terms are defined as follows:

(1) "Department" means the Department of Administrative Services.

(2) "Division" means a division of the Department of Administrative Services.

(3) "Office" means an office of the Department of Administrative Services.

R13-2-3. Records Officer.

Each division director shall comply with Section 63-2-903 and shall appoint a records officer to perform the following functions:

(a) the duties set forth in Section 63-2-903; and

(b) review and respond to requests for access to division records.

R13-2-4. Requests for Access.

(1) Except as provided by R13-2-8 , a request for access to records shall be directed to the records officer of the office or division which the requester believes generated or possesses the records.

(2) The offices and divisions of the department are as described in Sections 63A-1-104 and 63A-1-109 and are located at the corresponding address indicated below:

(a) Administrative Services Executive Director's Office, 3120 State Office Building, Salt Lake City, UT 84114.

(b) Administrative Rules, 4120 State Office Building, Salt Lake City, UT 84114.

(c) Archives and Records Service, 346 S. Rio Grande Street, Salt Lake City, UT 84101-1106.

(d) Child Welfare Parental Defense, 3120 State Office Building, Salt Lake City, UT 84114.

(e) Debt Collection, 5110 State Office Building, Salt Lake City, UT 84114.

(f) Facilities Construction and Management, 4110 State Office Building, Salt Lake City, UT 84114.

(g) Finance, 2110 State Office Building, Salt Lake City, UT 84114.

(h) Fleet Operations, 4120 State Office Building, Salt Lake City, UT 84114.

(i)Purchasing and General Services, 3150 State Office Building, Salt Lake City, UT 84114.

(j) Risk Management, 5120 State Office Building, Salt Lake City, UT 84114.

(k) Surplus Property, Division of Fleet Operations, 4120 State Office Building, Salt Lake City, UT 84114.

R13-2-5. Appeal of Office or Division Decision.

(1) Except as provided by R13-2-8, if a requester is dissatisfied with the initial decision rendered by an office or division, the requester may appeal the decision to the department executive director under the procedures of Section 63-2-401 et seq.

(2) An individual may contest the accuracy or completeness of a document pertaining to that individual pursuant to Section 63-2-603. This type of request shall be made to the records officer.

R13-2-6. Fees.

(1) A fee schedule for the actual costs of providing a record may be obtained from an office or division by contacting the records officer. The fee schedule is also available in the annual appropriations bill.

(2) Fees for providing a record may be waived under certain circumstances described in Subsection 63-2-203(4). Requests for this waiver of fees may be made to the records officer.

R13-2-7. Forms.

Request forms are available from the records officer of each office or division.

R13-2-8. Access to Records in the Custody of the Division of Archives and Records Service.

(1) An individual need not submit a formal records request to inspect public records of permanent or historical value stored at the state archives.

(2) An individual may request access to records that are noncurrent records of permanent or historical value in the custody of the state archives. The individual shall direct that request to the state archives' research center, 346 S Rio Grande, Salt Lake City, UT 84101-1106.

(3) If the requester is dissatisfied with the initial decision rendered by the research center, or if the state archives' research center denies access to these records, the requester may appeal the decision to the state archivist under the procedures of Section 63-2-401 et seq.

KEY: freedom of information, public information, confidentiality of information, access to information
May 22, 2007 63-2-204(2)(d)
Notice of Continuation April 2, 2007 63-2-904(2)

R23. Administrative Services, Facilities Construction and Management.
R23-1. Procurement of Construction.
R23-1-1. Purpose and Authority.

(1) In accordance with Subsection 63-56-208(2), this rule establishes procedures for the procurement of construction by the Division.

(2) The statutory provisions governing the procurement of construction by the Division are contained in Title 63, Chapter 56 and Title 63A, Chapter 5.

R23-1-2. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63-56-105.

(2) In addition:

(a) "Acceptable Bid Security" means a bid bond meeting the requirements of Subsection R23-1-40(4).

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

(c) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(d) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

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

(f) "Established Market Price" means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources independent of the manufacturer or supplier.

(g) "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.

(h) "Procuring Agencies" means, individually or collectively, the state, the Division, the owner and the using agency.

(i) "Products" means and includes materials, systems and equipment.

(j) "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 or which is written in such a manner that restricts the procurement to one brand.

(k) "Public Notice" means the notice that is publicized pursuant to this rule to notify contractors of Invitations For Bids and Requests For Proposals.

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

(m) "Specification" means any description of the physical, functional or performance characteristics of a supply or construction item. It may include requirements for inspecting, testing, or preparing a supply or construction item for delivery or use.

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

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

(p) "Using Agency" means any state agency or any political subdivision of the state which utilizes any services or construction procured under these rules.

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

R23-1-5. Competitive Sealed Bidding.

(1) Use. Competitive sealed bidding, which includes multi-step sealed bidding, shall be used for the procurement of construction if the design-bid-build method of construction contract management described in Subsection R23-1-45(5)(b) is used unless a determination is made by the Director in accordance with Subsection R23-1-15(1)(c) that the competitive sealed proposals procurement method should be used.

(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;

(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 Division in Salt Lake City, Utah.

(3) Content of the Public Notice. The public notice of Invitation For Bids 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;

(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 Division. 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 Director.

(5) Bidding Documents. The bidding documents for an Invitation For Bids:

(a) shall include a bid 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

(b) 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 the bidding documents.

(b) Addenda shall be distributed or otherwise made available 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.

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

(a) Bids may be modified or withdrawn by the bidder by written notice delivered to the location designated in the public notice where 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 location 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 notice. The names of the bidders, the bid price, and other information deemed appropriate by the 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. The 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 Director and only to the extent it is not contrary to the interest of the procuring agencies 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 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 substantially lower than the other bids submitted.

(c) This subsection sets forth procedures to be applied in three situations described below in which mistakes in bids are discovered after opening but before award.

(i) Minor formalities are matters which, in the discretion of the Director, are of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders and with respect to which, in the Director's discretion, the effect on price, quantity, quality, delivery, or contractual conditions is not or will not be significant. The Director, in his sole discretion, may waive minor formalities or allow the bidder to correct them depending on which is in the best interest of the procuring agencies. 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) If the Director determines that the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid 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) A bidder may be permitted to withdraw a low bid if the 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 the bidder submits to the Division proof which, in the Director's judgment, demonstrates that a mistake 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 this Subsection (10) may be corrected or the award of the contract canceled if the Director determines that correction or cancellation will not prejudice the interests of the procuring agencies or fair competition.

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

(11) Bid Evaluation and Award. Except as provided in the following sentence, the contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the bidding documents 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 63-56-405 are met.

(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 Division may cancel an Invitation For Bids or reject bids received in whole or in part only when the Director determines that it is in the best interests of the procuring agencies to do so.

(b) The reasons for cancellation or rejection shall be 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 Director in writing and shall be based upon the criteria that the Director shall establish as relevant to this determination with respect to the particular project. An unreasonable failure of the bidder or to promptly supply information regarding responsibility may be grounds for a determination of nonresponsibility. Any bidder or 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 63-2-304 and may be disclosed only as provided for in Subsection R23-1-35.

(13) Tie Bids. Tie bids shall be resolved in accordance with Section 63-56-426.

(14) Subcontractor Lists. For purposes of this Subsection (14), the definitions of Section 63A-5-208 shall be applicable. Within 24 hours after the bid opening time, not including Saturdays, Sundays and state holidays, the apparent lowest three bidders, as well as other bidders that desire to be considered, shall submit to the Division a list of their first-tier subcontractors that are in excess of the dollar amounts stated in Subsection 63-A-5-208(3)(a).

(a) The subcontractor list shall include the following:

(i) the type of work the subcontractor is to perform;

(ii) the subcontractor's name;

(iii) the subcontractor's bid amount;

(iv) the license number of the subcontractor issued by the Utah Division of Occupational and Professional Licensing, if such license is required under Utah law; and

(v) the impact that the selection of any alternate included in the solicitation would have on the information required by this Subsection (14).

(b) The contract documents for a specific project may require that additional information be provided regarding any contractor, subcontractor, or supplier.

(c) If pursuant to Subsection 63A-5-208(4), a bidder intends to perform the work of a subcontractor or obtain, at a later date, a bid from a qualified subcontractor, the bidder shall:

(i) comply with the requirements of Section 63A-5-208 and

(ii) clearly list himself on the subcontractor list form.

(d) Errors on the subcontractor list will not disqualify the bidder if the bidder can demonstrate that the error is a result of his reasonable reliance on information that was provided by the subcontractor and was used to meet the requirements of this section, and, provided that this does not result in an adjustment to the bidder's contract amount.

(e) Pursuant to Sections 63A-5-208 and 63-2-304, information contained in the subcontractor list submitted to the Division 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.

(15) Change of Listed Subcontractors. Subsequent to twenty-four hours after the bid opening, the contractor may change his listed subcontractors only after receiving written permission from the Director based on complying with all of the following:

(a) 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:

(i) the original subcontractor has failed to perform, or is not qualified or capable of performing,

(ii) the subcontractor has requested in writing to be released;

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

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

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

(e) 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.

R23-1-10. Multi-Step Sealed Bidding.

(1) Description. Multi-step sealed bidding is a two-phase process. In the first phase bidders submit unpriced technical offers to be evaluated. In the second phase, bids submitted by bidders whose technical offers are determined to be acceptable during the first phase are considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to arrive at technical offers and terms acceptable to the Division and suitable for competitive pricing.

(2) Use. The multi-step sealed bidding method may be used when the Director deems it to the advantage of the state. Multi-step sealed bidding may be used when it is considered desirable:

(a) to invite and evaluate technical offers or statements of qualifications to determine their acceptability to fulfill the purchase description requirements;

(b) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;

(c) to accomplish (a) or (b) prior to soliciting bids; and

(d) to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.

(3) Pre-Bid Conferences In Multi-Step Sealed Bidding. The Division may hold one or more pre-bid conferences prior to the submission of unpriced technical offers or at any time during the evaluation of the unpriced technical offers.

(4) Procedure for Phase One of Multi-Step Sealed Bidding.

(a) Public Notice. Multi-step sealed bidding shall be initiated by the issuance of a Public Notice in the form required by Subsections R23-1-5(2) and (3).

(b) Invitation for Bids. The multi-step Invitation for Bids shall state:

(i) that unpriced technical offers are requested;

(ii) when bids are to be submitted (if they are to be submitted at the same time as the unpriced technical offers, the bids shall be submitted in a separate sealed envelope);

(iii) that it is a multi-step sealed bid procurement, and bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(iv) the criteria to be used in the evaluation of the unpriced technical offers;

(v) that the Division, to the extent the Director finds necessary, may conduct oral or written discussions of the unpriced technical offers;

(vi) that the item being procured shall be furnished in accordance with the bidders technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids; and

(vii) that bidders may designate those portions of the unpriced technical offers which the bidder believes qualifies as a protected record as provided in Section R23-1-35. Such designated portions may be disclosed only as provided for in Section R23-1-35.

(c) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the Director, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R23-1-5(12) and a new Invitation for Bids may be issued.

(d) Receipt and Handling of Unpriced Technical Offers. After the date and time established for the receipt of unpriced technical offers, a register of bidders shall be open to public inspection. Prior to award, unpriced technical offers shall be shown only to those involved with the evaluation of the offers who shall adhere to the requirements of GRAMA and this rule. Except for those portions classified as protected under Section R23-1-35 or otherwise subject to non-disclosure under applicable law, unpriced technical offers shall be open to public inspection after award of the contract.

(e) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids which may include an evaluation of the past performance of the bidder. The unpriced technical offers shall be categorized as acceptable or unacceptable. The Director shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

(f) Discussion of Unpriced Technical Offers. Discussion of technical offers may be conducted with bidders who submit an acceptable technical offer. During the course of discussions, any information derived from one unpriced technical offer shall not be disclosed to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been found unacceptable may submit supplemental information modifying or otherwise amending its technical offer until the closing date established by the Director. Submission may be made at the request of the Director or upon the bidder's own initiative.

(g) Notice of Unacceptable Unpriced Technical Offer. When the Director determines a bidder's unpriced technical offer to be unacceptable, he shall notify the bidder in writing. Such bidders shall not be afforded an additional opportunity to supplement technical offers.

(h) Confidentiality of Past Performance and Reference Information. Confidentiality of past performance and reference information shall be maintained in accordance with Subsection R23-1-15(10).

(5) Mistakes During Multi-Step Sealed Bidding. Mistakes may be corrected or bids may be withdrawn during phase one:

(a) before unpriced technical offers are considered;

(b) after any discussions have commenced under Subsection R23-1-10(4)(f); or

(c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with Subsection R23-1-5(10).

(6) Carrying Out Phase Two.

(a) Initiation. Upon the completion of phase one, the Director shall either:

(i) open bids submitted in phase one (if bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; provided, however, that the offers have remained unchanged, and the Invitation for Bids has not been amended subsequent to the submittal of bids; or

(ii) invite each acceptable bidder to submit a bid.

(b) Conduct. Phase two is to be conducted as any other competitive sealed bid procurement except:

(i) as specifically set forth in Section R23-1-10; and

(ii) no public notice is given of this invitation to submit.

R23-1-15. Competitive Sealed Proposals.

(1) Use.

(a) Construction Management. The competitive sealed proposals procurement method shall be used in the procurement of a construction manager under the construction manager/general contractor method of construction contract management described in subsection R23-1-45(5)(d) due to the need to consider qualifications, past performance and services offered in addition to the cost of the services and because only a small portion of the ultimate construction cost is typically considered in this selection.

(b) Design-Build. In order to meet the requirements of Section 63-56-703, competitive sealed proposals shall be used to procure design-build contracts.

(c) Design-Bid-Build. The competitive sealed proposals procurement method may be used for procuring a contractor under the design-bid-build method of construction contract management described in subsection R23-1-45(5)(b) only after the Director makes a determination that it is in the best interests of the state to use the competitive sealed proposals method due to unique aspects of the project that warrant the consideration of qualifications, past performance, schedule or other factors in addition to cost.

(2) Documentation. The Director's determination made under subsection R23-1-15(1)(c) shall be documented in writing and retained in the project file.

(3) Public Notice.

(a) Public notice of the Request for Proposals shall be publicized in the same manner provided for giving public notice of an Invitation for Bids, as provided in Subsection R23-1-5(2).

(b) The public notice shall include:

(i) a brief description of the project;

(ii) directions on how to obtain the Request for Proposal documents;

(iii) notice of any mandatory pre-proposal meetings; and

(iv) the closing date and time by which the first submittal of information is required;

(4) Proposal Preparation Time. Proposal preparation time is the period of time between the date of first publication of the public notice and the date and time set for the receipt of proposals by the Division. In each case, the proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. The time between the first publication of the public notice and the earlier of the first required submittal of information or any mandatory pre-proposal meeting shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular procurement as determined, in writing, by the Director.

(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 set forth in Subsection R23-1-5(6) except that addenda may be issued to qualified offerors until the deadline for best and final offers.

(7) Modification or Withdrawal of Proposals.

(a) Proposals may be modified prior to the due dates established in the Request for Proposals.

(b) Proposals may be withdrawn until the notice of selection is issued.

(8) Late Proposals, and Late Modifications. Except for modifications allowed pursuant to negotiation, any proposal, or modification received at the location designated for receipt of proposals after the due dates established in the Request for Proposals shall be deemed to be late and shall not be considered unless there are no other offerors.

(9) Receipt and Registration of Proposals.

After the date established for the first receipt of proposals or other required information, a register of offerors shall be prepared and open to public inspection. 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) 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 63-2-304(6) 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 Division 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.

(11) Evaluation of Proposals.

(a) The evaluation of proposals shall be conducted by an evaluation committee appointed by the Director that may include representatives of the Division, the Board, other procuring agencies, and contractors, architects, engineers, and others of the general public. Each member of the selection committee shall certify as to his lack of conflicts of interest.

(b) The Request for Proposals shall state all of the evaluation factors and the relative importance of price and other evaluation factors.

(c) 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. Factors not specified in the request for proposals shall not be considered.

(d) Proposals may be initially classified as potentially acceptable or unacceptable. Offerors whose proposals are unacceptable shall be so notified by the Director in writing and they may not continue to participate in the selection process.

(e) This classification of proposals may occur at any time during the selection process once sufficient information is received to consider the potential acceptability of the offeror.

(f) The request for proposals may provide for a limited

number of offerors who may be classified as potentially acceptable. In this case, the offerors considered to be most acceptable, up to the number of offerors allowed, shall be considered acceptable.

(12) Proposal Discussions with Individual Offerors.

(a) Unless only one proposal is received, proposal discussions with individual offerors, if held, shall be conducted with no less than the offerors submitting the two best proposals.

(b) Discussions are held to:

(i) Promote understanding of the procuring agency's requirements and the offerors' proposals; and

(ii) Facilitate arriving at a contract that will be most advantageous to the procuring agencies taking into consideration price and the other evaluation factors set forth in the request for proposals.

(c) Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

(13) Best and Final Offers. If utilized, the Director shall establish a common time and date to submit best and final offers. Best and final offers shall be submitted only once unless the Director makes a written determination before each subsequent round of best and final offers demonstrating that another round is in the best interest of the procuring agencies and additional discussions will be conducted or the procuring agencies' requirements may be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they 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.

(14) Mistakes in Proposals.

(a) Mistakes discovered before the established due date. An offeror may correct mistakes discovered before the time and date established in the Request for Proposals for receipt of that information by withdrawing or correcting the proposal as provided in Subsection R23-1-15(7).

(b) Confirmation of proposal. When it appears from a review of the proposal before award that a mistake has been made, the offeror may be asked to confirm the proposal. Situations in which confirmation may be requested include obvious, apparent errors on the face of the proposal or a proposal amount that is substantially lower than the other proposals submitted. If the offeror alleges mistake, the proposal may be corrected or withdrawn as provided for in this section.

(c) Minor formalities. Minor formalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under Subsection R23-1-5(10)(c).

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

(15) Award.

(a) Award Documentation. A brief written justification statement shall be made showing the basis on which the award was found to be most advantageous to the state taking into consideration price and the other evaluation factors set forth in the Request for Proposals.

(b) One proposal received. If only one proposal is received in response to a Request for Proposals, the Director may, as he deems appropriate, make an award or, if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals.

(16) Publicizing Awards.

(a) Notice. After the selection of the successful offeror(s), notice of award shall be available in the principal office of the Division 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 Division 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.

R23-1-17. Bids Over Budget.

(1) In the event 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 Director may, 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.

(2) As an alternative to the procedure authorized in Subsection (1), when all bids for a construction project exceed available funds as certified by the Director, and the Director finds that due to time or economic considerations the re-solicitation of a reduced scope of work would not be in the interest of the state, the Director may negotiate an adjustment in the bid price using one of the following methods:

(a) reducing the scope of work in specific subcontract areas and supervising the re-bid of those subcontracts by the low responsive and responsible bidder;

(b) negotiating with the low responsive and responsible bidder for a reduction in scope and cost with the value of those reductions validated in accordance with Section R23-1-50; or

(c) revising the contract documents and soliciting new bids only from bidders who submitted a responsive bid on the original solicitation. This re-solicitation may have a shorter bid response time than otherwise required.

(3) The use of one of the alternative procedures provided for in this subsection (2) must provide for the fair and equitable treatment of bidders.

(4) The Director's written determination, including a brief explanation of the basis for the decision shall be included in the contact file.

(5) This section does not restrict in any way, the right of the 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.

R23-1-20. Small Purchases.

(1) Procurements of $100,000 or Less.

(a) The Director may make procurements of construction estimated to cost $100,000 or less by soliciting at least two firms to submit written quotations. The award shall be made to the firm offering the lowest acceptable quotation.

(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 Division.

(c) If the Director determines that other factors in addition

to cost should be considered in a procurement of construction estimated to cost $100,000 or less, the 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 Section R23-1-15 except that a public notice is not required and only invited firms may submit proposals.

(2) Procurements of $10,000 or Less. The Director may make small purchases of construction of $10,000 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 section.

R23-1-25. Sole Source Procurement.

(1) Conditions for Use of Sole Source Procurement.

The procedures concerning sole source procurement in this Section may be used if, in the discretion of the Director, a requirement is reasonably available only from a single source. Examples of circumstances which could also necessitate sole source procurement are:

(a) where the compatibility of product design, equipment, accessories, or replacement parts is the paramount consideration;

(b) where a sole supplier's item is needed for trial use or testing;

(c) procurement of public utility services;

(d) when it is a condition of a donation that will fund the full cost of the supply, material, equipment, service, or construction item.

(2) Written Determination. The determination as to whether a procurement shall be made as a sole source shall be made by the Director in writing and may cover more than one procurement. In cases of reasonable doubt, competition shall be solicited.

(3) Negotiation in Sole Source Procurement. The Director shall negotiate with the sole source vendor for considerations of price, delivery, and other terms.

R23-1-30. Emergency Procurements.

(1) Application. This section shall apply to every procurement of construction 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 construction items necessary to meet the emergency.

(4) Authority to Make Emergency Procurements.

(a) The Division makes emergency procurements of construction when, in the 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 Director with a view to assuring that the required services of construction items are procured in time to meet the emergency. Given this constraint, as much competition as the Director determines to be practicable shall be obtained.

(6) Specifications. The Director may use any appropriate specifications without being subject to the requirements of Section R23-1-55.

(7) Required Construction Contract Clauses. The Director may modify or not use the construction contract clauses otherwise required by Section R23-1-60.

(8) Written Determination. The 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.

R23-1-35. Protected Records.

(1) General Classification. Records submitted to the Division in a procurement process are classified as public unless a different classification is determined in accordance with Title 63, Chapter 2, U.C.A., Government Records Access and Management Act, hereinafter referred to as GRAMA.

(2) Protected Records. Records meeting the requirements of Section 63-2-304 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 Subsection R23-1-35(3) are met;

(b) commercial information or nonindividual financial information if the requirements of Subsection 63-2-304(2) and Subsection R23-1-35(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 Division, including, but not limited to, those records for which such a determination is made in this rule R23-1, Procurement of Construction, or rule R23-2, Procurement of Architect-Engineer Services.

(3) Requests for Protected Status. Persons who believe that a submitted record, or portion thereof, should be protected under the classifications listed in Subsections R23-1-35(2)(a) and R23-1-35(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 this Section R23-1-35 shall be notified by the Division prior to the Division'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 63-2-308 and 63-2-401 et seq., GRAMA.

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

R23-1-40. Acceptable Bid Security; Performance and Payment Bonds.

(1) Application. This section shall govern bonding and bid security requirements for the award of construction contracts by the Division in excess of $50,000; although the Division may require acceptable bid security and performance and payment bonds on smaller contracts. Bidding Documents shall state whether acceptable bid security, performance bonds or payment bonds are required.

(2) Acceptable Bid Security.

(a) Invitations for Bids and Requests For Proposals shall require the submission of acceptable bid security in an amount equal to at least five percent of the bid, at the time the bid is

submitted. If a contractor fails to accompany its bid with acceptable bid security, the bid shall be deemed nonresponsive, unless this failure is found to be nonsubstantial as hereinafter provided.

(b) If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Director to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:

(i)(A) the bid security is submitted on a form other than the Division's required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Subsection (5); and

(B) the contractor provides acceptable bid security by the close of business of the next succeeding business day after the Division notified the contractor of the defective bid security; or

(ii) only one bid is received.

(3) Payment and Performance Bonds. Payment and performance bonds in the amount of 100% of the contract price are required for all contracts in excess of $50,000. These bonds shall cover the procuring agencies and be delivered by the contractor to the Division at the same time the contract is executed. 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 Subsection (5) and must be on the exact bond forms most recently adopted by the Board and on file with the Division.

(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 Director may waive the bonding requirement if the Director finds, in writing, that bonds cannot be reasonably obtained for the work involved.

R23-1-45. Methods of Construction Contract Management.

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

(2) Flexibility. The Director shall have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procuring agencies. In each instance consideration commensurate with the project's size and importance should be given to all the appropriate and effective means of obtaining both the design and construction of the project. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.

(3) Selecting the Method of Construction Contracting. In selecting the construction contracting method, the Director shall consider the results achieved on similar projects in the past, the methods used, and other appropriate and effective methods and how they might be adapted or combined to fulfill the needs of the procuring agencies. The use of the design-bid-build method is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost equal to or less than $1,500,000 and the construction manager/general contractor method is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost greater than $1,500,000. The Director shall include a statement in the project file setting forth the basis for using any construction contracting method other than those suggested in the preceding sentence.

(4) Criteria for Selecting Construction Contracting Methods. Before choosing the construction contracting method to use, the Director shall consider the factors outlined in Subsection 63-56-501(1)(c).

(5) General Descriptions.

(a) Application of Descriptions. The following descriptions are provided for the more common contracting methods. The methods described are not all 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) Design-Bid-Build. The design-bid-build method is typified by one business, acting as a general contractor, contracting with the state to complete a 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) Design-Build. In a design-build project, a business contracts directly with the Division to meet requirements described in a set of performance specifications. The design-build contractor is responsible for both design and construction. This method can include instances where the design-build contractor supplies the site as part of the package.

(d) Construction Manager/General Contractor. A construction manager/general contractor is a firm experienced in construction that provides professional services 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 administration of change orders. The Division may contract with the construction manager/general contractor early in a project to assist in the development of a cost effective design. The construction manager/general contractor will generally become the general contractor for the project and procure subcontract work at a later date. The procurement of a construction manager/general contractor 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. If the design is sufficiently developed prior to the selection of a construction manager/general contractor, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager/general contractor may 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 submitted in the original procurement of the Construction Manager/General Contractor's services, the Construction Manager/General Contractor shall procure that subcontractor by using one of the source selection methods provided for in Title 63, Chapter 56, Part 4, Source Selections and Contract Formation, in a similar manner as if the subcontract work was procured directly by the Division.

R23-1-50. Cost or Pricing Data and Analysis; Audits.

(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 Subsection (2); and

(b) the amounts set forth in Subsection (3) are exceeded.

(2) Adequate Price Competition. Adequate price competition is achieved for portions of contracts or entire

contracts when one of the following is met:

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

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

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

(d) For that portion of a contract for which adequate price competition was not otherwise obtained when competitive bids were obtained and documented by either the Division or the contractor;

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

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

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

(3) Amounts. This section does not apply to:

(a) Contracts or portions of contracts costing less than $100,000, and

(b) Change orders and other price adjustments of less than $25,000.

(4) Other Applications. The Director may apply the requirements of this section to any contract or price adjustment when he determines that it would be in the best interest of the state.

(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 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 refuses to submit the required data, the Director shall determine in writing whether to disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. If a contractor refuses to submit the required data to support a price adjustment, the Director shall determine in writing whether to further investigate the price adjustment, to not allow any price adjustment, or to 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 Division 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 is assumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee; therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced by this amount. In establishing that the defective data caused an increase in the contract price, the Director shall not be required to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(8) Audit. The Director may, at his discretion, and at reasonable times and places, audit or cause to be audited the books and information of a contractor, prospective contractor, subcontractor, or prospective subcontractor which are related to the cost or pricing data submitted.

(9) Retention of Books and Information. Any contractor who receives a contract or price adjustment for which cost or pricing data is required shall maintain all books and information that relate to the cost or pricing data for three years from the date of final payment under the contract. This requirement shall also extend to any subcontractors of the contractor.

R23-1-55. Specifications.

(1) General Provisions.

(a) Purpose. The purpose of a specification is to serve as a basis for obtaining a supply or construction item adequate and suitable for the procuring agencies' needs and the requirements of the project, in a cost-effective manner, taking into account, the costs of ownership and operation as well as initial acquisition costs. Specifications shall permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the procuring agencies' requirements.

(b) 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, to the extent practicable.

(c) Nonrestrictiveness Requirements. All specifications shall be written in such a manner as to 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 suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

(2) Director's Responsibilities.

(a) The Director is responsible for the preparation of all specifications.

(b) The Division may enter into contracts with others to prepare construction specifications when there will not be a substantial conflict of interest. The Director shall retain the authority to approve all specifications.

(c) Whenever specifications are prepared by persons other than Division personnel, the contract for the preparation of specifications shall require the specification writer to adhere to the requirements of this section.

(3) Types of Specifications. The Director may use any method of specifying construction items which he considers to be in the best interest of the state including the following:

(a) By a performance specification stating the results to be achieved with the contractor choosing the means.

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

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

(ii) Proprietary specifications, identifying the desired product by using manufacturers, brand names, model or type designation or important characteristics. This is further divided into two classes:

(A) Sole Source, 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 is only one proprietary product known that will meet the rigid standards needed. A sole source proprietary specification must be approved by the Director.

(B) Or Equal, which allows substitutions if properly approved.

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

(d) By 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) The specification shall contain a nontechnical section to include any solicitation or contract term or condition such as a requirement 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 Director shall seek to designate three brands as a standard reference and shall state that substantially equivalent products to those designated will be considered for award, with particular conditions of approval being described in the specification.

(ii) Unless the 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 in a solicitation, 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 Division 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 Section R23-1-25.

R23-1-60. Construction Contract Clauses.

(1) Required Contract Clauses. Pursuant to Section 63-56-601, the document entitled "Required Construction Contract Clauses", Dated May 25, 2005, and on file with the Division, is hereby incorporated by reference. Except as provided in Subsections R23-1-30(7) and R23-1-60(2), the Division shall include these clauses in all construction contracts.

(2) Revisions to Contract Clauses. The clauses required by this section may be modified for use in any particular contract when, pursuant to Subsection 63-56-601(5), the 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. Examples of changes that are not material variations include, but are not limited to, the following: grammatical corrections; corrections made that resolve conflicts in favor of the intent of the document as a whole; and changes that reflect State law or rule and applicable court case law.

KEY: contracts, public buildings, procurement
June 1, 2006 **63A-5-103 et seq.**
Notice of Continuation May 24, 2007 **63-56-14(2)**
63-56-20(7)

R23. Administrative Services, Facilities Construction and Management.
R23-19. Facility Use Rules.
R23-19-1. Purpose.

The purpose of this rule is to provide for use of state facilities for continued operation of state government.

R23-19-2. Authority.

This Rule is authorized under Section 63A-5-204, which authorizes the Executive Director of the Department of Administrative Services to adopt rules governing state grounds surrounding facilities managed by DFCM.

R23-19-3. Definitions.

(1) The following definitions are provided to assist in understanding language incorporated into the following Facility Use Rules:

(a) "Agency" - department, division or agency within the structure of the State of Utah.

(b) "DFCM" - Division of Facilities Construction and Management, a division within the Department of Administrative Services.

(c) "Director" - the director of the Division of Facilities Construction and Management.

(d) "Facility Use Application" - a form that needs to be completed by prospective user and approved by resident agency for activities held within state-owned facilities and contains the following information: (i) prospective user's name, address, and telephone number; (ii) the name of the facility being requested; (iii) the type of activity; (iv) the dates and times of the function; (v) insurance company, name and policy number, unless applicant is seeking waiver under R23-19-2(24); (vi) any other special considerations being requested; and (vii) all applications shall be reviewed by DFCM Facilities Management group determining the applicable category for activity and fee assessment. This decision may be appealed using process described under R23-19-2(24).

(e) "Facility Use Permit" - permit issued to users authorizing the use of state-owned facilities for designated activities and contains the following information: (i) the name of the organization and individual authorized to use designated facility; (ii) the facility designated for use; (iii) purpose for use of the facility; (iv) the dates and times of the activity; (v) the fee assessed for the activity; (vi) the permit number; (vii) information required for compliance with Subsection 23-19-4(18); and (viii) the authorized resident agency representative signature authorizing the activity.

(f) "Fees" - charges assessed for use of state-owned facilities. The fees shall be assessed as follows: (i) "Freedom of Speech Activities" shall be assessed a fee using a base cost commensurate with actual cost to the state; (ii) "Commercial Activities" shall be assessed a fee comparable to fees charged for similar activities within the community; and (iii) "Community Service Activities" shall be assessed a fee the same as first amendment activities. "Base Cost" is the actual cost to the State for utilities, janitorial, security services and cost of rental for equipment used for activity. The "Fee Schedule", which is subject to change, shall be approved by the Director. A fee schedule shall be provided to applicant at time of application. The content of any first amendment activity shall not be a basis for calculating any portion of the fee.

(g) "Governmental Activities" - any activity directly related to governmental business. This does not include extra-curricular activities.

(h) "State" - state of Utah and any of its departments, divisions, agencies or commissions.

(i) "Freedom of Speech Activities" - an activity characterized as the right of a person or group to exercise freedom of speech or other first amendment right that is provided on government property by applicable law.

(j) "Community Service Activities" - an activity closely related to community service activities including public awards, public recognition and public benefits.

(k) "State Sponsored Activities" - this shall include any activity directly sponsored by the state of Utah, its departments, agencies and commission and shall be exempt from fees and insurance costs.

(l) "Commercial Activities" - any activity not meeting above criteria shall be characterized as commercial activity. Endorsements for commercial purposes of products or services is prohibited.

R23-19-4. General Rules.

(1) Those intending to use state facilities must obtain scheduling and authorization of activities in advance from the agency/department head or facilities manager. If no facility manager exists, approval must be obtained from resident agency or its representative. Users must comply with all rules and procedures established. The proposed activity shall not interfere with the operation of governmental business or public access.

(2) All rules apply to state-owned or leased facilities.

(3) Users may use the facilities for activities scheduled at reasonable times. Examples of activities at the Capitol Complex might include dances in the Rotunda, rallies on the front stairs of the Capitol and in designated areas on the grounds, weddings and receptions in the White Community Memorial Chapel, and meetings in the State Office Building Auditorium. Endorsements for commercial purposes of products or services is prohibited.

(4) The state of Utah, any of its departments or divisions, or any employee shall not be responsible for any property damage or loss, any personal property damage or loss, or any personal injury sustained during, or as a result of, any activity.

(5) Every group applying for a facility use permit will be required to complete an application form, provide the required fee, and provide a certificate of insurance showing proof of liability insurance in the amount of $1,000,000 per occurrence unless exempt or waived under these rules.

(6) Users may not carry or post placards or signs attached to wood or metal posts of any type, within any building. In addition, users may not post signs on the grounds or the exterior of any building. Any signs or placards placed in state facilities shall be hung with rope, cord or string. No adhesive materials or wire will be allowed. Balloons may be used but need to be tied with string to banisters or railings; they may not be handed out to participants of the activity or let loose.

(7) No temporary structure of any kind shall be constructed on state-owned properties without the express written consent of DFCM or the appropriate resident agency.

(8) The use or storage of alcoholic beverages or any unauthorized or controlled drugs in any state-owned facility or on state grounds is prohibited.

(9) All "No Smoking" ordinances, rules and policies shall be strictly observed in all state-owned facilities.

(10) To protect the beauty of state facilities, all decorations used for a scheduled activity shall be of a temporary nature and shall be appropriate for the dignity and beauty of the structure and shall be approved by the resident agency.

(a) No adhesive material may be used that would leave a glue, paste, tape, oil, paint or other residue on the building.

(b) Nothing may be used as a decoration or in the process of decorating that would cause damage to the structure.

(c) No markings, paint or sprays may be applied to any area of the building.

(d) Decorating during the normal work hours shall be done in a manner that limits any disturbance to normal building activities. Any decorating during other than normal hours must be coordinated with facility manager or resident agency.

(e) Decorating is to be done in a safe manner, using proper tools and equipment.

(f) Users may not decorate on the outside of any building.

(g) Signs, posters, decorations, displays, or markings must comply with all current pornography ordinances of the jurisdiction in which the facility is located.

(11) Food services in conjunction with a permitted use in state-owned facilities is subject to the approval of resident agency.

(12) Parking is available at all state-owned facilities. Users shall observe, and Protective Services will enforce, all restricted and marked parking areas.

(a) Vehicles owned or under control of participants shall not be parked in reserved parking areas, which shall include the parking plaza on Capitol Hill, and shall not be allowed to remain overnight.

(13) The user shall be responsible for any personal injury, vandalism, damage, or loss or other destruction of property or premises incurred during the activity.

(14) Any animals must be specifically approved in advance and must provide assurance of safety to the animal, participants and the facility.

(15) No open flame, flammable fluids, or explosives shall be brought to or used on the premises.

(16) User shall not sublet any part of the premises or transfer or assign the premises or change the purpose of the permitted activity without the written consent of the state.

(17) No money may be collected at state facilities; all tickets, if required, must be pre-sold.

(18) Users and participants must abide by all applicable firearm laws, rules, and regulations.

(a) The state shall reserve the right to require users to notify the appropriate security agent of the anticipated presence of any person with a weapon or firearm.

(19) These general rules are incorporated into any permit issued and into all rules governing use of any state facility. These rules do not apply to facilities of public or higher education.

(20) No equipment shall be used nor activity engaged in which is contrary to applicable rules, regulations or state, local or governmental ordinances or codes.

(21) No equipment shall be used nor activity shall be engaged in which will place an excessive stress load on the building structure or building systems.

(22) Exceptions and Waivers.

(a) State activities are exempt from fees and insurance requirements to the extent that the activity is covered by state Risk Management.

(b) Governmental activities are exempt from fee and insurance requirements to the extent that the activity is covered by state Risk Management.

(c) Freedom of speech activities - a waiver of the fee or insurance costs, or a part thereof, shall be provided for free speech activities if the applicant or sponsoring group can demonstrate clearly an inability to pay the fee or insurance. The state reserves the right to pay the insurance costs. The applicant may be requested to provide a financial statement and other relevant documents as proof of inability to make payment. A request for such a waiver must be made at time of application and shall be promptly scheduled for an informal review before the Executive Director of the Department of Administrative Services (DAS) or the director's designee. The Executive Director or designee shall make a written determination of approval or disapproval of the waiver request and state the grounds for the decision within five days of the submission of the request for a waiver. The applicant shall have the right to appeal and to have a hearing before the DAS Executive Director or designee within five days of notification. The DAS Executive Director or designee shall conduct a hearing and make his decision in writing as to appeal of the initial disapproval of a waiver within five days of the submission of the appeal. The person hearing the appeal shall not be the same person who denied the original request. The notice of appeal to be filed by the applicant should be in writing. Notice of the right to appeal and the appropriate procedure shall be given to applicant if denial is made. The applicant shall be allowed to submit additional or pertinent information during the appeal to support the request for a waiver. There will be no waiver of fee of costs associated with usage of equipment such as tables, chairs, podium, microphone or any outside accessory items to the activity. Applicant may provide and use any accessory item for an activity. An insurance waiver may be issued to an applicant that can show proof of being uninsurable - proof that coverage was denied by at least three insurance providers licensed and doing business in the state of Utah, including the current state provider of insurance.

(d) Community service activities - a waiver of the fee and/or insurance costs, or a part thereof, may be provided for community service activities if the applicant or sponsoring group can demonstrate clearly an inability to pay the fee and/or insurance. The state reserves the right to pay the insurance costs. The applicant may be requested to provide a financial statement and other relevant documents as proof of inability to make payment. A request for such a waiver must be made at time of application and shall be promptly scheduled for an informal review before the Executive Director of the Department of Administrative Services (DAS) or his designee. The Executive Director or designee shall make a written determination of approval or disapproval of the waiver request and state the grounds for the decision within five days of the submission of the request for a waiver. The applicant shall have the right to appeal and to have a hearing before the DAS Executive Director or designee within five days of notification. The DAS Executive Director or designee shall conduct a hearing and make his decision in writing as to appeal of the initial disapproval of a waiver within five days of the submission of the appeal. The person hearing the appeal shall not be the same person who denied the original request. The notice of appeal to be filed by the applicant should be in writing. Notice of the right to appeal and the appropriate procedure shall be given to applicant if denial is made. The applicant shall be allowed to submit additional or pertinent information during the appeal to support the request for a waiver. There will be no waiver of fee of costs associated with usage of equipment such as tables, chairs, podium, microphone or any accessory items to the activity. Applicant may provide and use own accessory items for an activity. An insurance waiver may be issued to an applicant that can show proof of being uninsurable - proof that coverage was denied by at least three insurance providers licensed and doing business in the state of Utah including the current state provider of insurance.

(e) Commercial activities - no exceptions or waivers shall apply except the insurance may be waived if covered by State Risk Management. Adult chaperons will be required for commercial activities; the number, appropriate for the nature of the event and the number and ages of the users, will be determined by DFCM. Chaperons will help direct roaming guests, check rest rooms periodically, aid in maintaining reasonable behavior and enforcement of the rules.

R23-19-5. Use of Capitol Rotunda.

In addition to the provisions of Section 2, the following rules for the Capitol Rotunda shall be observed:

(1) Public use of the Capitol shall not disrupt or interfere with any legislative session or state agency business. Safe, unhindered passageways must be provided at all times.

(2) A Facility Use request for permit for events in the Capitol Rotunda must be received in writing at least 24 hours in

advance of the time the event is proposed to commence. Priority will be given to state departments, agencies, and public school districts for use of the Capitol Rotunda. The Rotunda is available six days a week, Monday through Saturday. The facility has an established Fire Marshal occupancy limit of 2,700 people which shall not be exceeded.

(3) The sound level of any individual or group, whether amplified or not, must not disrupt or interfere with any legislative session or state agency business.

(4) The second floor of the Rotunda, marble stairways, and third floor balcony are available for use but access to the fourth floor, first floor, and basement areas is not allowed.

(5) For use of committee rooms, House of Representatives Chamber, Senate Chambers, or the Supreme Court, requests must be made directly to those agencies for scheduling.

(6) No fire exits, which shall include staircases and doorways, shall be blocked during any activity. Tables shall not be placed in front of, or so as to block, doorways in any manner.

(7) All vehicles coming to Capitol Hill in conjunction with the activity shall park on the south side of the Capitol Building, on the circular drive south of the Capitol known as Cherry Lane, or in the small visitor parking area or the main parking lot directly east of the Capitol.

(8) All deliveries and movement of equipment shall come to the south entrance under the main stairs, after 5:00 p.m., and shall use the south elevator between the first and second floors, unless prior arrangement has been made with DFCM.

(9) Elevators used to move equipment shall be protected from damage.

(10) All equipment brought into the building shall have rubber wheels, four inch or larger, or be hand carried so to cause no damage to facilities.

(11) Users shall remove all equipment, decorations and supplies by 12:00 midnight on the night of the activity unless specific arrangements are made in advance with DFCM or Protective Services.

(12) In addition, DFCM may require two uniformed security personnel for every 400 participants and will be included as a part of the base cost paid by user.

(13) Protective Services will determine number and arrange for uniformed security personnel.

(14) Users shall control entrances to allow only those persons attending the activity to enter building.

(15) If any person or group is reasonably suspected of being in non-compliance with any of these rules, an appropriate State law enforcement office may provide a warning to such person or group to cease and desist from such non-complying act. If a State law enforcement office reasonably observes that such non-complying act is continuing after such warning, then a State law enforcement office may have the person or group removed from the Capitol premises as well as take any other appropriate action allowed by law.

R23-19-6. Use of State Office Building Auditorium.

In addition to the provisions of Section 2, the following rules for the State Office Building Auditorium shall be observed:

(1) The Auditorium is available to all state departments and agencies on a first-come, first-served basis for meetings, public hearings, bid openings, lectures, training sessions, examinations and other similar activities. Agencies shall reserve the auditorium with DFCM.

(2) When not being used by a state agency, the Auditorium may be used by private or public organizations upon receipt of a permit from DFCM.

(a) The facility is available five days a week, Monday through Friday.

(3) After hours access shall be through the first floor south doors.

(a) The remainder of the building will be closed to the public.

(4) The Auditorium has an established Fire Marshal occupancy limit of 225 people which shall not be exceeded.

(5) All vehicles coming to Capitol Hill in conjunction with the activity should park in the lot on the west side of the State Office Building.

(6) Sufficient supervision shall be present to insure that people use only the Auditorium or rest room areas on the 1st floor of the State Office Building.

R23-19-7. Use of White Community Memorial Chapel.

In addition to the provisions of Section 2, the following rules for the White Community Memorial Chapel shall be observed:

(1) The Chapel area has pew seating for 129 people, balcony seating for 35 people and elevated front "stand" seating for 16 people, but the Fire Marshal has established an occupancy limit of 164 people which shall not be exceeded.

(a) Users may use the speaker's pulpit and upright piano.

(2) The lower level of the building has a large open meeting room with seating for 76 people conference style and the Fire Marshal has established an occupancy limit of 76 people which shall not be exceeded.

(a) Users may use the full rest room facilities and full kitchen facilities for small to medium sized groups. Kitchen use includes electric stove, oven, refrigerator, double sinks, and work counter.

(3) The following is available for use:

(a) small kitchen facilities;

(b) hot water;

(c) air conditioning;

(d) fire extinguisher in basement; and

(e) the elevator serving lower level and main floor of chapel.

(4) The Chapel will be available from 7 a.m. until 12 midnight, seven days a week, 365 days a year unless otherwise specified.

(5) All vehicles coming to Capitol Hill in conjunction with the activity should park in the lot between the Chapel and Council Hall.

(6) Notice of intent to display, prepare, or consume food shall be communicated to DFCM on the Facility Use Application Form prior to issuance of the permit. Users shall treat the equipment with the utmost care and leave the equipment in its original condition after use.

(7) Sufficient supervision shall be present to insure that damage does not occur to the premises.

R23-19-8. Use of Capitol Complex Grounds.

In addition to the provisions of Section 2, the following rules for the Capitol Complex Grounds shall be observed:

(1) Camping is prohibited on the State Capitol Complex grounds.

(2) When a permit is issued, the location of the activity will be specified. Participants will be required to contain the activity in the area specified in the permit.

(3) No activity on the grounds shall interfere with normal government and business activities.

(4) No motor vehicle races, neither speed, time, endurance, exhibition nor driving competition shall be held on the Capitol Complex grounds.

(5) No grass, plants, shrubs, trees, paving or concrete shall be disturbed, broken, removed or covered without the written permission of DFCM.

(6) Sufficient supervision shall be present to insure that people use only designated area and to insure that no damage occurs.

R23-19-9. Rules for Other State-Owned Facilities.

(1) All General Rules shall be observed.

(2) Permission to use other state facilities must be obtained from the facility manager or resident agency for the facility.

R23-19-10. Solicitation Policy.

(1) Definitions

(a) "Solicitation" is any activity which may be considered or reasonably interpreted as being for the advertisement, promotion, sale or transfer of products, or services, or for the participation in a commercial venture of any kind.

(i) The distribution or posting of handbills, leaflets, circulars, advertising or other printed materials for the purpose cited in paragraph 1 is construed as solicitation.

(b) "State property" is all premises maintained by, or for the use of, a state agency, department or division.

(2) Policy

(a) Solicitation, whether on-site or through establishment of an on-going delivery service, is prohibited on state property except as listed in "C" below.

(b) No solicitation materials may be posted except on designated bulletin boards.

(c) With the exception of bulletin boards designated for posting solicitation materials, no state materials, supplies, services or equipment may be used for solicitation purposes other than activities authorized by an agency of the state for state-connected business or state-sponsored charitable purposes.

(d) Any and all violations observed shall be reported immediately to Protective Services.

(3) Permissible Solicitation Activities

(a) Charitable campaigns (including blood drives, state United Way campaign, food banks, sub for Santa and other charitable activities).

(b) Organized employee participation in sports activities representing their state agency or a charitable organization including departmental or charity ball teams.

(c) Announcements required by law or requested by a state agency in furtherance of official duties (including job announcements, EEO and OSHA notices).

(d) Activities conducted at the direction of the head of a state agency.

(e) Employees' sale of small craft items during breaks and lunch in employee lounges and break areas.

(f) State employees may post handbills, leaflets, circulars, advertising or other printed materials on specifically designated bulletin boards regarding the offering or sale of personal items such as free kittens or bikes for sale, or personal announcements such as wedding announcements or ride share requests. This does not apply to conducting a business (such as Tupperware or Amway sales).

(g) Employee recognition events conducted by a state agency such as National Secretaries Week Luncheons which are approved by the supervisor of the employees affected.

R23-19-11. Waiver.

Notwithstanding any provision of this Facility Use Rules R23-19, a waiver of any provision therof, may be made in writing by the DFCM Facilities Management group, if it determines in writing that the strict holding of the provision would be unreasonable under the circumstances and that the provision is not needed to protect the facility, grounds or the public. The applicant has the burden to establish that the waiver should be granted. The request for waiver shall be made in writing as part of the Facility Use Application and must provide the necessary information and documentation to support such waiver. The decision of the Facilities Management group may be appealed similarly to the appeal of the denial of a Facility Use Application.

KEY: public buildings, facilities use*
January 1, 1998 **63A-5-204**
Notice of Continuation May 24, 2007

R27. Administrative Services, Fleet Operations.
R27-10. Identification Mark for State Motor Vehicles.
R27-10-1. Authority.

(1) Pursuant to Section 63A-9-401(5), the Department of Administrative Services is responsible for ensuring that state-owned vehicles for all departments, universities and colleges are marked as required by Section 41-1a-407. If "EX" license plates are required, the identification mark is also required, as described herein, for these agencies.

(2) Subsection 63A-9-601(1)(c) requires the Department of Administrative Services to enact rules relating to the size and design of the identification mark.

R27-10-2. Identification Mark.

(1) The identification mark shall be a likeness of the Great Seal of the State of Utah.

(a) Light/Heavy duty trucks, service vehicles and off-road equipment shall be clearly marked, on each front door, with an eight-inch seal. At the option of the entity operating the motor vehicle, the identification mark may include a banner not more than four inches high which may bear the entity's logo and such name of department or division. All identification markings must be approved by the Division of Fleet Operations prior to use.

(b) Non-law enforcement passenger vehicles shall be marked with a translucent identification sticker, four inches in diameter on the furthest rearward window in the lower most rearward corner, on each side of the of the vehicle.

(2) An identification mark shall be placed on both sides of the motor vehicle. The required portion of the identification mark (State Seal) shall be placed on in a visible location on each side of the vehicle.

(3) The requirement for the display of the identification mark is not intended to preclude other markings to identify special purpose vehicles.

(4) Vehicles used for law enforcement purposes may, at the discretion of the operating agency, display a likeness of the Great Seal of the State of Utah, worked in the same colors as the identification mark described in Subsection R27-1-2(1), in the center of a gold star for identification purposes. Other emergency response vehicles are not precluded from displaying additional appropriate markings. At the option of the agency, this seal may be placed on the front door above any molding and, where practicable, below the window at least four inches. The optional banner portion of the identification mark shall be placed immediately below the State Seal portion.

(5) It is the intent of these rules that these identification marks clearly identify the vehicles as being the property of the State of Utah. Additional markings should be applied discriminately so as not to detract from that intent.

R27-10-3. License Plates.

(1) Every vehicle owned and operated or leased for the exclusive use of the state shall have placed on it a registration plate displaying the letters "EX." At the option of the Division of Fleet operations, a plate signifying that the vehicle is assigned to the central motor pool may be allowed.

(2) Plates issued to Utah Highway Patrol vehicles may bear the capital letters "UHP," a beehive logo, and the call number of the vehicle for which the plate is issued. In lieu of the identification mark herein described, the Utah Highway Patrol may use a substitute identification mark of its own specification.

R27-10-4. Exceptions.

(1) Neither the "EX" license plates nor the identification marks need be displayed on state-owned motor vehicles if:

(a) the motor vehicle is in the direct service of the Governor, Lieutenant Governor, Attorney General, State Auditor or State Treasurer of Utah;

(b) the motor vehicle is used in official investigative work where secrecy is essential;

(c) the motor vehicle is provided to an official as part of a compensation package allowing unlimited personal use of that vehicle; or

(d) the personal security of the occupants of the vehicle would be jeopardized if the identification mark were in place.

(2) State vehicles which meet the criteria described in Subsection R27-1-4 (1) may be excused from these rules to display the identification mark and "EX" license plates. Exceptions shall be requested in writing from the Executive Director of the Department of Administrative Services and shall continue in force only so long as the use of the vehicle continues.

(3) Exceptions shall expire when vehicles are replaced. New exceptions shall be requested when new vehicles are placed in use.

(4) No motor vehicle required to display "EX" license plates shall be exempt from displaying the identification mark.

R27-10-5. Effective Date.

(1) All motor vehicles obtained or leased for use after the effective date of these rules shall display the prescribed identification mark.

(2) All passenger motor vehicles owned, leased for use or operated by the state, except as herein excepted, shall display an identification mark as required by these rules no later than two years following the effective date of this rule. Special purpose vehicles currently displaying markings other than as prescribed herein may retain such markings until the vehicle bearing them is disposed of.

KEY: motor vehicles

June 1, 2000	**41-1a-407**
Notice of Continuation May 14, 2007	**63A-9-401**
	63A-9-601(1)©

R28. Administrative Services, Fleet Operations, Surplus Property.
R28-7. Surplus Property Rate Schedule.
R28-7-1. Purpose and Authority.

As allowed in Section 63A-9-807 of the Utah Code, charges and fees are assessed based on the value of the surplus property sold or donated as well as for services and handling of the property by the Utah State Agency for Surplus Property.

R28-7-2. Definitions.

"USASP" means Utah State Agency for Surplus Property.

R28-7-3. Rate Schedule.

The USASP operates by assessing services and handling charges on property sold or donated. The services and handling charges are based on the direct and indirect costs associated with acquiring, receiving, warehousing, distributing, selling, donating, or transferring the surplus property.

A. The USASP rate structure includes several individual rate schedules for different types of surplus property sales and/or services provided. The USASP rate structure is reviewed annually.

B. In addition to the direct and indirect costs identified above, other expenses that were determined to be necessary in order to sale or donate the property may also be included. Such costs would include any rehabilitation expenses or special handling expenses.

KEY: rates
November 1, 1999 **63A-9-807**
Notice of Continuation May 15, 2007

R131. Capitol Preservation Board (State), Administration.
R131-3. Use of Magnetometers on Capitol Hill.
R131-3-1. Authority.

Subsection 63C-9-301(3)(a) requires the Capitol Preservation Board to make rules to govern, administer, and regulate Capitol Hill facilities and Capitol Hill grounds.

R131-3-2. Definitions.

(1) Terms used in this rule are defined in Section 63C-9-102.

(2) In addition:

(a) "Magnetometer" means a device that electronically detects the presence of ferrous metals from their effect on the magnetic field surrounding the earth.

(b) "Capitol Hill identification card" means a valid identification card issued or recognized by the board with a picture, individual name, and department identifying the person as a state elected official or state employee. A Capitol Hill identification card for this purpose does not include a card issued to an individual who are not a state elected official or state employee.

R131-3-3. Security Levels.

(1) Notwithstanding any provision in this rule, under all security levels, Capitol Hill security personnel may in all cases exercise the full authority and discretion granted to them by law to maintain the public safety and peace and to enforce the law.

(2) "Security level one"

(a) Any person entering a facility may be asked to register with the Capitol Hill security personnel. No one is required to pass through a magnetometer.

(b) State elected officials and state employees holding valid Capitol Hill identification cards shall be allowed to enter at all entrances without registering or passing through a magnetometer.

(c) Bag searches may not be conducted.

(3) "Security level two"

(a) Except as provided in Subsection (3)(b), all persons entering a facility may be required to register with the Capitol Hill security personnel, and pass through a magnetometer.

(b) The board shall provide designated "employee entrances" where state elected officials and state employees holding valid Capitol Hill identification cards shall be allowed to enter without registering. The Capitol Hill security personnel may require State elected officials and state employees to pass through the magnetometers.

(c) The Capitol Hill security personnel may require bag searches for persons entering a facility including state elected officials and state employees holding a valid Capitol Hill identification card.

(4) "Security level three"

(a) Except as provided in Subsection (4)(b), all persons entering a facility shall register with the Capitol Hill security personnel, and pass through a magnetometer.

(b) The board shall provide designated "employee entrances" where state elected officials and state employees holding valid Capitol Hill identification cards shall be allowed to enter without registering. The Capitol Hill security personnel shall require state elected officials and state employees to pass through the magnetometers.

(c) The Capitol Hill security personnel shall require bag searches for all person entering a facility, including state elected officials and state employees.

R131-3-4. Magnetometers.

(1) By this rule, the board authorizes the use of magnetometers by Capitol Hill security personnel. Magnetometers may be used for security levels two and three.

(2) Capitol Hill security personnel may use magnetometers in facilities and on the grounds under the jurisdiction of the board after the commander of Capitol Hill security, or that person"s superior, determines that there is a justification for increasing security precautions to level two, or level three. Depending on where the threat is focused, different Capitol Hill facilities may be designated to be at different security levels. When practicable, the decision to increase security precautions at any Capitol Hill facility shall be made in consultation with the executive director. Otherwise, the person making the determination to change from one security level to another, shall notify the executive director as soon as practicable after the decision is made.

(3) The executive director shall notify the members of the board when the security level is changed. Any member of the board may request a meeting of the full board to examine further the decision to move to higher security levels. The Board may lower the security level by a majority vote of the members present forming a quorum of the Board. The Commander may also reduce the security level depending on the security information received.

(4) The board and Capitol Hill security personnel, while using magnetometers in facilities under the authority of the board, shall not impact or infringe upon the rights of persons to keep and bear arms in accordance with Utah Constitution Article I, Section 6, and Title 76, Chapter 10, Part 5. A person carrying a concealed weapon by permit may be asked to show a valid, current concealed weapons permit before being allowed to enter the facility.

KEY: public buildings, state buildings, facilities use
May 30, 2002 63C-9-301(3)
Notice of Continuation May 16, 2007

R151. Commerce, Administration.
R151-33. Pete Suazo Utah Athletic Commission Act Rule.
R151-33-101. Title.

This Rule is known as the "Pete Suazo Utah Athletic Commission Act Rule."

R151-33-102. Definitions.

In addition to the definitions in Title 13, Chapter 33, the following definitions are adopted for the purpose of this Rule:

(1) "Boxing" means the sport of attack and defense using the fist, covered by an approved boxing glove.

(2) "Designated Commission member" means a member of the Commission designated as supervisor for a contest and responsible for the conduct of a contest, as assisted by other Commission members, Commission personnel, and others, as necessary and requested by the designated Commission member.

(3) "Drug" means a controlled substance, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, or alcohol.

(4) "Elimination Tournament" means a contest involving unarmed combat in which contestants compete in a series of matches until not more than one contestant remains in any weight category.

(5) "Mandatory count of eight" means a required count of eight that is given by the referee of a boxing contest to a contestant who has been knocked down.

(6) "Unprofessional conduct" is as defined in Subsection 13-33-102(21), and is defined further to include the following:

(a) as a promoter, failing to promptly inform the Commission of all matters relating to the contest;

(b) as a promoter, substituting a contestant in the 24 hours immediately preceding the scheduled contest without approval of the Commission;

(c) violating the rules for conduct of contests;

(d) testing positive for drugs or alcohol in a random body fluid screen before or after participation in any contest;

(e) testing positive for HIV;

(f) failing or refusing to comply with a valid order of the Commission or a representative of the Commission; and

(g) for a promoter and a contestant, entering into a secret contract that contradicts the terms of the contract(s) filed with the Commission.

R151-33-201. Authority - Purpose.

The Commission adopts this Rule under the authority of Subsection 13-33-202(2), to enable the Commission to administer Title 13, Chapter 33, of the Utah Code.

R151-33-202. Scope and Organization.

Pursuant to Title 13, Chapter 33, general provisions codified in Sections R151-33-101 through R151-33-512 apply to all contests or exhibitions of "unarmed combat," as that term is defined in Subsection 13-33-102(19). The provisions of Sections R151-33-601 through R151-33-623 shall apply only to contests of boxing, as defined in Subsection R151-33-102(1). The provisions of Sections R151-33-701 through R151-33-702 shall apply only to elimination tournaments, as defined in R151-33-102(4). The provisions of Section R151-33-801 shall apply only to martial arts contest and exhibitions. The provisions of Sections R151-33-901 through R151-33-904 shall apply only to grants for amateur boxing.

R151-33-301. Qualifications for Licensure.

(1) In accordance with Section 13-33-301, a license is required for a person to act as or to represent that the person is a promoter, manager, contestant, second, referee, or judge.

(2) A licensed manager shall not hold a license as a referee or judge.

(3) A promoter shall not hold a license as a referee, judge, or contestant.

R151-33-302. Renewal Cycle - Procedure.

(1) In accordance with the authority granted in Section 13-33-302, the renewal date for licenses issued by the Commission shall be December 31st of even-numbered years.

(2) Expiration of licensure due to failure to renew in accordance with this Section is not an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act.

(3)(a) The Commission shall notify each licensee that the licensee's license is due for renewal and that unless an application for renewal is received by the Commission by the expiration date shown on the license, together with the appropriate renewal fee and documentation showing completion of or compliance with renewal qualifications, the license will not be renewed.

(b) The application procedures and requirements specified in Section 13-33-301 apply to renewals.

(4)(a) A renewed license shall be issued to applicants who submit a complete application, unless it is apparent to the Commission that the applicant no longer meets the qualifications for continued licensure.

(b) The Commission may evaluate or verify documentation showing completion of or compliance with renewal requirements. If necessary, the Commission may complete its evaluation or verification subsequent to renewal and, if appropriate, pursue action to suspend or revoke the license of a licensee who no longer meets the qualifications for continued licensure.

(5) Any license that is not renewed may be reinstated at any time within two years after nonrenewal upon submission of an application for reinstatement, payment of the renewal fee together with the reinstatement fee determined by the Department under Section 63-38-3.2, and upon submission of documentation showing completion of or compliance with renewal qualifications.

(6) If not reinstated within two years, the holder may obtain a license only if he meets the requirements for a new license.

R151-33-401. Designation of Adjudicative Proceedings.

(1) Formal Adjudicative Proceedings. The following proceedings before the Commission are designated as formal adjudicative proceedings:

(a) any action to revoke, suspend, restrict, place on probation or enter a reprimand as to a license;

(b) approval or denial of applications for renewal of a license;

(c) any proceedings conducted subsequent to the issuance of a cease and desist order; and

(d) the withholding of a purse by the Commission pursuant to Subsection 13-33-504(3).

(2) Informal Adjudicative Proceedings. The following proceedings before the Commission are designated as informal adjudicative proceedings:

(a) approval or denial of applications for initial licensure;

(b) approval or denial of applications for reinstatement of a license; and

(c) protests against the results of a match.

(3) Any other adjudicative proceeding before the Commission not specifically listed in Subsections (1) and (2) above, is designated as an informal adjudicative proceeding.

R151-33-402. Adjudicative Proceedings in General.

(1) The procedures for formal adjudicative proceedings are set forth in Sections 63-46b-6 through 63-46b-10; the Department of Commerce Administrative Procedures Act Rule, R151-46b; and this Rule.

(2) The procedures for informal adjudicative proceedings

are set forth in Section 63-46b-5; Rule R151-46b; and this Rule.

(3) No evidentiary hearings shall be held in informal adjudicative proceedings before the Commission with the exception of protests against the results of a match in which an evidentiary hearing is permissible if timely requested. Any request for a hearing with respect to a protest of match results shall comply with the requirements of Section R151-33-404.

(4) Unless otherwise specified by the Commission, an administrative law judge shall be designated as the presiding officer to conduct any hearings in adjudicative proceedings before the Commission and thus rule on evidentiary issues and matters of law or procedure.

(5) The Commission shall be designated as the sole presiding officer in any adjudicative proceeding where no evidentiary hearing is conducted. The Commission shall be designated as the presiding officer to serve as the fact finder at evidentiary hearings.

(6) A majority vote of the Commission shall constitute its decision. Orders of the Commission shall be issued in accordance with Section 63-46b-10 for formal adjudicative proceedings, Subsection 63-46b-5(1)(i) for informal adjudicative proceedings, and shall be signed by the Director or, in his or her absence, by the Chair of the Commission.

R151-33-403. Additional Procedures for Immediate License Suspension.

(1) In accordance with Subsection 13-33-303(7), the designated Commission member may issue an order immediately suspending the license of a licensee upon a finding that the licensee presents an immediate and significant danger to the licensee, other licensees, or the public.

(2) The suspension shall be at such time and for such period as the Commission believes is necessary to protect the health, safety, and welfare of the licensee, other licensees, or the public.

(3) A licensee whose license has been immediately suspended may, within 30 days after the decision of the designated Commission member, challenge the suspension by submitting a written request for a hearing. The Commission shall convene the hearing as soon as is reasonably practical but not later than 20 days from the receipt of the written request, unless the Commission and the party requesting the hearing agree to conduct the hearing at a later date.

R151-33-404. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) A request for an evidentiary hearing in an informal adjudicative proceeding shall be submitted in writing no later than 20 days following the issuance of the Commission's notice of agency action if the proceeding was initiated by the Commission, or together with the request for agency action, if the proceeding was not initiated by the Commission, in accordance with the requirements set forth in the Utah Administrative Procedures Act, Title 63, Chapter 46b.

(2) Unless otherwise agreed upon 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 63-46b-5(1)(d). Timely notice means service of a Notice of Hearing upon all parties no later than ten days prior to any scheduled evidentiary hearing.

(3) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in an informal adjudicative proceeding.

R151-33-405. Reconsideration and Judicial Review.

Agency review is not available as to any order or decision entered by the Commission. However, any person aggrieved by an adverse determination by the Commission may either seek reconsideration of the order pursuant to Section 63-46b-13 of the Utah Administrative Procedures Act or seek judicial review of the order pursuant to Sections 63-46b-14 through 63-46b-17.

R151-33-501. Promoter's Responsibility in Arranging Contests-Permit Fee, Bond, Restrictions.

(1) Before a licensed promoter may hold a contest or single contest as part of a single promotion, the promoter shall file with the Commission an application for a permit to hold the contest not less than 15 days before the date of the proposed contest, or not less than seven days for televised contests.

(2) The application shall include the date, time, and place of the contest as well as information concerning the on-site emergency facilities, personnel, and transportation.

(3) The permit application must be accompanied by a contest registration fee determined by the Department under Section 63-38-32.

(4) Before a permit to hold a contest is granted, the promoter shall post a surety bond with the Commission in the amount of $10,000.

(5) Prior to the scheduled time of the contest, the promoter shall have available for inspection the completed physical facilities which will be used directly or indirectly for the contest. The designated Commission member shall inspect the facilities in the presence of the promoter or the promoter's authorized representative, and all deficiencies cited upon inspection shall be corrected before the contest.

(6) A promoter shall be responsible for verifying the identity, ring record, and suspensions of each contestant. A promoter shall be held responsible for the accuracy of the names and records of each of the participating contestants in all publicity or promotional material.

(7) A promoter shall be held responsible for a contest in which one of the contestants is disproportionately outclassed.

(8) Before a contest begins, the promoter shall give the designated Commission member the money for payment of contestants, referees, judges, and the attending physician. The designated Commission member shall pay each contestant, referee, judge, and physician in the presence of one witness.

(9) At the time of a boxing contest weigh-in, the promoter of a contest shall provide evidence of health insurance pursuant to Public Law 104272, "The Professional Boxing Safety Act of 1996."

R151-33-502. Ringside Equipment.

(1) Each promoter shall provide all of the following:

(a) a sufficient number of buckets for use by the contestants;

(b) stools for use by the seconds;

(c) rubber gloves for use by the referees, seconds, ringside physicians, and Commission representatives;

(d) a stretcher, which shall be available near the ring and near the ringside physician;

(e) a portable resuscitator with oxygen;

(f) an ambulance with attendants on site at all times when contestants are competing. Arrangements shall be made for a replacement ambulance if the first ambulance is required to transport a contestant for medical treatment. The location of the ambulance and the arrangements for the substitute ambulance service shall be communicated to the physician;

(g) seats at ringside for the assigned officials;

(h) seats at ringside for the designated Commission member;

(i) scales for weigh-ins, which the Commission shall require to be certified;

(j) a gong;

(k) a public address system;

(l) a separate dressing room for each sex, if contestants of both sexes are participating;

(m) a separate room for physical examinations;
(n) a separate dressing room shall be provided for officials, unless the physical arrangements of the contest site make an additional dressing room impossible;
(o) adequate security personnel; and
(p) sufficient bout sheets for ring officials and the designated Commission member.
(2) A promoter shall only hold contests in facilities that conform to the laws, ordinances, and regulations regulating the city, town, or village where the bouts are situated.
(3) Restrooms shall not be used as dressing rooms and for physical examinations and weigh-ins.

R151-33-503. Contracts.
(1) Pursuant to Section 13-33-503, a copy of the contract between a promoter and a contestant shall be filed with the Commission before a contest begins. The contract that is filed with the Commission shall embody all agreements between the parties.
(2) A contestant's manager may sign a contract on behalf of the contestant. If a contestant does not have a licensed manager, the contestant shall sign the contract.
(3) A contestant shall use his own legal name to sign a contract. However, a contestant who is licensed under another name may sign the contract using his licensed name if the contestant's legal name appears in the body of the contract as the name under which the contestant is legally known.
(4) The contract between a promoter and a contestant shall be for the use of the contestant's skills in a contest and shall not require the contestant to sell tickets in order to be paid for his services.

R151-33-504. Complimentary Tickets.
(1) Limitation on issuance, calculation of price, and service charge for payment to contestant working on percentage basis.
(a) A promoter may not issue complimentary tickets for more than 4 percent of the seats in the house without the Commission's written authorization. The Commission shall not consider complimentary tickets which it authorizes under this Section to constitute part of the total gross receipts from admission fees for the purposes of calculating the license fee prescribed in Subsection 13-33-304(1).
(b) If complimentary tickets are issued for more than 4 percent of the seats in the house, each contestant who is working on a percentage basis shall be paid a percentage of the normal price of all complimentary tickets in excess of 4 percent of the seats in the house, unless the contract between the contestant and the promoter provides otherwise and stipulates the number of complimentary tickets which will be issued. In addition, if a service fee is charged for complimentary tickets, the contestant is entitled to be paid a percentage of that service fee, less any deduction for federal taxes and fees.
(c) Pursuant to Subsection 13-33-304(3)(a) a promoter shall file, within 10 days after the contest, a report indicating how many complimentary tickets the promoter issued and the value of those tickets.
(2) Complimentary ticket and tickets at reduced rate, persons entitled or allowed to receive such tickets, duties of promoter, disciplinary action, fees and taxes.
(a) Each promoter shall provide tickets without charge to the following persons who shall not be liable for the payment of any fees for those tickets:
(i) the Commission members, Director and representatives;
(ii) principals and seconds who are engaged in a contest or exhibition which is part of the program of unarmed combat; and
(iii) holders of lifetime passes issued by the Commission.
(b) Each promoter may provide tickets without charge or at a reduced rate to the following persons who shall be liable for payment of applicable fees on the reduced amount paid, unless the person is a journalist, police officer or fireman as provided in this Subsection:
(i) Any of the promoter's employees, and if the promoter is a corporation, to a director or officer who is regularly employed or engaged in promoting programs of unarmed combat, regardless of whether the director or officer's duties require admission to the particular program and regardless of whether the director or officer is on duty at the time of that program;
(ii) Employees of the Commission;
(iii) A journalist who is performing a journalist's duties; and
(iv) A fireman or police officer that is performing the duties of a fireman or police officer.
(c) Each promoter shall perform the following duties in relation to the issuance of complimentary tickets or those issued at a reduced price:
(i) Each ticket issued to a journalist shall be clearly marked "PRESS." No more tickets may be issued to journalists than will permit comfortable seating in the press area;
(ii) Seating at the press tables or in the press area must be limited to journalists who are actually covering the contest or exhibition and to other persons designated by the Commission;
(iii) A list of passes issued to journalists shall be submitted to the Commission prior to the contest or exhibition;
(iv) Only one ticket may be sold at a reduced price to any manager, second, contestant or other person licensed by the Commission;
(v) Any credential issued by the promoter which allows an admission to the program without a ticket, shall be approved in advance by a member of the Commission or the Director. Request for the issuance of such credentials shall be made at least 5 hours before the first contest or exhibition of the program.
(d) Admission of any person who does not hold a ticket or who is not specifically exempted pursuant to this Section is grounds for suspension or revocation of the promoter's license or for the assessment of a penalty.
(e) The Commission shall collect all fees and taxes due on any ticket that is not specifically exempt pursuant to this Section, and for any person who is admitted without a ticket in violation of this Section.
(3) Reservation of area for use by Commission. For every program of unarmed combat, the promoter of the program shall reserve seats at ringside for use by the designated Commission member and Commission representatives.

R151-33-505. Physical Examination - Physician.
(1) Not less than one hour before a contest, each contestant shall be given a medical examination by a physician who is appointed by the designated Commission member. The examination shall include a detailed medical history and a physical examination of all of the following:
(a) eyes;
(b) teeth;
(c) jaw;
(d) neck;
(e) chest;
(f) ears;
(g) nose;
(h) throat;
(i) skin;
(j) scalp;
(k) head;
(l) abdomen;
(m) cardiopulmonary status;
(n) neurological, musculature, and skeletal systems;
(o) pelvis; and

(p) the presence of controlled substances in the body.

(2) If after the examination the physician determines that a contestant is unfit for competition, the physician shall notify the Commission of this determination, and the Commission shall prohibit the contestant from competing.

(3) The physician shall provide a written certification of those contestants who are in good physical condition to compete.

(4) Before a bout, a female contestant shall provide the ringside physician with the results of a pregnancy test performed on the contestant within the previous 14 days. If the results of the pregnancy test are positive, the physician shall notify the Commission, and the Commission shall prohibit the contestant from competing.

(5) A female contestant with breast implants shall be denied a license.

(6) A contestant who has had cardiac surgery shall not be issued a license unless he is certified as fit to compete by a cardiovascular surgeon.

(7) A contest shall not begin until a physician and an attended ambulance are present. The physician shall not leave until the decision in the final contest has been announced and all injured contestants have been attended to.

(8) The contest shall not begin until the physician is seated at ringside. The physician shall remain at that location for the entire fight, unless it is necessary for the physician to attend to a contestant.

R151-33-506. Drug Tests.

In accordance with Section 13-33-405, the following shall apply to drug testing:

(1) At the request of the Commission, the designated Commission member, or the ringside physician, a contestant or assigned official shall submit to a test of body fluids to determine the presence of drugs. The promoter shall be responsible for any costs of testing.

(2) If the test results in a finding of the presence of a drug or if the contestant or assigned official is unable or unwilling to provide a sample of body fluids for such a test, the Commission may take one or more of the following actions:

(a) immediately suspend the contestant's or assigned official's license in accordance with Section R151-33-403;

(b) stop the contest in accordance with Subsection 13-33-404(2);

(c) initiate other appropriate licensure action in accordance with Section 13-33-303; or

(d) withhold the contestant's purse in accordance with Subsection 13-33-405(2).

(3) A contestant who is disciplined pursuant to the provisions of this Rule and who was the winner of a contest shall be disqualified and the decision of the contest shall be changed to "no contest."

R151-33-507. HIV Testing.

In accordance with Section 13-33-405, contestants shall produce evidence of a clear test for HIV as a condition to participation in a contest as follows:

(1) All contestants shall provide evidence in the form of a competent laboratory examination certificate verifying that the contestant is HIV negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HIV test was completed within 180 days prior to the contest.

(3) Any contestant whose HIV test is positive shall be prohibited from participating in a contest.

R151-33-508. Contestant Use or Administration of Any Substance.

(1) The use or administration of drugs, stimulants, or non-prescription preparations by or to a contestant during a contest is prohibited, except as provided by this Rule.

(2) The giving of substances other than water to a contestant during the course of the contest is prohibited.

(3) The discretional use of petroleum jelly may be allowed, as determined by the referee.

(4) The discretional use of coagulants, adrenalin 1/1000, avetine, and thrombin, as approved by the Commission, may be allowed between rounds to stop the bleeding of minor cuts and lacerations sustained by a contestant. The use of monsel solution, silver nitrate, "new skin," flex collodion, or substances having an iron base is prohibited, and the use of any such substance by a contestant is cause for immediate disqualification.

(5) The ringside physician shall monitor the use and application of any foreign substances administered to a contestant before or during a contest and shall confiscate any suspicious foreign substance for possible laboratory analysis, the results of which shall be forwarded to the Commission.

R151-33-509. Weighing-In.

(1) Unless otherwise approved by the Commission for a specific contest, the weigh-in shall occur not less than six nor more than 24 hours before the start of a contest. The designated Commission member or authorized Commission representative(s), shall weigh-in each contestant in the presence of other contestants.

(2) Contestants shall be licensed at the time they are weighed-in.

(3) Only those contestants who have been previously approved for the contest shall be permitted to weigh-in.

R151-33-510. Announcer.

(1) At the beginning of a contest, the announcer shall announce that the contest is under the auspices of the Commission.

(2) The announcer shall announce the names of the referee, judges, and timekeeper when the competitions are about to begin, and shall also announce the changes made in officials as the contest progresses.

(3) The announcer shall announce the names of all contestants, their weight, professional record, their city and state of residence, and country of origin if not a citizen.

R151-33-511. Timekeepers.

(1) A timekeeper shall indicate the beginning and end of each round by the gong.

(2) A timekeeper shall possess a whistle and a stopwatch.

(3) Ten seconds before the beginning of each round, the timekeeper shall warn the contestants of the time by blowing a whistle.

(4) If a contest terminates before the scheduled limit of rounds, the timekeeper shall inform the announcer of the exact duration of the contest.

(5) The timekeeper shall keep track of and record the exact amount of time that any contestant remains on the canvas.

R151-33-512. Stopping a Contest.

In accordance with Subsections 13-33-404(2) and 13-33-102(14)(b), authority for stopping a contest is defined, clarified or established as follows.

(1) The referee may stop a contest to ensure the integrity of a contest or to protect the health, safety, or welfare of a contestant or the public for any one or more of the following reasons:

(a) injuries, cuts, or other physical or mental conditions that would endanger the health, safety, or welfare of a contestant if the contestant were to continue with the competition.

(b) one-sided nature of the contest;

(c) refusal or inability of a contestant to reasonably

compete; and

(d) refusal or inability of a contestant to comply with the rules of the contest.

(2) If a referee stops a contest, the referee shall disqualify the contestant, where appropriate, and recommend to the designated Commission member that the purse of that professional contestant be withheld pending an impoundment decision in accordance with Section 13-33-504.

(3) The designated Commission member may stop a contest at any stage in the contest when there is a significant question with respect to the contest, the contestant, or any other licensee associated with the contest, and determine whether the purse should be withheld pursuant to Section 13-33-504.

R151-33-601. Boxing - Contest Weights and Classes.

(1) Boxing weights and classes are established as follows:

(a) Strawweight: up to 105 lbs. (47.627 kgs.)

(b) Light-Flyweight: over 105 to 108 lbs. (47.627 to 48.988 kgs.)

(c) Flyweight: over 108 to 112 lbs. (48.988 to 50.802 kgs.)

(d) Super Flyweight: over 112 to 115 lbs. (50.802 to 52.163 kgs.)

(e) Bantamweight: over 115 to 118 lbs. (52.163 to 53.524 kgs.)

(f) Super Bantamweight: over 118 to 122 lbs. (53.524 to 55.338 kgs.)

(g) Featherweight: over 122 to 126 lbs. (55.338 to 57.153 kgs.)

(h) Super Featherweight: over 126 to 130 lbs. (57.153 to 58.967 kgs.)

(i) Lightweight: over 130 to 135 lbs. (58.967 to 61.235 kgs.)

(j) Super Lightweight: over 135 to 140 lbs. (61.235 to 63.503 kgs.)

(k) Welterweight: over 140 to 147 lbs. (63.503 to 66.678 kgs.)

(l) Super Welterweight: over 147 to 154 lbs. (66.678 to 69.853 kgs.)

(m) Middleweight: over 154 to 160 lbs. (69.853 to 72.574 kgs.)

(n) Super Middleweight: over 160 to 168 lbs. (72.574 to 76.204 kgs.)

(o) Light-heavyweight: over 168 to 175 lbs. (76.204 to 79.378 kgs.)

(p) Cruiserweight: over 175 to 200 lbs. (79.378 to 90.80 kgs.)

(q) Heavyweight: all over 200 lbs. (90.80 kgs.)

(2) A contestant shall not fight another contestant who is outside of the contestant's weight classification unless prior approval is given by the Commission.

(3) A contestant who has contracted to box in a given weight class shall not be permitted to compete if he or she exceeds that weight class at the weigh-in, unless the contract provides for the opposing contestant to agree to the weight differential. If the weigh-in is held the day before the contest and if the opposing contestant does not agree or the contract does not provide for a weight exception, the contestant may have two hours to attempt to lose not more than three pounds in order to be reweighed.

(4) The Commission shall not allow a contest in which the contestants are not fairly matched. In determining if contestants are fairly matched, the Commission shall consider all of the following factors with respect to the contestant:

(a) the win-loss record of the contestants;

(b) the weight differential;

(c) the caliber of opponents;

(d) each contestant's number of fights; and

(e) previous suspensions or disciplinary actions.

R151-33-602. Boxing - Number of Rounds in a Bout.

(1) A contest bout shall consist of not less than four and not more than twelve scheduled rounds. Three minutes of boxing shall constitute a round for men's boxing, and two minutes shall constitute a round for women's boxing. There shall be a rest period of one minute between the rounds.

(2) A promoter shall contract with a sufficient number of contestants to provide a program consisting of at least 30 and not more than 56 scheduled rounds of boxing, unless otherwise approved by the Commission.

R151-33-603. Boxing - Ring Dimensions and Construction.

(1) The ring shall be square, and the sides shall not be less than 16 feet nor more than 22 feet. The ring floor shall extend not less than 18 inches beyond the ropes. The ring floor shall be padded with a base not less than 5/8 of an inch of ensolite or another similar closed-cell foam. The padding shall extend beyond the ring ropes and over the edge of the platform, and shall be covered with canvas, duck, or a similar material that is tightly stretched and laced securely in place.

(2) The ring floor platform shall not be more than four feet above the floor of the building, and shall have two sets of suitable stairs for the use of contestants, with an extra set of suitable stairs to be used for any other activities that may occur between rounds. Ring posts shall be made of metal and shall be not less than three nor more than four inches in diameter, extending a minimum of 58 inches above the ring floor. Ring posts shall be at least 18 inches away from the ropes.

(3) The ring shall not have less than four ring ropes which can be tightened and which are not less than one inch in diameter. The ring ropes shall be wrapped in a soft material. The turnbuckles shall be covered with a protective padding. The ring ropes shall have two spacer ties on each side of the ring to secure the ring ropes. The lower ring rope shall be 18 inches above the ring floor. The ring shall have corner pads in each corner.

R151-33-604. Boxing - Gloves.

(1) A boxing contestant's gloves shall be examined before a contest by the referee and the designated Commission member. If gloves are found to be broken or unclean or if the padding is found to be misplaced or lumpy, they shall be changed before the contest begins.

(2) A promoter shall be required to have on hand an extra set of gloves that are to be used if a contestant's gloves are broken or damaged during the course of a contest.

(3) Gloves for a main event may be put on in the ring after the referee has inspected the bandaged hands of both contestants.

(4) During a contest, male contestants shall wear gloves weighing not less than eight ounces each if the contestant weighs 154 1bs. (69.853 kgs.) or less. Contestants who weigh more than 154 1bs. (69.853 kgs.) shall wear gloves weighing ten ounces each. Female contestants' gloves shall be ten-ounce gloves. The designated Commission member shall have complete discretion to approve or deny the model and style of the gloves before the contest.

(5) The laces shall be tied on the outside of the back of the wrist of the gloves and shall be secured. The tips of the laces shall be removed.

R151-33-605. Boxing - Bandage Specification.

(1) Except as agreed to by the managers of the contestants opposing each other in a contest, a contestant's bandage for each hand shall consist of soft gauze not more than 20 yards long and not more than two inches wide. The gauze shall be held in place by not more than eight feet of adhesive tape not more than one and one-half inches wide. The adhesive tape must be white or a light color.

(2) Bandages shall be adjusted in the dressing room under the supervision of the designated Commission member.

(3) The use of water or any other substance other than medical tape on the bandages is prohibited.

(4) The bandages and adhesive tape may not extend to the knuckles, and must remain at least three-fourths of an inch away from the knuckles when the hand is clenched to make a fist.

R151-33-606. Boxing - Mouthpieces.

A round shall not begin until the contestant's form-fitted protective mouthpiece is in place. If, during a round, the mouthpiece falls out of the contestant's mouth, the referee shall, as soon as practicable, stop the bout and escort the contestant to his corner. The mouthpiece shall be rinsed out and replaced in the contestant's mouth and the contest shall continue. If the referee determines that the contestant intentionally spit the mouthpiece out, the referee may direct the judges to deduct points from the contestant's score for the round.

R151-33-607. Boxing - Contest Officials.

(1) The officials for each boxing contest shall consist of not less than the following:

(a) one referee;

(b) three judges;

(c) one timekeeper; and

(d) one physician licensed in good standing in Utah.

(2) A licensed referee, judge, or timekeeper shall not officiate at a contest that is not conducted under the authority or supervision of the designated Commission member.

(3) A referee or judge shall not participate or accept an assignment to officiate when that assignment may tend to impair the referee's or judge's independence of judgment or action in the performance of the referee's or judge's duties.

(4) A judge shall be seated midway between the ring posts of the ring, but not on the same side as another judge, and shall have an unimpaired view of the ring.

(5) A referee shall not be assigned to officiate more than 32 scheduled rounds in one day, except when substituting for another referee who is incapacitated.

(6) A referee shall not wear jewelry that might cause injury to the contestants. Glasses, if worn, shall be protective athletic glasses or goggles with plastic lenses and a secure elastic band around the back of the head.

(7) Referees, seconds working in the corners, the designated Commission member, and physicians may wear rubber gloves in the performance of their duties.

(8) No official shall be under the influence of alcohol or controlled substances while performing the official's duties.

R151-33-608. Boxing - Contact During Contests.

(1) Beginning one minute before the first round begins, only the referee, boxing contestants, and the chief second may be in the ring. The referee shall clear the ring of all other individuals.

(2) Once a contest has begun, only the referee, contestants, seconds, judges, Commission representatives, physician, the announcer and the announcer's assistants shall be allowed in the ring.

(3) At any time before, during or after a contest, the referee may order that the ring and technical area be cleared of any individual not authorized to be present in those areas.

(4) The referee, on his own initiative, or at the request of the designated Commission member, may stop a bout at any time if individuals refuse to clear the ring and technical area, dispute a decision by an official, or seek to encourage spectators to object to a decision either verbally, physically, or by engaging in disruptive conduct. If the individual involved in disruptive conduct or encouraging disruptive conduct is the manager or second of a contestant, the referee may disqualify the contestant or order the deduction of points from that contestant's score. If the conduct occurred after the decision was announced, the Commission may change the decision, declare no contest, or pursue disciplinary action against any licensed individual involved in the disruptive conduct.

R151-33-609. Boxing - Referees.

(1) The chief official of a boxing contest shall be the referee. The referee shall decide all questions arising in the ring during a contest that are not specifically addressed in this Rule.

(2) The referee shall, before each contest begins, determine the name and location of the physician assigned to officiate at the contest and each contestant's chief second.

(3) At the beginning of each contest, the referee shall summon the contestants and their chief seconds together for final instructions. After receiving the instructions, the contestants shall shake hands and retire to their respective corners.

(4) Where difficulties arise concerning language, the referee shall make sure that the contestant understands the final instructions through an interpreter and shall use suitable gestures and signs during the contest.

(5) No individual other than the contestants, the referee, and the physician when summoned by the referee, may enter the ring or the apron of the ring during the progress of a round.

(6) If a contestant's manager or second steps into the ring or onto the apron of the ring during a round, the fight shall be halted and the referee may eject the manager or second from the ringside working area. If the manager or second steps into the ring or onto the apron a second time during the contest, the fight may be stopped and the decision may be awarded to the contestant's opponent due to disqualification.

(7) A referee shall inspect a contestant's body to determine whether a foreign substance has been applied.

R151-33-610. Boxing - Stalling or Faking.

(1) A referee shall warn a contestant if the referee believes the contestant is stalling or faking. If after proper warning, the referee determines the contestant is continuing to stall or pull his punches, the referee shall stop the bout at the end of the round.

(2) A referee may consult the judges as to whether or not the contestant is stalling or faking and shall abide by a majority decision of the judges.

(3) If the referee determines that either or both contestants are stalling or faking, or if a contestant refuses to fight, the referee shall terminate the contest and announce a no contest.

(4) A contestant who, in the opinion of the referee, intentionally falls down without being struck shall be immediately examined by a physician. After conferring with the physician, the referee may disqualify the contestant.

R151-33-611. Boxing - Injuries and Cuts.

(1) When an injury or cut is produced by a fair blow and because of the severity of the blow the contest cannot continue, the injured boxing contestant shall be declared the loser by technical knockout.

(2) If a contestant intentionally fouls his opponent and an injury or cut is produced, and due to the severity of the injury the contestant cannot continue, the contestant who commits the foul shall be declared the loser by disqualification.

(3) If a contestant receives an intentional butt or foul and the contest can continue, the referee shall penalize the contestant who commits the foul by deducting two points. The referee shall notify the judges that the injury or cut has been produced by an intentional unfair blow so that if in the subsequent rounds the same injury or cut becomes so severe that the contest has to be suspended, the decision will be awarded as follows:

(a) a technical draw if the injured contestant is behind on points or even on a majority of scorecards; and

(b) a technical decision to the injured contestant if the injured contestant is ahead on points on a majority of the scorecards.

(4) If a contestant injures himself trying to foul his opponent, the referee shall not take any action in his favor, and the injury shall be considered as produced by a fair blow from his opponent.

(5) If a contestant is fouled accidentally during a contest and can continue, the referee shall stop the action to inform the judges and acknowledge the accidental foul. If in subsequent rounds, as a result of legal blows, the accidental foul injury worsens and the contestant cannot continue, the referee shall stop the contest and declare a technical decision with the winner being the contestant who is ahead on points on a majority of the scorecards. The judges shall score partial rounds. If a contestant is accidentally fouled in a contest and due to the severity of the injury the contestant cannot continue, the referee shall rule as follows:

(a) if the injury occurs before the completion of four rounds, declare the contest a technical draw; or

(b) if the injury occurs after the completion of four rounds, declare that the winner is the contestant who has a lead in points on a majority of the scorecards before the round of injury. The judges shall score partial rounds.

(6) If in the opinion of the referee, a contestant has suffered a dangerous cut or injury, or other physical or mental condition, the referee may stop the bout temporarily to summon the physician. If the physician recommends that the contest should not continue, the referee shall order the contest to be terminated.

(7) A fight shall not be terminated because of a low blow. The referee may give a contestant not more than five minutes if the referee believes a foul has been committed. Each contestant shall be instructed to return to his or her respective corner by the referee. The contestants may sit in their respective corners with their mouthpiece removed. After removing their contestant's mouthpiece, the seconds must return to their seats. The seconds may not coach, administer water, or in any other way attend to their contestant, except to replace the mouthpiece when the round is ready to resume.

(8) If a contestant is knocked down or given a standing mandatory count of eight or a combination of either occurs three times in one round, the contest shall be stopped and a technical knockout shall be awarded to the opponent. The physician shall immediately enter the ring and examine the losing contestant.

(9) A physician shall immediately examine and administer aid to a contestant who is knocked out or injured.

(10) When a contestant is knocked out or rendered incapacitated, the referee or second shall not handle the contestant, except for the removal of a mouthpiece, unless directed by the physician to do so.

(11) A contestant shall not refuse to be examined by a physician.

(12) A contestant who has been knocked out shall not leave the site of the contest until one hour has elapsed from the time of the examination or until released by the physician.

(13) A physician shall file a written report with the Commission on each contestant who has been knocked out or injured.

R151-33-612. Boxing - Knockouts.

(1) A boxing contestant who is knocked down shall take a minimum mandatory count of eight.

(2) If a boxing contestant is dazed by a blow and, in the referee's opinion, is unable to defend himself, the referee shall give a standing mandatory count of eight or stop the contest. If on the count of eight the boxing contestant, in the referee's opinion, is unable to continue, the referee may count him out on his feet or stop the contest on the count of eight.

(3) In the event of a knockdown, the timekeeper shall immediately start the count loud enough to be heard by the referee, who, after waving the opponent to the farthest neutral corner, shall pick up the count from the timekeeper and proceed from there. The referee shall stop the count if the opponent fails to remain in the corner. The count shall be resumed when the opponent has returned to the corner.

(4) The timekeeper shall signal the count to the referee.

(5) If the boxing contestant taking the count is still down when the referee calls the count of ten, the referee shall wave both arms to indicate that the boxing contestant has been knocked out. The referee shall summon the physician and shall then raise the opponent's hand as the winner. The referee's count is the official count.

(6) If at the end of a round a boxing contestant is down and the referee is in the process of counting, the gong indicating the end of the round shall not be sounded. The gong shall only be sounded when the referee gives the command to box indicating the continuation of the bout.

(7) In the final round, the timekeeper's gong shall terminate the fight.

(8) A technical knockout decision shall be awarded to the opponent if a boxing contestant is unable or refuses to continue when the gong sounds to begin the next round. The decision shall be awarded in the round started by the gong.

(9) The referee and timekeeper shall resume their count at the point it was suspended if a boxing contestant arises before the count of ten is reached and falls down again immediately without being struck.

(10) If both boxing contestants go down at the same time, counting will be continued as long as one of them is still down or until the referee or the ringside physician determines that one or both of the boxing contestants needs immediate medical attention. If both boxing contestants remain down until the count of ten, the bout will be stopped and the decision will be scored as a double knockout.

R151-33-613. Boxing - Procedure After Knockout or Contestant Sustaining Damaging Head Blows.

(1) A boxing contestant who has lost by a technical knockout shall not fight again for a period of 30 calendar days or until the contestant has submitted to a medical examination. The Commission may require such physical exams as necessary.

(2) A ringside physician shall examine a boxing contestant who has been knocked out in a contest or a contestant whose fight has been stopped by the referee because the contestant received hard blows to the head that made him defenseless or incapable of continuing immediately after the knockout or stoppage. The ringside physician may order post-fight neurological examinations, which may include computerized axial tomography (CAT) scans or magnetic resonance imaging (MRI) to be performed on the contestant immediately after the contestant leaves the location of the contest. Post-fight neurological examination results shall be forwarded to the Commission by the ringside physician as soon as possible.

(3) A report that records the amount of punishment a fighter absorbed shall be submitted to the Commission by the ringside physician within 24 hours of the end of the fight.

(4) A ringside physician may require any boxing contestant who has sustained a severe injury or knockout in a bout to be thoroughly examined by a physician within 24 hours of the bout. The physician shall submit his findings to the Commission. Upon the physician's recommendation, the Commission may prohibit the contestant from boxing until the contestant is fully recovered and may extend any such suspension imposed.

(5) All medical reports that are submitted to the

Commission relative to a physical examination or the condition of a boxing contestant shall be confidential and shall be open for examination only by the Commission and the licensed contestant upon the contestant's request to examine the records or upon the order of a court of competent jurisdiction.

(6) A boxing contestant who has been knocked out or who received excessive hard blows to the head that made him defenseless or incapable of continuing shall not be permitted to take part in competitive or noncompetitive boxing for a period of not less than 60 days. Noncompetitive boxing shall include any contact training in the gymnasium. It shall be the responsibility of the boxing contestant's manager and seconds to assure that the contestant complies with the provisions of this Rule. Violation of this Rule could result in the indefinite suspension of the contestant and the contestant's manager or second.

(7) A contestant may not resume boxing after any period of rest prescribed in Subsections R151-33-613(1) and (6), unless following a neurological examination, a physician certifies the contestant as fit to take part in competitive boxing. A boxing contestant who fails to secure an examination prior to resuming boxing shall be automatically suspended until the results of the examination have been received by the Commission and the contestant is certified by a physician as fit to compete.

(8) A boxing contestant who has lost six consecutive fights shall be prohibited from boxing again until the Commission has reviewed the results of the six fights or the contestant has submitted to a medical examination by a physician.

(9) A boxing contestant who has suffered a detached retina shall be automatically suspended and shall not be reinstated until the contestant has submitted to a medical examination by an ophthalmologist and the Commission has reviewed the results of the examination.

(10) A boxing contestant who is prohibited from boxing in other states or jurisdictions due to medical reasons shall be prohibited from boxing in accordance with this Rule. The Commission shall consider the boxing contestant's entire professional record regardless of the state or country in which the contestant's fights occurred.

(11) A boxing contestant or the contestant's manager shall report any change in the contestant's medical condition which may affect the contestant's ability to fight safely. The Commission may, at any time, require current medical information on any contestant.

R151-33-614. Boxing - Waiting Periods.

(1) The number of days that shall elapse before a boxing contestant who has competed anywhere in a bout may participate in another bout shall be as follows:

TABLE

Length of Bout (In scheduled Rounds)	Required Interval (In Days)
4	3
5-9	5
10-12	7

R151-33-615. Boxing - Fouls.

(1) A referee may disqualify or penalize a boxing contestant by deducting one or more points from a round for the following fouls:

(a) holding an opponent or deliberately maintaining a clinch;

(b) hitting with the head, shoulder, elbow, wrist, inside or butt of the hand, or the knee.

(c) hitting or gouging with an open glove;

(d) wrestling, spinning or roughing at the ropes;

(e) causing an opponent to fall through the ropes by means other than a legal blow;

(f) gripping at the ropes when avoiding or throwing punches;

(g) intentionally striking at a part of the body that is over the kidneys;

(h) using a rabbit punch or hitting an opponent at the base of the opponent's skull;

(i) hitting on the break or after the gong has sounded;

(j) hitting an opponent who is down or rising after being down;

(k) hitting below the belt line;

(l) holding an opponent with one hand and hitting with the other;

(m) purposely going down without being hit or to avoid a blow;

(n) using abusive language in the ring;

(o) un-sportsmanlike conduct on the part of the boxing contestant or a second whether before, during, or after a round;

(p) intentionally spitting out a mouthpiece;

(q) any backhand blow; or

(r) biting.

R151-33-616. Boxing - Penalties for Fouling.

(1) A referee who penalizes a boxing contestant pursuant to this Rule shall notify the judges at the time of the infraction to deduct one or more points from their scorecards.

(2) A boxing contestant committing a deliberate foul, in addition to the deduction of one or more points, may be subject to disciplinary action by the Commission.

(3) A judge shall not deduct points unless instructed to do so by the referee.

(4) The designated Commission member shall file a complaint with the Commission against a boxing contestant disqualified on a foul. The Commission shall withhold the purse until the complaint is resolved.

R151-33-617. Boxing - Contestant Outside the Ring Ropes.

(1) A boxing contestant who has been knocked, wrestled, pushed, or has fallen through the ropes during a contest shall not be helped back into the ring, nor shall the contestant be hindered in any way by anyone when trying to reenter the ring.

(2) When one boxing contestant has fallen through the ropes, the other contestant shall retire to the farthest neutral corner and stay there until ordered to continue the contest by the referee.

(3) The referee shall determine if the boxing contestant has fallen through the ropes as a result of a legal blow or otherwise. If the referee determines that the boxing contestant fell through the ropes as a result of a legal blow, he shall warn the contestant that the contestant must immediately return to the ring. If the contestant fails to immediately return to the ring following the warning by the referee, the referee shall begin the count that shall be loud enough to be heard by the contestant.

(4) If the boxing contestant enters the ring before the count of ten, the contest shall be resumed.

(5) If the boxing contestant fails to enter the ring before the count of ten, the contestant shall be considered knocked out.

(6) When a contestant has accidentally slipped or fallen through the ropes, the contestant shall have 20 seconds to return to the ring.

R151-33-618. Boxing - Scoring.

(1) Officials who score a boxing contest shall use the 10-point must system.

(2) For the purpose of this Rule, the "10-point must system" means the winner of each round received ten points as determined by clean hitting, effective aggressiveness, defense, and ring generalship. The loser of the round shall receive less than ten points. If the round is even, each boxing contestant shall receive not less than ten points. No fraction of points may be given.

(3) Officials who score the contest shall mark their cards in ink or in indelible pencil at the end of each round.

(4) Officials who score the contest shall sign their scorecards.

(5) When a contest is scored on the individual score sheets for each round, the referee shall, at the end of each round, collect the score sheet for the round from each judge and shall give the score sheets to the designated Commission member for computation.

(6) Referees and judges shall be discreet at all times and shall not discuss their decisions with anyone during a contest.

(7) A decision that is rendered at the termination of a boxing contest shall not be changed without a hearing, unless it is determined that the computation of the scorecards of the referee and judges shows a clerical or mathematical error giving the decision to the wrong contestant. If such an error is found, the Commission may change the decision.

(8) After a contest, the scorecards collected by the designated Commission member shall be maintained by the Commission.

(9) If a referee becomes incapacitated, a time-out shall be called and the other referee who is assigned to the contest shall assume the duties of the referee.

(10) If a judge becomes incapacitated and is unable to complete the scoring of a contest, a time-out shall be called and an alternate licensed judge shall immediately be assigned to score the contest from the point at which he assumed the duties of a judge. If the incapacity of a judge is not noticed during a round, the referee shall score that round and the substitute judge shall score all subsequent rounds.

R151-33-619. Boxing - Seconds.

(1) A boxing contestant shall not have more than four seconds, one of whom shall be designated as the chief second. The chief second shall be responsible for the conduct in the corner during the course of a contest. During the rest period, one second shall be allowed inside the ring, two seconds shall be allowed on the apron and one second shall be allowed on the floor.

(2) All seconds shall remain seated during the round.

(3) A second shall not spray or throw water on a boxing contestant during a round.

(4) A boxing contestant's corner shall not heckle or in any manner annoy the contestant's opponent or the referee, or throw any object into the ring.

(5) A second shall not enter the ring until the timekeeper has indicated the end of a round.

(6) A second shall leave the ring at the timekeeper's whistle and shall clear the ring platform of all obstructions at the sound of the gong indicating the beginning of a round. Articles shall not be placed on the ring floor until the round has ended or the contest has terminated.

(7) A referee may eject a second from a ring corner for violations of the provisions of Subsections R151-33-609(6) and R151-33-608(4) of this Rule (stepping into the ring and disruptive behavior) and may have the judges deduct points from a contestant's corner.

(8) A second may indicate to the referee that the second's boxing contestant cannot continue and that the contest should be stopped. Only verbal notification or hand signals may be used; the throwing of a towel into the ring does not indicate the defeat of the second's boxing contestant.

(9) A second shall not administer alcoholic beverages, narcotics, or stimulants to a contestant, pour excessive water on the body of a contestant, or place ice in the trunks or protective cup of a contestant during the progress of a contest.

R151-33-620. Boxing - Managers.

A manager shall not sign a contract for the appearance of a boxing contestant if the manager does not have the boxing contestant under contract.

R151-33-621. Boxing. Identification - Photo Identification Cards.

(1) Each boxing contestant shall provide two pieces of identification to the designated Commission member before participation in a fight. One of the pieces of identification shall be a recent photo identification card issued or accepted by the Commission at the time the boxing contestant receives his original license.

(2) The photo identification card shall contain the following information:

(a) the contestant's name and address;

(b) the contestant's social security number;

(c) the personal identification number assigned to the contestant by a boxing registry;

(d) a photograph of the boxing contestant; and

(e) the contestant's height and weight.

(3) The Commission shall honor similar photo identification cards from other jurisdictions.

(4) Unless otherwise approved by the Commission, a boxing contestant will not be allowed to compete if his or her photo identification card is incomplete or if the boxing contestant fails to present the photo identification card to the designated Commission member prior to the bout.

R151-33-622. Boxing - Dress for Contestants.

(1) Boxing contestants shall be required to wear the following:

(a) trunks that are belted at the contestant's waistline. For the purposes of this Subsection, the waistline shall be defined as an imaginary horizontal line drawn through the navel to the top of the hips. Trunks shall not have any buckles or other ornaments on them that might injure a boxing contestant or referee;

(b) a foul-proof protector for male boxing contestants and a pelvic area protector and breast protector for female boxing contestants;

(c) shoes that are made of soft material without spikes, cleats, or heels;

(d) a fitted mouthpiece; and

(e) gloves meeting the requirements specified in Section R151-33-604.

(2) In addition to the clothing required pursuant to Subsections R151-33-622(1)(a) through (e), a female boxing contestant shall wear a body shirt or blouse without buttons, buckles, or ornaments.

(3) A boxing contestant's hair shall be cut or secured so as not to interfere with the contestant's vision.

(4) A boxing contestant shall not wear corrective lenses other than soft contact lenses into the ring. A bout shall not be interrupted for the purposes of replacing or searching for a soft contact lens.

R151-33-623. Boxing - Failure to Compete.

A boxing contestant's manager shall immediately notify the Commission if the contestant is unable to compete in a contest due to illness or injury. A physician may be selected as approved by the Commission to examine the contestant.

R151-33-701. Elimination Tournaments.

(1) In general. The provisions of Title 13, Chapter 33, and Rule R151-33 apply to elimination tournaments, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, an elimination tournament contestant shall provide any form of identification that contains a photograph of the contestant, such

as a state driver's license, passport, or student identification card.

(2) Official rules of the sport. Upon requesting the Commission's approval of an elimination tournament in this State, the sponsoring organization or promoter of an elimination tournament may submit the official rules for the particular sport to the Commission and request the Commission to apply the official rules in the contest.

(3) The Commission shall not approve the official rules of the particular sport and shall not allow the contest to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 13, Chapter 33, or with the Rule adopted by the Commission for the administration of that Act, Rule R151-33.

R151-33-702. Restrictions on Elimination Tournaments.

Elimination tournaments shall comply with the following restrictions:

(1) An elimination tournament must begin and end within a period of 48 hours.

(2) All matches shall be scheduled for no more than three rounds. A round must be one minute in duration.

(3) A contestant shall wear 16 oz. boxing gloves, training headgear, a mouthpiece and a large abdominal groin protector during each match.

(4) A contestant may participate in more than one match, but a contestant shall not compete more than a total of 12 rounds.

(5) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of contestants, a physical examination on each contestant, conducted by a physician not more than 60 days prior to the elimination tournament in a form provided by the Commission, certifying that the contestant is free from any physical or mental condition that indicates the contestant should not engage in activity as a contestant.

(6) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of the contestants HIV test results for each contestant pursuant to Subsection R151-33-507 of this Rule and Subsection 13-33-405(1).

(7) The Commission may impose additional restrictions in advance of an elimination tournament.

R151-33-801. Martial Arts Contests and Exhibitions.

(1) In general. All full-contact martial arts are forms of unarmed combat. Therefore, the provisions of Title 13, Chapter 33, and Rule R151-33 apply to contests or exhibitions of such martial arts, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, a contestant in a martial arts contest or exhibition shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

(2) Official rules of the art. Upon requesting the Commission's approval of a contest or exhibition of a martial art in this State, the sponsoring organization or promoter may submit the official rules for the particular art to the Commission and request the Commission to apply the official rules in the contest or exhibition.

(3) The Commission shall not approve the official rules of the particular art and shall not allow the contest or exhibition to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 13, Chapter 33, or with the Rule adopted by the Commission for the administration of that Act, Rule R151-33.

R151-33-901. Authority - Purpose.

These rules are adopted to enable the Commission to implement the provisions of Section 13-33-304 to facilitate the distribution of General Fund monies to Organizations Which Promote Amateur Boxing in the State.

R151-33-902. Definitions.

Pursuant to Section 13-33-304, the Commission adopts the following definitions:

(1) For purposes of Subsection 13-33-304(3), "amateur boxing" means a live boxing contest conducted in accordance with the standards and regulations of USA Boxing, Inc., and in which the contestants participate for a non-cash purse.

(2) "Applicant" means an Organization Which Promotes Amateur Boxing in the State as defined in this section.

(3) "Grant" means the Commission's distribution of monies as authorized under Section 13-33-304(3).

(4) "Organization Which Promotes Amateur Boxing in the State" means an amateur boxing club located within the state, registered with USA Boxing Incorporated.

(5) "State Fiscal Year" means the annual financial reporting period of the State of Utah, beginning July 1 and ending June 30.

R151-33-903. Qualifications for Applications for Grants for Amateur Boxing.

(1) In accordance with Section 13-33-304, each applicant for a grant shall:

(a) submit an application in a form prescribed by the Commission;

(b) provide documentation that the applicant is an "organization which promotes amateur boxing in the State";

(c) Upon request from the Commission, document the following:

(i) the financial need for the grant;

(ii) how the funds requested will be used to promote amateur boxing; and

(iii) receipts for expenditures for which the applicant requests reimbursement.

(2) Reimbursable Expenditures - The applicant may request reimbursement for the following types of eligible expenditures:

(a) costs of travel, including meals, lodging and transportation associated with participation in an amateur boxing contest for coaches and contestants;

(b) Maintenance costs; and

(c) Equipment costs.

(3) Eligible Expenditures - In order for an expenditure to be eligible for reimbursement, an applicant must:

(a) submit documentation supporting such expenditure to the Commission showing that the expense was incurred during the State Fiscal Year at issue; and

(b) submit such documentation no later than June 30 of the current State Fiscal Year at issue.

(4) the Commission will review applicants and make a determination as to which one(s) will best promote amateur boxing in the State of Utah.

R151-33-904. Criteria for Awarding Grants.

The Commission may consider any of the following criteria in determining whether to award a grant:

(1) whether any funds have been collected for purposes of amateur boxing grants under Section 13-33-304;

(2) the applicant's past participation in amateur boxing contests;

(3) the scope of the applicant's current involvement in amateur boxing;

(4) demonstrated need for the funding; or

(5) the involvement of adolescents including rural and minority groups in the applicant's amateur boxing program.

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R152. Commerce, Consumer Protection.
R152-34. Postsecondary Proprietary School Act Rules.
R152-34-1. Purpose.

These rules are promulgated under the authority of Section 13-2-5(1) to administer and enforce the Postsecondary Proprietary School Act. These rules provide standards by which institutions and their agents who are subject to the Postsecondary Proprietary School Act are required to operate consistent with public policy.

R152-34-2. References.

The statutory references that are made in these rules are to Title 13, Chapter 34, Utah Code Annotated 1953.

R152-34-3. Definitions in Addition to Those Found in Section 13-34-103.

(1) "Branch" and "extension" mean a freestanding location that is apart from the main campus, where resident instruction is provided on a regular, continuing basis.

(2) "Correspondence institution" means an institution that is conducted predominantly through the means of home study.

(3) "Course" means a unit subject within a program of education that must be successfully mastered before an educational credential can be awarded.

(4) "Division" means the Division of Consumer Protection.

(5) "Probation" means a negative action of the division that specifies a stated period for an institution to correct stipulated deficiencies; but does not imply any impairment of operational authority.

(6) "Program of education" consists of a series of courses that lead to an educational credential when completed.

(7) "Resident institution" means an institution where the courses and programs offered are predominantly conducted in a classroom or a class laboratory, with an instructor.

(8) "Revocation" means a negative action of the division that orders an institution to surrender its certificate and cease operations, including advertising, enrolling students and teaching classes, for whatever reason.

(9) "Suspension" means a negative action of the division that impairs an institution's operational authority for a stated period of time during which the deficiencies must be corrected or the certificate may be revoked.

R152-34-4. Rules Relating to the Responsibilities of Proprietary Schools as Outlined in Section 13-34-104.

(1) In order to be able to award a degree or certificate, a proprietary school must meet the following general criteria:

(a) Its program must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

(b) The areas of study, the methods of instruction, and the level of effort required of the student for a degree or certificate must be commensurate with reasonable standards established by recognized accrediting agencies and associations.

(c) In order for the proprietary school to award a degree or certificate, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. This notwithstanding, credit may be awarded toward degree completion based on (1) transfer of credit from other accredited and recognized institutions, (2) recognized proficiency exams (CLEP, AP, etc.), and (3) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (30 semester credit hours/45 quarter credit hours).

(d) In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or non-vocational program which is excluded from registration under 13-34-105(g).

(i) If the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the entity offering, or desiring to offer, the program of study must provide the Division:

(A) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;

(B) the name and contact information of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(C) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity from subsection(B) above; and,

(D) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency from subsection (B) above, or have earned the accreditation and/or certification from the appropriate entity from subsection (B) above to teach and/or practice in the field for which the students are being prepared.

(2) The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

(3) As appropriate to the program or course of study to be pursued, the proprietary school shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student (1) is beyond the age of compulsory high school attendance, as prescribed by Utah law; and (2) has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, before admitting the prospective student to the program, the institution must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and be able to find appropriate employment based on the skills acquired through the program.

(4) Each proprietary school shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:

(a) The legal name, address, and telephone number of the institution, also any branches and/or extension locations;

(b) The date of issue;

(c) The names, titles, and qualifications of administrators and faculty;

(d) The calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;

(e) The admission and enrollment prerequisites, both institutional and programmatic, as provided in R152-34-8(1);

(f) The policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;

(g) The policies regarding attendance and absence, and any provision for make-up of assignments;

(h) The policies regarding dismissal and/or interruption of training and of reentry;

(i) The policies explaining or describing the records that are to be maintained by the institution, including transcripts;

(j) The policies explaining any credit granted for previous education and experience;

(k) The policies explaining the grading system, including standards of progress required;

(l) The policies explaining the provision to students of interim grade or performance reports;

(m) The graduation requirements and the credential awarded upon satisfactory completion of a program;

(n) The schedule of tuition, any other fees, books, supplies and tools;

(o) The policies regarding refunds of any unused charges collected as provided in R152-34-8(3);

(p) The student assistance available, including scholarships and loans.

(q) The name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

(r) The placement services available and any variation by program;

(s) The facilities and equipment available;

(t) An explanation of whether and to what extent that the credit hours earned by the student are transferable to other institutions; and

(u) Such other information as the division may reasonably require from time to time.

R152-34-5. Rules Relating to Institutions Exempt Under Section 13-34-105.

(1) Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless they are considered as workshops or seminars within the meaning of Section 13-34-105(h).

(2) In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset.

(3) Any institution which claims an accreditation exemption must furnish acceptable documentation to the division upon request.

(4) To be exempt under Section 13-34-105(f):

(a) the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system or;

(b) the organization, association, society, labor union, or franchise system shall meet the following requirements:

(i) the organization, association, society, labor union, or franchise system does not recruit students;

(ii) the organization, association, society, labor union, or franchise system provides courses of instruction only to students who are currently employed;

(iii) the cost of the course of instruction is paid for by the employer of the student, not the student; and

(iv) enrollment in each individual course of instruction is limited to those who are bona fide employees of the employer.

(5) The division shall determine an institution's status in accordance with the categories contained in this section.

(6) An exempt institution shall notify the division within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 13-34-107.

(7) An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.

(8) To apply for a certificate of registration, an accredited institution shall submit a completed registration statement application and a copy of such portions of its current accreditation self-evaluation report as are specified by the division.

R152-34-6. Rules Relating to the Registration Statement Required under Section 13-34-106.

(1) The registration statement application shall provide the following information and statements made under oath:

(a) The institution's name, address, and telephone number;

(b) The names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students.

(c) The name of the agent authorized to respond to students inquiries if the registrant is a branch institution whose parent is located outside of the state of Utah;

(d) A statement that its articles of incorporation have been registered and accepted by the Utah Department of Commerce, Division of Corporations and Commercial Code and that it has a local business license, if required;

(e) A statement that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

(f) A statement that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

(g) A statement that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises;

(h) A statement that there is sufficient student interest in Utah for the courses that it provides and that there is reasonable employment potential in those areas of study in which credentials will be awarded;

(i) If the registration statement is filed pursuant to Section 13-34-107(3)(b), a detailed description of any material modifications to be made in the institution's operations, identification of those programs that are offered in whole or in part in Utah and a statement of whether the student can complete his or her program without having to take residence at the parent campus; and

(j) A statement that it maintains adequate insurance continuously in force to protect its assets.

(k) A disclosure as required by R152-34-7(1).

(l) If the registrant is a correspondence institution, whether located within or without the state of Utah, a demonstration that the institution's educational objectives can be achieved through home study; that its programs, instructional material, and methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives; that it provides adequate interaction between the student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique; and that any degrees and certificates earned through correspondence study meet the requirements and criteria of R152-34-4(1).

(2) The institution shall provide with its registration statement application copies of the following documents:

(a) A sample of the credential(s) awarded upon completion of a program;

(b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;

(c) A copy of the student enrollment agreement; and

(d) A financial statement, as described in R152-34-7(8) and Section 13-34-107(6).

(3) If any information contained in the registration statement application becomes incorrect or incomplete, the registrant shall, within thirty (30) days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by the division.

(4) An institution ceasing its operations shall immediately inform the division and provide the division with student records in accordance with Section 13-34-109.

R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.

(1) An authorized officer of the institution to be registered under this chapter shall sign a disclosure as to whether the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.

(2) The division shall refuse to register an institution when the division:

(a) determines that the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding;

(b) determines the violation(s) to be relevant to the appropriate operation of the school; and

(c) has a reasonable doubt that the institution will function in accordance with these laws and rules or provide students with an appropriate learning experience.

(3) A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than 50 percent of the its assets within a three-year period. When this occurs the following information is submitted to the division for its review:

(a) a copy of any new articles of incorporation;

(b) a current financial statement, as outlined in section (8) below;

(c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;

(d) a detailed description of any material modifications to be made in the operation of the institution; and

(e) payment of the appropriate fee.

(i) The division collects the following fees in accordance with U.C.A. Subsection 13-34-107(5):

(A) Initial registration application fees will be based on the expected gross income of the registered program during the first year of operation. The initial application fee shall be computed as one-half of one percent of the gross tuition income of the registered program(s) expected during the first year, but not less than $100 or more than $2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the division.

(B) The division also collects annual registration fees computed as one-half of one percent of the gross tuition income of the registered program(s) during the previous year, but not less than $100 or more than $2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the division. The annual registration fee is due on the anniversary date of the institution's certificate of registration.

(C) All registration fees collected by the division will be used to enhance the administration of the Act and Rules.

(4) The institution shall submit to the division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.

(5) In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of $25 for each month or part of a month after the date on which the registration statement application or renewal were due to be filed.

(6) Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the division shall do one of the following:

(a) issue a certificate of registration;

(b) request further information and, if needed, conduct a site visit to the institution as detailed in R152-34-10(1); or

(c) refuse to accept the registration statement based on Sections 13-34-107 and 113.

(7) Although a certificate of registration is valid for two (2) years, the division may periodically request updates of financial statements, surety requirements and the following statistical information:

(a) The number of students enrolled from September 1 through August 31;

(b) The number of students who completed and received a credential;

(c) The number of students who terminated or withdrew;

(d) The number of administrators, faculty, supporting staff, and agents; and

(e) The new catalog, information bulletin, or supplements.

(8) The institution must have, in addition to other criteria contained in this rule, sufficient financial resources to fulfill its commitments to students and staff members, and to meet its other obligations as evidenced by the following financial statements:

(a)(i) A current financial statement prepared in accordance with generally accepted accounting principles including a balance sheet, a profit and loss statement, and a statement of cash flows for the most recent fiscal year with all applicable footnotes; or

(ii) Pro forma financial statements until actual information is available when an institution has not operated long enough to complete a fiscal year; and

(b)(i) A certified fiscal audit of the institution's financial statement performed by a certified or licensed public accountant; or

(ii) A review of the institution's financial statement performed by a certified or licensed public accountant, which shall include at least a statement by the accountant that there are not material modifications that should be made to the financial statement for it to be in conformity with generally accepted accounting principles;

(9)(a) A satisfactory surety in the form of a bond, certificate of deposit, or irrevocable letter of credit must be provided by the institution before a certificate of registration will be issued by the division.

(b) The obligation of the surety will be that the institution, its officers, agents, and employees will:

(i) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students; and

(ii) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules.

(c) The bond, certificate of deposit, or letter of credit must be in a form approved by the division and issued by a company authorized to do such business in Utah.

(d)(i) The bond, certificate of deposit, or letter of credit must be payable to the division to be used for creating teach-out

opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.

(ii) In each instance the division may determine:

(A) which of the uses listed in Subsection (9)(d)(i) are appropriate; and

(B) if the division creates teach-out opportunities, the appropriate institution to provide the instruction.

(e) An institution that closes or otherwise discontinues operation shall maintain the institution's surety until:

(i) at least one year has passed since the institution has notified the division in writing that the institution has closed or discontinued operation; and

(ii) the institution has satisfied the requirements of R152-34-9.

(10)(a) The surety company may not be relieved of liability on the surety unless it gives the institution and the division ninety calendar days notice by certified mail of the company's intent to cancel the surety.

(b) The cancellation or discontinuance of surety coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage resulting from any act of the institution alleged to have occurred while the surety was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the surety was in force.

(c) If at any time the company that issued the surety cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained and provided to the division.

(11)(a) Before an original registration is issued, and except as otherwise provided in this rule, the institution shall secure and submit to the division a surety in the form of a bond, certificate of deposit or letter of credit in an amount of one hundred and eighty-seven thousand, five- hundred dollars ($187,500) for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, one hundred and twenty-five thousand dollars ($125,000) for schools expecting to enroll between 50 and 99 separate individual students during the first year, and sixty-two thousand, five- hundred dollars ($62,500) for institutions expecting to enroll less than 50 separate individual students during the first year.

(b) Institutions that submit evidence acceptable to the division that the school's gross tuition income from any source during the first year will be less than twenty-five thousand dollars ($25,000) may provide a surety of twelve thousand, five hundred dollars ($12,500) for the first year of operation.

(12)(a) Except as otherwise provided in this rule, the minimum amount of the required surety to be submitted annually after the first year of operation will be based on twenty-five percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest $1,000), with a minimum surety amount of twelve thousand, five hundred dollars ($12,500) and a maximum surety amount of one hundred and eighty-seven thousand, five-hundred dollars ($187,500).

(b) The surety must be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal.

(c) No additional programs may be offered without appropriate adjustment to the surety amount.

(13)(a) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the surety meets the requirements of this rule.

(b) The division may require that such statement be verified by an independent certified public accountant if the division determines that the written evidence confirming the amount of the surety is questionable.

(14) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a surety.

(15) The division will not register a program at a proprietary school if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

(16) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the division supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

R152-34-8. Rules Relating to Fair and Ethical Practices Set Forth in Section 13-34-108.

(1) An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by R152-34-4(3).

(2) Financial dealings with students shall reflect standards of ethical practice.

(3) The institution shall adopt a fair and equitable refund policy including:

(a) A three-business-day cooling-off period, commencing with the day an enrollment agreement with the applicant is signed or an initial deposit or payment toward tuition and fees of the institution is made, until midnight of the third business day following such date or from the date that the student first visits the institution, whichever is later, shall be applicable and during this time the contract may be rescinded by the student and all money paid refunded.

(b) A student enrolled in a correspondence institution may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials or prior to receipt of course materials, whichever comes first, and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than $200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(c) A clear and unambiguous written statement of the institution's refund policy for students who desire a refund after the three-business-day cooling-off period or after a student enrolled in a correspondence institution has submitted lesson materials or been in receipt of course materials.

(d) There shall be a written enrollment agreement, to be signed by the student and a representative of the institution, that clearly describes the cooling-off period, nonrefundable registration fee, and refund policy and schedule, including the rights of both the student and the institution, with copies provided to each.

(e) There shall be complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities.

(f) A pay-as-you-learn payment schedule that limits a student's prospective contractual obligation(s),at any one time, to the institution for tuition and fees to four months of training, plus registration or start-up costs not to exceed $200 or an alternative amount that the institution can demonstrate to have

spent in undertaking a student's instruction. This restriction applies regardless of whether a contractual obligation is paid to the institution by:

(i) the student directly; or

(ii) a lender or any other entity on behalf of the student.

(g) The payment of a refund within 30 calendar days of a request for a refund if the person requesting the refund is entitled to the refund:

(i) under any provision of:

(A) the Utah Postsecondary Proprietary School Act, Utah Code Title 13, Chapter 34;

(B) the Postsecondary Proprietary School Act Rules, R152-34; or

(C) a contract or other agreement between the institution and the person requesting the refund; or

(ii) because of the institution's failure to fulfill its obligations to the person requesting the refund.

(4) Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses completed and grades or other performance evaluations received.

(5) No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials, unless the use of such designation had previously been approved by the Board of Regents prior to July 1, 2002.

(6) The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.

(7) Advertising standards consist of the following:

(a) The institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and shall instruct all personnel, including agents, as to this rule and other appropriate laws regarding the ethics of advertisement and recruitment;

(b) Advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;

(c) The institution shall not advertise in conjunction with any other business or establishment, nor advertise in "help wanted" nor in "employment opportunity" columns of newspapers, magazines or similar publications in such a way as to lead readers to believe that they are applying for employment rather than education and training. It must disclose that it is primarily operated for educational purposes, if this is not apparent from its legal name;

(d) An institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:

(i) claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and

(ii) representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;

(e) An institution shall maintain a file of all promotional information and related materials for a period of three (3) years;

(f) The division may require an institution to submit its advertising prior to its use; and

(g) An institution cannot advertise that its organization or program is endorsed by the state of Utah other than to state that the school is 'Registered under the Utah Postsecondary Proprietary School Act'.

(i) An institution shall include the following registration and disclaimer statements in its catalog, student information bulletin, and enrollment agreements:

(A) REGISTERED UNDER THE UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT (Title 13, Chapter 34, Utah Code).

(B) Registration under the Utah Postsecondary Proprietary School Act does not mean that the State of Utah supervises, recommends, nor accredits the institution. It is the student's responsibility to determine whether credits, degrees, or certificates from the institution will transfer to other institutions or meet employers' training requirements. This may be done by calling the prospective school or employer.

(C) The institution is not accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(8) Recruitment standards include the following:

(a) Recruiting efforts shall be conducted in a professional and ethical manner and free from 'high pressure' techniques; and

(b) An institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.

(9) An agent or sales representative may not be directly or indirectly be portrayed as 'counselor,' 'advisor,' or any other similar title to disguise his or her sales function.

(10) An agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof.

(11) An institution shall indemnify any student from loss or other injury as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.

(12) An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its registered agent for purposes of service of legal process.

(13) An institution shall provide a student with all of the student's school records, as described in R152-34-9(2), within five business days after a written or verbal request by a student for the student's school records. The institution may not charge a student more than the actual copying costs for the student's school records.

R152-34-9. Rules Relating to Discontinuance of Operations Pursuant to Section 13-34-109.

(1) Institutional closure procedures consist of the following:

(a) The chief administrative officer of each institution subject to the Postsecondary Proprietary Schools Act shall prepare a written plan for access to and the preservation of permanent records in the event the institution closes for whatever reason; and

(b) In the event an institution closes with students enrolled who have not completed their programs, a list of such, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the division, with all particulars.

(2) School records consist of the following permanent scholastic records for all students who are admitted, even though withdrawn or terminated:

(a) appropriate entrance and admission acceptance information;

(b) attendance and performance information, including transcripts which consist of no less than the program for which he enrolled, each course attempted and the final grade earned;

(c) graduation or termination dates of students;

(d) enrollment agreements, tuition payments, refunds, and any other financial transactions.

(3) The division shall not release a surety required under R152-34-7(11) and/or R152-34-7(12) until one year after the date that the institution has complied with the requirements of (1) and (2) above, or until such time as the institution provides

documentation acceptable to the division to show that the institution has complied with (1) and (2) above and has satisfied all possible claims for refunds that may be made against the institution by students of the institution at the time the institution discontinued operations and by persons who were students of the institution within one year prior to the date that the institution discontinued operations, whichever is shorter.

R152-34-10. Rules Relating to Suspension, Termination or Refusal to Register under Section 13-34-111.

(1) The division may perform on-site evaluations to verify information submitted by an institution or an agent, or to investigate complaints filed with the Division.

(2) The division may, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, issue an order to deny, suspend, or revoke a registration, upon a finding that:

(a) the award of credentials by a nonexempt institution without having first duly registered with the division and having obtained the requisite surety;

(b) a registration statement application that contains material representations which are incomplete, improper, or incorrect;

(c) failure to maintain facilities and equipment in a safe and healthful manner;

(d) failure to perform the services or provide materials as represented by the institution, failure to perform any commitment made in the registration statement or permit application, offering programs or services not contained in the registration statement currently on file, or violations of the conditions of the certificate of registration;

(e) failure to maintain sufficient financial capability, as set forth in section R152-34-7;

(f) to confer, or attempt to confer, a fraudulent credential, as set forth in 13-34-201;

(g) employment of students for commercial gain, if such fact is not contained in the current registration statement;

(h) promulgation to the public of fraudulent or misleading statements relating to a program or service offered;

(g) noncompliance of the Postsecondary Proprietary Schools Act or these rules;

(h) withdrawal of the authority to operate in the home state of an institution whose parent campus or headquarters is not domiciled in this state;

(i) failure to comply with applicable laws in this state or another state where the institution is doing business; and

(j) failure to provide reasonable information to the division as requested from time to time.

R152-34-11. Rules Relating to Fraudulent Educational Credentials under Section 13-34-201.

(1) A person may not represent him or herself in a deceptive or misleading way, such as by using the title "Dr." or "Ph.D." if he or she has not satisfied accepted academic or scholastic requirements.

KEY: education, postsecondary proprietary school, registration
May 22, 2007 13-2-5(1)

R152. Commerce, Consumer Protection.
R152-42. Uniform Debt-Management Services Act Rules.
R152-42-1. Authority, Purpose and Definitions.

These rules are promulgated under Utah Code Section 13-42-102(9)(c), 13-42-112(2), 13-42-132(3), and 13-42-132(6) to facilitate the orderly administration of the Uniform Debt-Management Services Act, Utah Code Title 13, Chapter 42.

R152-42-2. Application for Registration.

In addition to the requirements contained in Sections 13-42-105 and 13-42-106, applicants shall submit to the division with their initial application a copy of the applicant's articles of incorporation or other organizational documentation showing the applicant's current legal status.

R152-42-3. Registration in Another State.

(1) If a provider holds a license or certificate of registration authorizing it to provide debt-management services in another state, the provider may submit a copy of that license or certificate and the application for that license or certificate, instead of an application in the form prescribed by the Uniform Debt-Management Services Act, Utah Code Title 13, Chapter 42, provided that the license or certificate was issued by one of the following states:

(a) Rhode Island, pursuant to Rhode Island General Laws, Title 19, Chapter 14.8;

(b) Delaware, pursuant to Delaware Code Annotated, Title 6, Chapter 24A; or

(c) any state approved by the Division by rule.

(2) To qualify under this rule, the provider must meet all the requirements of Utah Code Section 13-42-112, including filing a surety bond or substitute in accordance with Utah Code Section 13-42-113 or 13-42-114 that is solely payable or available to this state and to individuals who reside in this state.

R152-42-4. Independent Accrediting Organizations.

In order to comply with requirements of Utah Code Section 13-42-106(8) a provider must provide evidence of accreditation by an independent accrediting organization approved by the Director of the Division that assures compliance with industry standards. A list of organizations that have been approved can be found on the Division's website or obtained by contacting the Division.

R152-42-5. Certification of Counselors.

In order to comply with the requirements of Utah Code Section 13-42-106(9), a provider must provide evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor. A list of organizations or programs that have been approved can be found on the Division's website or by contacting the Division.

R152-42-6. Adoption of Base Year.

Pursuant to Utah Code Section 13-42-132(6), the Division adopts a base year of 2007.

KEY: debt-management, consumer protection
May 22, 2007 **13-42-102(9)(c)**
13-42-112(2)
13-42-132(3)
13-42-132(6)

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

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

R156-17b-102. Definitions.

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

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

(2) "Analytical laboratory":

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

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

(3) "Central Order Entry" means a pharmacy where functions are performed at the request of another pharmacy to perform processing functions such as dispensing, drug review, refill authorizations, and therapeutic interventions.

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

(5) "Dispense", as defined in Subsection 58-17b-102(23), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

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

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

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

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

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

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

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

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

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

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

(c) "Rx only".

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

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

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

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

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

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

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

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

(19) "Refill" means to fill again.

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

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

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

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

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

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

(26) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 30-NF 25), 2007 edition, which is official from May 1, 2007 through Supplement 1, dated August 1, 2007, which is hereby adopted and incorporated by reference.

(27) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient. The term includes a person who derives, produces, prepares or repackages drugs or medical devices that are restricted by federal law to sales based on the order of a physician for resale.

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

(a) sales within a company;

(b) the purchase or other acquisition of a drug by a health care facility or a pharmacy that is a member of a purchasing organization;

(c) the sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug:

(i) between health care facilities or pharmacies that are under common control;

(ii) for emergency medical reasons; or

(iii) pursuant to a prescription;

(d) a transfer of drugs, in an amount not to exceed five percent of the total annual sales, by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(e) the distribution of drug samples by a representative of the manufacturer or distributor; or

(f) the sale, purchase or exchange of blood or blood components for transfusions.

R156-17b-103. Authority - Purpose.

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

R156-17b-104. Organization - Relationship to Rule R156-1.

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

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

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

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

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

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

R156-17b-301. Pharmacy Licensure Classifications - Pharmacist-in-Charge Requirements.

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

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

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

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

(j) A retail pharmacy that prepares sterile products does not require a separate license as a Class B pharmacy.

(3) Class C pharmacy includes pharmacies located in Utah that are involved in:

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

(4) Class D pharmacy includes pharmacies located outside the state of Utah. Class D pharmacies require a pharmacist-in-charge licensed in the state where the pharmacy is located and include Out-of-state mail order pharmacies. Facilities that have multiple locations must have licenses for each facility and every component part of a facility.

(5) Class E pharmacy includes those pharmacies that do not require a pharmacist-in-charge and include:

(a) medical gases providers;
(b) analytical laboratories
(c) durable medical equipment providers; and
(d) central order entry pharmacies.

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

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

(8) The pharmacist-in-charge shall comply with the provisions of Section R156-17b-603.

R156-17b-302. Licensure - Examinations.

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

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

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

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

(3) In accordance with Subsection 58-17b-305(1)(g), the examinations which must be passed by an applicant applying for licensure as a pharmacy technician are:

(a) the Utah Pharmacy Technician Law and Rule Examination with a passing score of at least 75 and taken within six months prior to making application for licensure; and

(b) the National Pharmacy Technician Certification Board Examination, or equivalent certifying body, with a passing score as established by the certifying body. The certificate must exhibit a valid date and that the certification is active.

R156-17b-303. Licensure - Pharmacist by Endorsement.

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

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

(a) lawfully practiced as a licensed pharmacist a minimum of 2000 hours in the four years immediately preceding application in Utah;

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

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

R156-17b-304. Licensure - Education Requirements.

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

of Pharmacy Foundation, or an equivalent credentialing agency as approved by the Division.

(2) In accordance with Subsection 58-17b-304(6), an applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

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

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

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

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician must complete an approved program of education and training that meets the following standards:

(a) The didactic training program must be approved by the Division in collaboration with the Board and must address, at a minimum, the following topics:

(i) legal aspects of pharmacy practice including federal and state laws and rules governing practice;

(ii) hygiene and aseptic techniques;

(iii) terminology, abbreviations and symbols;

(iv) pharmaceutical calculations;

(v) identification of drugs by trade and generic names, and therapeutic classifications;

(vi) filling of orders and prescriptions including packaging and labeling;

(vii) ordering, restocking, and maintaining drug inventory;

(viii) computer applications in the pharmacy; and

(ix) non-prescription products including cough and cold, nutritional, analgesics, allergy, diabetic testing supplies, first aid, ophthalmic, family planning, foot, feminine hygiene, gastrointestinal preparations, and pharmacy care over-the-counter drugs, except those over-the-counter drugs that are prescribed by a practitioner.

(b) This training program's curriculum and a copy of the final examination shall be submitted to the Division for approval by the Board prior to starting any training session with a pharmacy technician in training. The final examination must include questions covering each of the topics listed in Subsection (3)(a) above.

(c) Approval must be granted by the Division in collaboration with the Board before a student may start a program of study. An individual who completes a non-approved program is not eligible for licensure.

(d) The training program must require at least 180 hours of practical training supervised by a licensed pharmacist in good standing with the Division and must include written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technicians in training that includes:

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

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

(e) An individual must complete an approved training program and successfully pass the required examinations as listed in Subsection R156-17b-302(3) within one year from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

(i) An individual who has completed an approved program, but did not seek licensure within the one year time frame must complete a minimum of 180 hours of refresher practice in a pharmacy approved by the board if it has been more than six months since having exposure to pharmacy practice.

(ii) An individual who has been licensed as a pharmacy technician but allowed that license to expire for more than two years and wishes to renew that license must complete a minimum of 180 hours of refresher hours in an approved pharmacy under the direct supervision of a pharmacist.

(iii) An individual who has completed an approved program, but is awaiting the results of the required examinations may practice as a technician-in-training under the direct supervision of the pharmacist for a period not to exceed three months. If the individual fails the examinations, that individual can no longer work as at technician-in-training while waiting to retake the examinations. The individual shall work in the pharmacy only as supportive personnel.

(4) An applicant for licensure as a pharmacy technician is deemed to have met the qualification for licensure in Subsection 58-17b-305(f) if the applicant:

(a) is currently licensed and in good standing in another state and has not had any adverse action taken on that license;

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

(c) has passed and maintained current the PTCB certification or a Board approved equivalent and passed the Utah law exam.

R156-17b-306. Licensure - Pharmacist - Pharmacy Internship Standards.

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

(a) At least 1500 hours of practice supervised by a pharmacy preceptor shall be obtained in Utah or another state or territory of the United States, or a combination of both.

(i) Internship hours completed in Utah shall include at least 360 hours but not more than 900 hours in a college coordinated practical experience program as an integral part of the curriculum which shall include a minimum of 120 hours in each of the following practices:

(A) community pharmacy;

(B) institutional pharmacy; and

(C) any clinical setting.

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

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

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

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

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

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

(4) In accordance with Subsections 58-17b-102(50), to be an approved preceptor, a pharmacist must meet the following criteria:

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

(b) have been engaged in active practice as a licensed pharmacist for not less than two years in any jurisdiction;

(c) is not currently under any sanction nor has been under any sanction at any time which when considered by the Division and the Board would be of such a nature that the best interests of the intern and the public would not be served.

(d) shall provide direct, on-site supervision to only one pharmacy intern during a working shift; and

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

R156-17b-307. Licensure - Meet with the Board.

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

R156-17b-308. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 17b is established by rule in Section R156-1-308.

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

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

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

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

(c) An individual must pass the NAPLEX and MJPE examinations and seek licensure as a pharmacist within six months of graduation and receipt of a degree from a school or college of pharmacy which is accredited by the ACPE. An internship license will not be extended beyond the six month time frame from graduation and receipt of a degree.

(4) The extended internship hours shall be under the direct supervision of a preceptor who meets the criteria established in R156-17b-306(4).

R156-17b-309. Continuing Education.

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

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

(a) 30 hours for a pharmacist; and

(b) 20 hours for a pharmacy technician.

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

(4) Qualified continuing professional education hours shall consist of the following:

(a) for pharmacists:

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

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

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

(b) for pharmacy technicians:

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

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

(iii) educational meetings that meet ACPE continuing education criteria sponsored by the Utah Pharmaceutical Association, the Utah Society of Health-System Pharmacists or a pharmacy technician training program approved in accordance with Subsection R156-17b-304(3)(b).

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

(a) Pharmacists:

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

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

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

(b) Pharmacy Technicians:

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

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

(iii) documentation of current Pharmacy Technician Certification Board certification will count as meeting the requirement for continuing education.

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

R156-17b-401. Disciplinary Proceedings.

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

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

R156-17b-402. Administrative Penalties.

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

(1) Preventing or refusing to permit any authorized agent of the Division to conduct an inspection:

initial offense: $500 - $2,000

subsequent offense(s): $5,000

(2) Failing to deliver the license or permit or certificate to the Division upon demand:
initial offense: $100 - $1,000
subsequent offense(s): $500 - $2,000
(3) Using the title pharmacist, druggist, pharmacy intern, pharmacy technician or any other term having a similar meaning or any term having similar meaning when not licensed to do so:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(4) Conducting or transacting business under a name which contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(5) Buying, selling, causing to be sold, or offering for sale any drug or device which bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words:
initial offense: $1,000 - $5,000
subsequent offense(s): $10,000
(6) Using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process which is a trade secret:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(7) Illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(8) Filling, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(9) Requiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter:
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(10) Being in possession of a drug for an unlawful purpose:
initial offense: $500 - $1,000
subsequent offense(s): $1,500 - $5,000
(11) Dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation:
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(12) Selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure:
initial offense: $1,000 - $5,000
subsequent offense(s): $10,000
(13) Using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner:
initial offense: $100 - $500
subsequent offense(s): $1,000 - $2,5000
(14) Willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter:
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(15) Paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party:
initial offense: $2,500 - $5,000
subsequent offense(s): $5,500 - $10,000
(16) Misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices:
initial offense: $1,000 - $5,000
subsequent offense(s): $10,000
(17) Accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503:
initial offense: $1,000 - $5,000
subsequent offense(s): $10,000
(18) Violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act:
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(19) Failure to follow USP-NF Chapter 797 guidelines:
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(20) Failure to follow USP-NF Chapter 795 guidelines:
initial offense: $250 - $500
subsequent offense(s): $500 - $750
(21) Administering without appropriate guidelines or lawful order:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(22) Disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law:
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(23) Engaging in the practice of pharmacy without a licensed pharmacist designated as the pharmacist in charge:
initial offense: $100 - $500
subsequent offense(s): $2,000 - $10,000
(24) Failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court:
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(25) Compounding a prescription drug for sale to another pharmaceutical facility:
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(26) Preparing a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner:
initial offense: $500 - $1,000
subsequent offense(s): $2,500 - $5,000
(27) Violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994:
initial offense: $250 - $500
subsequent offense(s): $2,000 - $10,000
(28) Failing to comply with the continuing education requirements set forth in this rule:
initial offense: $100 - $500
subsequent offense(s): $500 - $1,000
(29) Failing to provide the Division with a current mailing address within 10 days following any change of address:
initial offense: $50 - $100
subsequent offense(s): $200 - $300

(30) Defaulting on a student loan:
initial offense: $100 - $200
subsequent offense(s): $200 - $500
(31) Failing to abide by all applicable federal and state law regarding the practice of pharmacy:
initial offense: $500 - $1,000
subsequent offense(s): $2,000 - $10,000
(32) Failing to comply with administrative inspections:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(33) Abandoning a pharmacy and/or leaving drugs accessible to the public:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(34) Failure to return or providing false information on a self-inspection report:
initial offense: $100 - $250
subsequent offense(s): $300 - $500
(35) Failure to pay an administrative fine:
Double the original penalty amount up to $10,000
(36) Any other conduct which constitutes unprofessional or unlawful conduct:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(37) Failure to maintain an appropriate ratio of personnel:
Pharmacist initial offense: $100 - $250
Pharmacist subsequent offense(s): $500 - $2,500
Pharmacy initial offense: $250 - $1,000
Pharmacy subsequent offense(s): $500 - $5,000
(38) Unauthorized people in the pharmacy:
Pharmacist initial offense: $50 - $100
Pharmacist subsequent offense(s): $250 - $500
Pharmacy initial offense: $250 - $500
Pharmacy subsequent offense(s): $1,000 - $2,000
(39) Failure to offer to counsel:
Pharmacy personnel initial offense: $500 - $2,500
Pharmacy personnel subsequent offense(s): $5,000 - $10,000
Pharmacy: $2,000 per occurrence
(40) Violations of the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division:
initial violation: $50 - $100
failure to comply within determined time: $250 - $500
subsequent violations: $250 - $500
failure to comply within established time: $750 - $1,000
(41) Practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(42) Impersonating a licensee or practicing under a false name:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(43) Knowingly employing an unlicensed person:
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000
(44) Knowingly permitting the use of a license by another person:
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000
(45) Obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
initial offense: $100 - $2,000
subsequent offense(s): $2,000 - $10,000
(46) Violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(47) Violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(48) Engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(49) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(50) Engaging in conduct, including the use of intoxicants or drugs, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(51) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(52) Practicing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(53) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician by any form of action or communication which is false, misleading, deceptive or fraudulent:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(54) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(55) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(56) Verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice:
initial offense: $100 - $1,000
subsequent offense(s): $500 - $2,000
(57) Failure to comply with the pharmacist-in-charge standards:
initial offense: $500 - $2,000
subsequent offense(s) $2,000 - $10,000
(58) Failure to resolve identified drug therapy management problems:
initial offense: $500 - $2,500
subsequent offense: $5,000 - $10,000

R156-17b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:
(1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;

(2) failing to comply with the USP-NF Chapters 795 and 797;

(3) failing to comply with the continuing education requirements set forth in these rules;

(4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;

(5) defaulting on a student loan;

(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;

(7) failing to comply with administrative inspections;

(8) abandoning a pharmacy or leaving prescription drugs accessible to the public;

(9) failing to identify licensure classification when communicating by any means;

(10) the practice of pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-306(4)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);

(11) allowing any unauthorized persons in the pharmacy;

(12) failing to offer to counsel any person receiving a prescription medication;

(13) failing to pay an administrative fine that has been assessed in the time designated by the Division;

(14) failing to comply with the pharmacist-in-charge standards as established in Section R156-17b-603; and

(15) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3).

R156-17b-601. Operating Standards - Pharmacy Technician - Scope of Practice.

In accordance with Subsection 58-17b-102(56), the scope of practice of a pharmacy technician is defined as follows:

(1) The pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:

(a) receiving written prescriptions;

(b) taking refill orders;

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

(d) preparing labels;

(e) retrieving medications from inventory;

(f) counting and pouring into containers;

(g) placing medications into patient storage containers;

(h) affixing labels;

(i) compounding;

(j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection R156-17b-304(3)(ix);

(k) accepting new prescription drug orders telephonically or electronically submitted for a pharmacist to review; and

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

(2) The pharmacy technician shall not receive new verbal prescriptions or medication orders, clarify prescriptions or medication orders nor perform drug utilization reviews.

(3) The licensed pharmacist on duty can, at his discretion, provide on-site supervision for up to three pharmacy technicians, who are actually on duty at any one time, and only one of the three technicians can be unlicensed.

R156-17b-602. Operating Standards - Pharmacy Intern - Scope of Practice.

A pharmacy intern may provide services including the practice of pharmacy under the supervision of an approved preceptor, as defined in Subsection 58-17b-102(51), provided the pharmacy intern met the criteria as established in Subsection R156-17b-304(2).

R156-17b-603. Operating Standards - Pharmacist-in-charge.

The pharmacist-in-charge shall have the responsibility to oversee the implementation and adherence to pharmacy policies that address the following:

(1) assuring that pharmacists and pharmacy interns dispense drugs or devices, including:

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

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

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

(3) assuring that a pharmacist, pharmacy intern or pharmacy technician communicates to the patient or the patient's agent information about the prescription drug or device or non-prescription products;

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

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

(6) education and training of pharmacy technicians;

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

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

(9) bulk compounding of drugs;

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

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

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

(13) if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;

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

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

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

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

(18) assuring that all personnel working in the pharmacy have the appropriate licensure.

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

At least 14 days prior to the closing of a pharmacy, the pharmacist-in-charge shall comply with the following:

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

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

(b) the anticipated date of closing;

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

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

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

(a) the date of closing; and

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

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

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

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

(4) If the pharmacy dispenses prescription drug orders:

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

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

(5) Within 10 days of the closing of the pharmacy, the pharmacist-in-charge shall forward to the Division a written notice of the closing that includes the following information:

(a) the actual date of closing;

(b) the license issued to the pharmacy;

(c) a statement attesting:

(i) that an inventory as specified in Subsection R156-17b-605(6) has been conducted; and

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

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

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

(a) DEA registration certificate;

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

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

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

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

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

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

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

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

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

(d) the inventory records shall be in a typewritten or printed form and include all stocks of controlled substances on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device must be promptly transcribed;

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

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

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

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

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

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

(2) Requirement for taking the initial inventory shall include the following:

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

(b) in the event a pharmacy commences business with none of the drugs specified in paragraph (2)(a) of this section on hand, the pharmacy shall record this fact as the initial inventory; and

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (3) of this section.

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

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

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

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

(c) transfer of Schedule I and II controlled substances shall

require the use of official DEA order forms (Form 222).

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

(6) Requirements specific to taking inventory in a Class B pharmacy shall include the following:

(a) all Class B pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances which shall be reconciled according to facility policy; and

(b) the inventory of the institution shall be maintained in the pharmacy; if an inventory is conducted in other departments within the institution, the inventory shall be listed separately as follows:

(i) the inventory of drugs on hand in the pharmacy shall be listed separately from the inventory of drugs on hand in the other areas of the institution; and

(ii) the inventory of the drugs on hand in all other departments shall be identified by department.

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

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

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

(1) supervising more than one intern; however, a preceptor may supervise only one intern actually on duty who is working for compensation in the practice of pharmacy at any one time. Interns who are doing educational, observational rotations can be supervised at two interns to one pharmacist ratio;

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

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

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

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

(1) In accordance with Subsection 58-17b-102(66)(a), supportive personnel may assist in any tasks not related to drug preparation or processing including:

(a) stock ordering and restocking;

(b) cashiering;

(c) billing;

(d) filing;

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

(f) housekeeping; and

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

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

(3) In accordance with Subsection 58-17b-102(66)(b), the supervision of supportive personnel is defined as follows:

(a) all supportive personnel shall be under the supervision of a licensed pharmacist; and

(b) the licensed pharmacist shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being performed except for the delivery of prefilled prescriptions as provided in Subsection (1)(g) above.

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

R156-17b-608. Reserved.

Reserved.

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

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

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

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

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

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

(i) name of prescription drug;

(ii) strength of prescription drug;

(iii) quantity dispensed;

(iv) date of filling or refilling;

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

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

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

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

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

(1) Based upon the pharmacist's or pharmacy intern's professional judgment, patient counseling may be discussed to include the following elements:

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

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

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

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

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

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

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

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

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

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

(3) A pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.

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

(5) Counseling shall be:

(a) provided with each new prescription drug order, once yearly on maintenance medications, and if the pharmacist deems appropriate with prescription drug refills;

(b) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent; and

(c) communicated verbally in person unless the patient or the patient's agent is not at the pharmacy or a specific communication barrier prohibits such verbal communication.

(6) Only a pharmacist or pharmacy intern may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs.

(7) In addition to the requirements of Subsections (1) through (6) of this section, if a prescription drug order is delivered to the patient at the pharmacy, a filled prescription may not be delivered to a patient unless a pharmacist is in the pharmacy. However, an agent of the pharmacist may deliver a prescription drug order to the patient or the patient's agent if the pharmacist is absent for ten minutes or less and provided a record of the delivery is maintained and contains the following information:

(a) date of the delivery;

(b) unique identification number of the prescription drug order;

(c) patient's name;

(d) patient's phone number or the phone number of the person picking up the prescription; and

(e) signature of the person picking up the prescription.

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

(a) the information specified in Subsection (1) of this section shall be delivered with the dispensed prescription in writing;

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

(c) written information provided in Subsection (8)(b) of this section shall be in the form of patient information leaflets similar to USP-NF patient information monographs or equivalent information.

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

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

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

(b) collecting and reviewing patient histories;

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

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

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

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

(a) inappropriate drug utilization;

(b) therapeutic duplication;

(c) drug-disease contraindications;

(d) drug-drug interactions;

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

(f) drug-allergy interactions; and

(g) clinical abuse or misuse.

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

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

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

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

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

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

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

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

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

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

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

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

(i) indicate on the prescription record that the prescription

was transferred electronically or manually; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) either:

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

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

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

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

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

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

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

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

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

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

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

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

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

In accordance with Subsections 58-17b-102(3) and 58-17b-601(1), prescription orders may be issued by electronic means of communication according to the following:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to Title 58, Chapter 37, Utah Controlled Substances Act and R156-37, Utah Controlled Substances Act Rules.

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

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

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

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

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

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

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

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

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

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

(4) No agreement between a prescribing practitioner and a pharmacy shall require that prescription orders be transmitted

by electronic means from the prescribing practitioner to that pharmacy only.

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

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

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

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

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

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

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

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

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

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

(iv) the date and time of the transfer.

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

(1) In accordance with Subsection 58-17b-601(1), standards for the operations for a Class A and Class B pharmacy include:

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

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

(c) be equipped to permit the orderly storage of prescription drugs and devices in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

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

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

(f) be equipped with a security system to permit detection of entry at all times when the facility is closed.

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and freezer shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing.

(3) Facilities engaged in extensive compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) must follow USP-NF Chapter 795, compounding of non-sterile preparations;

(b) may compound in anticipation of receiving prescriptions in limited amounts;

(c) bulk active ingredients must be component of FDA approved drugs listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA;

(d) compounding using drugs that are not part of a FDA approved drug listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA requires an investigational new drug application (IND). The IND approval shall be kept in the pharmacy for five years for inspection;

(e) a master worksheet sheet shall be developed and approved by a pharmacist for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master worksheet sheet shall be used as the preparation worksheet sheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet sheet shall contain at a minimum:

(i) the formula;

(ii) the components;

(iii) the compounding directions;

(iv) a sample label;

(v) evaluation and testing requirements;

(vi) sterilization methods, if applicable;

(vii) specific equipment used during preparation such as specific compounding device; and

(viii) storage requirements;

(f) a preparation worksheet sheet for each batch of sterile or non-sterile pharmaceuticals shall document the following:

(i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(ii) manufacturer lot number for each component;

(iii) component manufacturer or suitable identifying number;

(iv) container specifications (e.g. syringe, pump cassette);

(v) unique lot or control number assigned to batch;

(vi) expiration date of batch prepared products;

(vii) date of preparation;

(viii) name, initials or electronic signature of the person or persons involved in the preparation;

(ix) names, initials or electronic signature of the responsible pharmacist;

(x) end-product evaluation and testing specifications, if applicable; and

(xi) comparison of actual yield to anticipated yield, when appropriate;

(g) the label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:

(i) the unique lot number assigned to the batch;

(ii) all solution and ingredient names, amounts, strengths and concentrations, when applicable;

(iii) quantity;

(iv) expiration date and time, when applicable;

(v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and

(vi) device-specific instructions, where appropriate;

(h) the expiration date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;

(i) sources of drug stability information shall include the following:

(A) references can be found in Trissel's "Handbook on Injectable Drugs", 13th Edition, 2004;

(B) manufacturer recommendations; and

(C) reliable, published research;

(ii) when interpreting published drug stability information,

the pharmacist shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and

(iii) methods for establishing expiration dates shall be documented; and

(i) there shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.

(4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:

(a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act'

(b) R156-1, General Rules of the Division of Occupational and Professional Licensing;

(c) Title 58, Chapter 17b, Pharmacy Practice Act;

(d) R156-17b, Utah Pharmacy Practice Act Rule;

(e) Title 58, Chapter 37, Utah Controlled Substances Act;

(f) R156-37, Utah Controlled Substances Act Rules;

(g) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;

(h) current FDA Approved Drug Products (orange book); and

(i) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.

(5) The facility shall post the license of the facility and the license or a copy of the license of each pharmacist, pharmacy intern and pharmacy technician who is employed in the facility, but may not post the license of any pharmacist, pharmacy intern or pharmacy technician not actually employed in the facility.

(6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.

(7) If the pharmacy is located within a larger facility such as a grocery or department store, and a licensed Utah pharmacist is not immediately available in the facility, the pharmacy shall not remain open to pharmacy patients and shall be locked in such a way as to bar entry to the public or any non-pharmacy personnel. All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry by the public or any non-pharmacy personnel when the pharmacy is closed.

(8) Only a licensed Utah pharmacist or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(9) The facility shall maintain a permanent log of the initials or identification codes which identify each dispensing pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified; therefore identical initials or identification codes shall not be used.

(10) The pharmacy facility must maintain copy 3 of DEA order form (Form 222) which has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.

(11) If applicable, a hard copy of the power of attorney authorizing a pharmacist to sign DEA order forms (Form 222) must be available to the Division whenever necessary.

(12) Pharmacists or other responsible individuals shall verify that the suppliers' invoices of legend drugs, including controlled substances, are listed on the invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

(13) The pharmacy facility must maintain a record of suppliers' credit memos for controlled substances and legend drugs.

(14) A copy of inventories required under Section R156-17b-605 must be made available to the Division when requested.

(15) The pharmacy facility must maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

R156-17b-614a. Operating Standards - Class B pharmacy designated as a Branch Pharmacy.

In accordance with Subsections 58-17b-102(7) and 58-1-301(3), the qualifications for designation as a branch pharmacy include the following:

(1) The Division, in collaboration with the Board, shall approve the location of each branch pharmacy. The following shall be considered in granting such designation:

(a) the distance between or from nearby alternative pharmacies and all other factors affecting access of persons in the area to alternative pharmacy resources;

(b) the availability at the location of qualified persons to staff the pharmacy, including the physician, physician assistant or advanced practice registered nurse;

(c) the availability and willingness of a parent pharmacy and supervising pharmacist to assume responsibility for the branch pharmacy;

(d) the availability of satisfactory physical facilities in which the branch pharmacy may operate; and

(e) the totality of conditions and circumstances which surround the request for designation.

(2) A branch pharmacy shall be licensed as a pharmacy branch of an existing Class A or B pharmacy licensed by the Division.

(3) The application for designation of a branch pharmacy shall be submitted by the licensed parent pharmacy seeking such designation. In the event that more than one licensed pharmacy makes application for designation of a branch pharmacy location at a previously undesignated location, the Division in collaboration with the Board shall review all applications for designation of the branch pharmacy and, if the location is approved, shall approve for licensure the applicant determined best able to serve the public interest as identified in Subsection (1).

(4) The application shall include the following:

(a) complete identifying information concerning the applying parent pharmacy;

(b) complete identifying information concerning the designated supervising pharmacist employed at the parent pharmacy;

(c) address and description of the facility in which the branch pharmacy is to be located;

(d) specific formulary to be stocked indicating with respect to each prescription drug, the name, the dosage strength and dosage units in which the drug will be prepackaged;

(e) complete identifying information concerning each person located at the branch pharmacy who will dispense prescription drugs in accordance with the approved protocol; and

(f) protocols under which the branch pharmacy will operate and its relationship with the parent pharmacy to include the following:

(i) the conditions under which prescription drugs will be stored, used and accounted for;

(ii) the method by which the drugs will be transported from parent pharmacy to the branch pharmacy and accounted for by the branch pharmacy; and

(iii) a description of how records will be kept with respect to:

(A) formulary;

(B) changes in formulary;

(C) record of drugs sent by the parent pharmacy;

(D) record of drugs received by the branch pharmacy;

(E) record of drugs dispensed;
(F) periodic inventories; and
(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.

R156-17b-614b. Operating Standards - Class B - Sterile Pharmaceuticals.

In accordance with Subsection 58-17b-601(1), the USP-NF Chapter 797, Compounding for Sterile Preparations, shall apply to all pharmacies preparing sterile pharmaceuticals.

R156-17b-614c. Operating Standards - Class B - Pharmaceutical Administration Facility.

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the following applies with respect to prescription drugs which are held, stored or otherwise under the control of a pharmaceutical administration facility for administration to patients:

(1) The licensed pharmacist shall provide consultation on all aspects of pharmacy services in the facility; establish a system of records of receipt and disposition of all controlled substances in sufficient detail to enable an accurate reconciliation; and determine that drug records are in order and that an account of all controlled substances is maintained and periodically reconciled.

(2) Authorized destruction of all prescription drugs shall be witnessed by the medical or nursing director or a designated physician, registered nurse or other licensed person employed in the facility and the consulting pharmacist or licensed pharmacy technician and must be in compliance with DEA regulations.

(3) Prescriptions for patients in the facility can be verbally requested by a licensed prescribing practitioner and may be entered as the prescribing practitioner's order; but the practitioner must personally sign the order in the facility record within 72 hours if a Schedule II controlled substance and within 30 days if any other prescription drug. The prescribing practitioner's verbal order may be copied and forwarded to a pharmacy for dispensing and may serve as the pharmacy's record of the prescription order.

(4) Prescriptions for controlled substances for patients in Class B pharmaceutical administration facilities shall be dispensed according to Title 58, Chapter 37, Utah Controlled Substances Act, and R156-37, Utah Controlled Substances Act Rules.

(5) Requirements for emergency drug kits shall include:

(a) an emergency drug kit may be used by pharmaceutical administration facilities. The emergency drug kit shall be considered to be a physical extension of the pharmacy supplying the emergency drug kit and shall at all times remain under the ownership of that pharmacy;

(b) the contents and quantity of drugs and supplies in the emergency drug kit shall be determined by the Medical Director or Director of Nursing of the pharmaceutical administration facility and the consulting pharmacist of the supplying pharmacy;

(c) a copy of the approved list of contents shall be conspicuously posted on or near the kit;

(d) the emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner;

(e) records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the facility and the pharmacy;

(f) the pharmacy shall be responsible for ensuring proper storage, security and accountability of the emergency kit and shall ensure that:

(i) the emergency kit is stored in a locked area and is locked itself; and

(ii) emergency kit drugs are accessible only to licensed physicians, physician assistants and nurses employed by the facility;

(g) the contents of the emergency kit, the approved list of contents and all related records shall be made freely available and open for inspection to appropriate representatives of the Division and the Utah Department of Health.

R156-17b-614d. Operating Standards - Class B - Nuclear Pharmacy.

In accordance with Subsection 58-17b-601(1), the operating standards for a Class B pharmacy designated as a nuclear pharmacy shall have the following:

(1) A nuclear pharmacy shall have the following:

(a) have applied for or possess a current Utah Radioactive Materials License; and

(b) adequate space and equipment commensurate with the scope of services required and provided.

(2) Nuclear pharmacies shall only dispense radiopharmaceuticals that comply with acceptable standards of quality assurance.

(3) Nuclear pharmacies shall maintain a library commensurate with the level of radiopharmaceutical service to be provided.

(4) A licensed Utah pharmacist shall be immediately available on the premises at all times when the facility is open or available to engage in the practice of pharmacy.

(5) In addition to Utah licensure, the pharmacist shall have classroom and laboratory training and experience as required by the Utah Radiation Control Rules.

(6) This rule does not prohibit:

(a) a licensed pharmacy intern or technician from acting under the direct supervision of an approved preceptor who meets the requirements to supervise a nuclear pharmacy; or

(b) a Utah Radioactive Materials license from possessing and using radiopharmaceuticals for medical use.

(7) A hospital nuclear medicine department or an office of a physician/surgeon, osteopathic physician/surgeon, veterinarian, pediatric physician or dentist that has a current Utah Radioactive Materials License does not require licensure as a Class B pharmacy.

R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer in Utah.

In accordance with Subsections 58-17b-102(48) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

(1) A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs.

(2) The licensee need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a responsible officer or management employee.

(3) All Class C pharmacies shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or

closed or in any other way unsuitable for use or entry into distribution or manufacturing;

(e) be maintained in a clean and orderly condition; and

(f) be free from infestation by insects, rodents, birds or vermin of any kind.

(4) Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs or prescription drug precursors are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

(5) Each facility shall provide the storage of prescription drugs and prescription drug precursors in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug or prescription drug precursor, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs or prescription drug precursors are held to permit review of the record and ensure that the products have not been subjected to conditions which are outside of established limits.

(6) Each facility shall ensure that:

(a) upon receipt, each outside shipping container containing prescription drugs or prescription drug precursors shall be visibly examined for identity and to prevent the acceptance of prescription drugs or prescription drug precursors that are contaminated, reveal damage to the containers or are otherwise unfit for distribution; and

(b) each outgoing shipment shall be carefully inspected for identity of the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.

(7) Each facility shall ensure that:

(a) prescription drugs or prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs or prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(b) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier; and

(c) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity.

(8) Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(9) Each facility shall establish, maintain and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed; and

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of two years after disposition of the product.

(10) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(11) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(12) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(13) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a Class C pharmacy, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-614(1) through (4);

(b) a copy of the pharmacist's license for the pharmacist-in-charge; and

(c) a copy of the most recent state inspection showing the status of compliance with the laws and regulations for physical facility, records and operations.

R156-17b-617. Operating Standards - Class E pharmacy.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), the operating standards for a Class E pharmacy shall include a written pharmacy care protocol which includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) identity of the drugs that will be purchased, stored, used and accounted for; and

(d) identity of any licensed healthcare provider associated with operation.

R156-17b-618. Change in Ownership or Location.

(1) In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations which are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility that proposes to change its name, location, or ownership shall make application for a new license and receive approval from the division prior to the proposed change. The application shall be on application forms provided by the division and shall include:

(a) the name and current address of the licensee;

(b) the pharmacy license number and the controlled substance license number of the facility;

(c) the DEA registration number of the facility; and

(d) other information required by the division in collaboration with the board.

(2) A new license shall be issued upon a change of ownership, name or a change in location only after an application for change has been submitted and approved.

(3) Upon completion of the change in ownership, name or location, the original licenses shall be surrendered to the division.

R156-17b-619. Operating Standards - Third Party Payors.

Reserved.

R156-17b-620. Operating Standards - Automated Pharmacy System.

In accordance with Section 58-17b-621, automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Division and licensed health care facilities where legally permissible and shall comply with the following provisions:

(1) Documentation as to type of equipment, serial numbers, content, policies and procedures and location shall be maintained on site in the pharmacy for review upon request of the Division. Such documentation shall include:

(a) name and address of the pharmacy or licensed health care facility where the automated pharmacy system is being used;

(b) manufacturer's name and model;

(c) description of how the device is used;

(d) quality assurance procedures to determine continued appropriate use of the automated device; and

(e) policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access and malfunction.

(2) Automated pharmacy systems should be used only in settings where there is an established program of pharmaceutical care that ensures that before dispensing, or removal from an automated storage and distribution device, a pharmacist reviews all prescription or medication orders unless a licensed independent practitioner controls the ordering, preparation and administration of the medication; or in urgent situations when the resulting delay would harm the patient including situations in which the patient experiences a sudden change in clinical status.

(3) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(4) Automated pharmacy systems shall have:

(a) adequate security systems and procedures to:

(i) prevent unauthorized access;

(ii) comply with federal and state regulations; and

(iii) prevent the illegal use or disclosure of protected health information;

(b) written policies and procedures in place prior to installation to ensure safety, accuracy, security, training of personnel, and patient confidentiality and to define access and limits to access to equipment and medications.

(5) Records and electronic data kept by automated pharmacy systems shall meet the following requirements:

(a) all events involving the contents of the automated pharmacy system must be recorded electronically;

(b) records must be maintained by the pharmacy for a period of five years and must be readily available to the Division. Such records shall include:

(i) identity of system accessed;

(ii) identify of the individual accessing the system;

(iii) type of transaction;

(iv) name, strength, dosage form and quantity of the drug accessed;

(v) name of the patient for whom the drug was ordered; and

(vi) such additional information as the pharmacist-in-charge may deem necessary.

(6) Access to and limits on access to the automated pharmacy system must be defined by policy and procedures and must comply with state and federal regulations.

(7) The pharmacist-in-charge or pharmacist designee shall have the sole responsibility to:

(a) assign, discontinue or change access to the system;

(b) ensure that access to the medications comply with state and federal regulations; and

(c) ensure that the automated pharmacy system is filled and stocked accurately and in accordance with established written policies and procedures.

(8) The filling and stocking of all medications in the automated pharmacy system shall be accomplished by qualified licensed healthcare personnel under the supervision of a licensed pharmacist.

(9) A record of medications filled and stocked into an automated pharmacy system shall be maintained for a period of five years and shall include the identification of the persons filling, stocking and checking for accuracy.

(10) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.

(11) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(12) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system remain unused and must be secured and accounted for.

(13) The automated pharmacy system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system are wasted or discarded and must be secured.

R156-17b-621. Operating Standards - Pharmacist Administration - Training.

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

(a) current Basic Life Support (BLS) certification; and

(b) successful completion of a training program which includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and

(iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs; and

(b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

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R162. Commerce, Real Estate.
R162-1. Authority and Definitions.
R162-1-1. Authority.

1.1. The following administrative Rules, applicable to the Division of Real Estate, Department of Commerce have been established under the authority granted by Section 61-2-5.5, et seq.

1.1.1. The Division shall charge and collect fees for the (a) issuance of a new or duplicate license; (b) issuance of license history or certifications; (c) issuance of certified copies of official documents, orders, and other papers and transcripts; (d) certification of real estate schools, courses and instructors; and (e) costs of administering other duties.

1.1.2. The authority to collect the above fees is authorized by Section 61-2-9(5) and Section 61-2a-4.

R162-1-2. Definitions.

1.2. Terms used in these rules are defined as follows:

1.2.1. Active Licensee: One who: (a) has paid all applicable license fees; and (b) is affiliated with a principal brokerage.

1.2.2. Branch Manager: An associate broker who manages a branch office under the supervision of the principal broker.

1.2.3. Branch Office: A real estate office affiliated with and operating under the same name as a Principal Brokerage but located at an address different from the main office.

1.2.4. Business Opportunity: The sale, lease, or exchange of any business which includes an interest in real estate.

1.2.5. Brokerage: A real estate sales brokerage or a property management company.

1.2.6. Certification: The authorization issued by the Division to: (a) establish and operate a real estate school which provides courses approved for licensing requirements, (b) provide courses approved for renewal requirements, or (c) function as a real estate instructor.

1.2.7. Company Registration: A Registration issued to a corporation, partnership, Limited Liability Company, association or other legal entity of a real estate brokerage. A Company Registration is also issued to an individual or an individual's professional corporation.

1.2.8. Continuing Education: Professional education required as a condition of renewal in accordance with Subsection 61-2-9(2)(a).

1.2.9. Credit hour: 50 minutes of instruction within a 60 minute period.

1.2.10 DBA (doing business as): The authority issued by the Division of Corporations and Commercial Code to transact business under an assumed name.

1.2.11. Distance Education: education in which the instruction does not take place in a traditional classroom setting, but through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including computer conferencing, video conferencing, interactive audio, interactive computer software, Internet-based instruction, and other interactive online courses.

1.2.12. Expired License: A license will be deemed "expired" when the licensee fails to pay the fees due by the close of business on the expiration date. If the expiration date falls on a Saturday, Sunday or holiday the effective date of expiration shall be the next business day.

1.2.13. Inactivation: The placing of a license on an inactive status, either voluntarily or involuntarily.

1.2.13.1. Voluntary inactivation means the process initiated by an active licensee terminating affiliation with a principal brokerage.

1.2.13.2. Involuntary inactivation means the process of (a) inactivation of a sales agent or associate broker license resulting from the suspension, revocation, or non-renewal of the license of the licensee's principal broker, or death of the licensee's principal broker, or (b) inactivation of a sales agent or associate broker license by a principal broker when the licensee is unavailable to execute the transfer forms.

1.2.14. Inactive Licensee: One who: (a) has paid all applicable license fees; and (b) is not affiliated with a principal brokerage.

1.2.15. Net listing means a listing wherein the amount of real estate commission is the difference between the selling price of the property and a minimum price set by the seller.

1.2.16. Non-resident Licensee: A person who holds a Utah real estate principal broker, associate broker, or sales agent license whose primary residence is in a jurisdiction other than Utah.

1.2.17. Principal Brokerage: The main real estate or property management office of a principal broker.

1.2.18. Property Management: The business of providing services relating to the rental or leasing of real property, including: advertising, procuring prospective tenants or lessees, negotiating lease or rental terms, executing lease or rental agreements, supervising repairs and maintenance, collecting and disbursing rents.

1.2.19 Provider: any person, professional organization, or other entity that is approved by the Division of Real Estate to teach Division-approved continuing education courses.

1.2.20. Regular Salaried Employees: For purposes of this Chapter, "regular salaried employee" shall mean an individual employed other than on a contract basis, who has withholding taxes taken out by the employer.

1.2.21. Reinstatement: To restore to active or inactive status, a license which has expired or been suspended.

1.2.22. Reissuance: The process by which a licensee may obtain a license following revocation.

1.2.23. Renewal: To extend an active or inactive license for an additional licensing period.

1.2.24 School: For the purposes of Rules R162-8 and R162-9, "school" includes:

(a) Any college or university accredited by a regional accrediting agency which is recognized by the United States Department of Education;

(b) Any community college, vocational-technical school, state or federal agency or commission;

(c) Any nationally recognized real estate organization, any Utah real estate organization, or any local real estate organization which has been approved by the Real Estate Commission; and

(d) Any proprietary real estate school.

1.2.25 Traditional Education: education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

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R162. Commerce, Real Estate.
R162-3. License Status Change.
R162-3-1. Status Changes.

3.1. A licensee must notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and appropriate non-refundable fees are received by the Division. Notice must be on the forms required by the Division.

3.1.1. Change of name requires submission of official documentation such as a marriage or divorce certificate, or driver's license.

3.1.2. Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address.

3.1.3. Change of name of a brokerage must be accompanied by evidence that the new name has been approved by the Division of Corporations, Department of Commerce.

3.1.4. Change of Principal Broker of a real estate brokerage which is a sole proprietorship, requires closure of the registered entity. The new principal broker will activate the Registered Company and provide proof from the Division of Corporations of the authorization to use the DBA. Change cards will be required for the terminating Principal Broker, new Principal Broker and all licensees affiliated with the brokerage.

3.1.5. Change of a Principal Broker within an entity which is not a sole proprietorship requires written notice from the entity signed by both the terminating Principal Broker and the new Principal Broker.

R162-3-2. Unavailability of Licensee.

3.2. If a licensee is not available to properly execute the form required for a status change, the status change may still be made provided a letter advising of the change is mailed by certified mail to the last known address of the unavailable licensee. A verified copy of the letter and proof of mailing by certified mail must be attached to the form when it is submitted to the Division.

R162-3-3. Transfers.

3.3. Prior to transferring from one principal broker to another principal broker, the licensee must mail or deliver to the Division written notice of the change on the form required by the Division.

R162-3-4. Inactivation.

3.4. To voluntarily inactivate a license, the licensee must deliver or mail to the Division a written request for the change signed by both the licensee and principal broker.

3.4.1. Prior to placing his license on an inactive status, a principal broker must provide written notice to each licensee affiliated with him of that licensing status change. Evidence of that written notice must be provided to the Division in order to process the status change. The inactivation of the license of a principal broker will also cause the licenses of all affiliated licensees to be immediately inactivated if they do not transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change.

3.4.2. The non-renewal, suspension, or revocation of the license of a principal broker will cause the licenses of all affiliated licensees to be immediately inactivated if they do not transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change.

3.4.2.1. When a principal broker is notified that his license will be suspended or revoked, he must, prior to the effective date of the suspension or revocation, provide written notice to each licensee affiliated with him of that status change. In addition, the Division shall send written notice to each sales agent, associate broker, or branch broker of the effective date of inactivation and the process for transfer.

3.4.3. The principal broker may involuntarily inactivate the license of the sales agent or associate broker by complying with R162-3.2.

R162-3-5. Activation.

3.5. All licensees changing to active status must submit to the Division the applicable non-refundable activation fee, a request for activation in the form required by the Division, and, if the license was on inactive status at the time of last license renewal, proof of completion of the examination within six months prior to applying to activate or proof of completion of the 12 hours of continuing education that the licensee would have been required to complete in order to renew on active status. If a licensee last renewed on inactive status and applies to activate the license at the time of license renewal, the licensee shall be required to complete the 12 hours of continuing education required to renew but shall not be required to complete additional continuing education in order to activate the license.

3.5.1 Continuing Education for Activation. Courses that have been approved by the Division for continuing education purposes in the following topics will be acceptable toward the continuing education required for activation: agency, contract law, the Real Estate Purchase Contract and other state-approved forms, ethics, Utah law, and closing/settlement.

3.5.1.1 To qualify as continuing education for activation, all courses submitted must have been completed within one year before activation.

3.5.1.2 Continuing education that was submitted to activate a license may not be used again toward the continuing education required on the licensee's next renewal.

R162-3-6. Renewal and Reinstatement.

3.6.1 Licenses are valid for a period of two years. A license may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current license. Licenses not properly renewed shall expire on the expiration date.

3.6.1.1 A license may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.

3.6.1.2 A license may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and paying a non-refundable reinstatement fee and submitting proof of having completed 12 hours of continuing education in addition to the 12 hours of continuing education required to renew a license on active status.

3.6.1.3 A license that has been expired for more than six months may not be reinstated and an applicant must apply for a new license following the same procedure as an original license.

3.6.2 Renewal Requirements.

3.6.2.1 Continuing Education. To renew a license on active status an applicant must submit to the division proof of having completed, during the previous license period, 12 hours of continuing education from courses certified by the division.

3.6.2.1.1 During the first license period, a licensee must take the 12-hour "New Sales Agent Course" certified by the division.

3.6.2.1.2 During subsequent license periods, a licensee must take at least 6 hours of continuing education from courses certified by the division as "core" as defined in Rule R162.9.2.1. A licensee must take any remaining hours of continuing education from courses certified by the division as "elective" as defined in Rules R162.9.2.2 - 9.2.2.10.

3.6.2.1.2.1 The division may grant continuing education credit for non-certified courses submitted by a renewal applicant

in the form required by the division, if the course was not required by these rules to be certified and the division determines that the course meets the continuing education objectives listed in Rule R162.9.2.

3.6.2.1.3 Licensees must retain original course completion certificates for three years following renewal and produce those certificates when audited by the division.

3.6.2.2 Principal Broker. To renew a principal broker license on active status an applicant must certify that the business name under which the licensee is operating is current and in good standing with the Division of Corporations and that all real estate trust accounts are current and in compliance with Rule R162-4.2.

3.6.2.3 Any misrepresentation in an application for renewal will be considered a separate violation of these rules and separate grounds for disciplinary action against the licensee.

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R162. Commerce, Real Estate.
R162-6. Licensee Conduct.
R162-6-1. Improper Practices.

6.1.1. False Devices. A licensee shall not propose, prepare, or cause to be prepared any document, agreement, closing statement, or any other device or scheme, which does not reflect the true terms of the transaction, nor shall a licensee knowingly participate in any transaction in which a similar device is used.

6.1.1.1. Loan Fraud. A licensee shall not participate in a transaction in which a buyer enters into any agreement that is not disclosed to the lender, which, if disclosed, may have a material effect on the terms or the granting of the loan.

6.1.1.2. Double Contracts. A licensee shall not use or propose the use of two or more purchase agreements, one of which is not made known to the prospective lender or loan guarantor.

6.1.2. Signs. It is prohibited for any licensee to have a sign on real property without the written consent of the property owner.

6.1.3. Licensee's Interest in a Transaction. A licensee shall not either directly or indirectly buy, sell, lease or rent any real property as a principal, without first disclosing in writing on the purchase agreement or the lease or rental agreement his true position as principal in the transaction. For the purposes of this rule, a licensee will be considered to be a "principal in the transaction" if he: a) is himself the buyer or the lessee in the transaction; b) has any ownership interest in the property; c) has any ownership interest in the entity that is the buyer, seller, lessor or lessee; or d) is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor or lessee.

6.1.3.1. Disclosure of Licensed Status. Regardless of whether a person's license is in active or inactive status, a licensee shall not fail to disclose in writing on any agreement to buy, sell, lease or rent any real property as a principal that the licensee holds a Utah real estate license.

6.1.4. Listing Content. The real estate licensee completing a listing agreement is responsible to make reasonable efforts to verify the accuracy and content of the listing.

6.1.4.1. Net listings are prohibited and shall not be taken by a licensee.

6.1.5. Advertising. This rule applies to all advertising materials, including newspaper, magazine, Internet, e-mail, radio, and television advertising, direct mail promotions, business cards, door hangers, and signs.

6.1.5.1. Any advertising by active licensees that does not include the name of the real estate brokerage as shown on Division records is prohibited except as otherwise stated herein.

6.1.5.2 If the licensee advertises property in which he has an ownership interest and the property is not listed, the ad need not appear over the name of the real estate brokerage if the ad includes the phrase "owner-agent" or the phrase "owner-broker".

6.1.5.3. Names of individual licensees may be advertised in addition to the brokerage name. If the names of individual licensees are included in advertising, the brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the individual licensees.

6.1.5.4. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is prohibited if the advertising states "owner-agent" or "owner-broker" instead of the brokerage name.

6.1.5.5. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is permissible in advertising which includes the brokerage name upon the following conditions:

(a) The brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the team, group, or other marketing entity; and

(b) The advertising shall clearly indicate that the team, group, or other marketing entity is not itself a brokerage and that all licensees involved in the entity are affiliated with the brokerage named in the advertising.

6.1.5.6 If any photographs of personnel are used, the actual roles of any individuals who are not licensees must be identified in terms which make it clear that they are not licensees.

6.1.5.7. Any artwork or text which states or implies that licensees have a position or status other than that of sales agent or associate broker affiliated with a brokerage is prohibited.

6.1.5.8. Under no circumstances may a licensee advertise or offer to sell or lease property without the written consent of the owner of the property or the listing broker. Under no circumstances may a licensee advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor.

6.1.5.9 If an active licensee advertises to purchase or rent property, all advertising must contain the name of the licensee's real estate brokerage as shown on Division records.

6.1.6. Double Commissions. In order to avoid subjecting the seller to paying double commissions, licensees must not sell listed properties other than through the listing broker. A licensee shall not subject a principal to paying a double commission without the principal's informed consent.

6.1.6.1. A licensee shall not enter or attempt to enter into a concurrent agency representation agreement with a buyer or a seller, a lessor or a lessee, when the licensee knows or should know of an existing agency representation agreement with another licensee.

6.1.7. Retention of Buyer's Deposit. A principal broker holding an earnest money deposit shall not be entitled to any of the deposit without the written consent of the buyer and the seller.

6.1.8. Unprofessional Conduct. No licensee shall engage in any of the practices described in Section 61-2-2, et seq., whether acting as agent or on his own account, in a manner which fails to conform with accepted standards of the real estate sales, leasing or management industries and which could jeopardize the public health, safety, or welfare and includes the violation of any provision of Section 61-2-2, et seq. or the rules of this chapter.

6.1.9. Finder's Fees. A licensee may not pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction, except as provided in this rule.

6.1.9.1. Token Gifts. A licensee may give a gift valued at $50 or less to an individual in appreciation for an unsolicited referral of a prospect which resulted in a real estate transaction.

6.1.10. Referrals and Provision of Settlement Services.

6.1.10.1 Referrals of Prospects to Lender or Mortgage Broker. A licensee may not receive a referral fee from a lender or a mortgage broker.

6.1.10.2 Providing Settlement Services. A licensee may not act as a real estate agent or broker in the same transaction in which the licensee also acts as a mortgage loan officer or loan originator, appraiser, escrow agent, or provider of title services.

6.1.11. Failure to Have Written Agency Agreement. To avoid representing more than one party without the informed consent of all parties, principal brokers and licensees acting on their behalf shall have written agency agreements with their principals. The failure to define an agency relationship in writing will be considered unprofessional conduct and grounds for disciplinary action by the Division.

6.1.11.1. A principal broker and licensees acting on his behalf who represent a seller shall have a written agency

agreement with the seller defining the scope of the agency.

6.1.11.2. A principal broker and licensees acting on his behalf who represent a buyer shall have a written buyer agency agreement with the buyer defining the scope of the agency.

6.1.11.3. A principal broker and licensees acting on his behalf who represent both buyer and seller shall have written agency agreements with both buyer and seller which define the scope of the limited agency and which demonstrate that the principal broker has obtained the informed consent of both buyer and seller to the limited agency as set forth in Section R162-6.2.15.3.1.

6.1.11.3.1 A licensee may not act or attempt to act as a limited agent in any transaction in which: a) the licensee is a principal in the transaction; or b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction.

6.1.11.4. A licensee affiliated with a brokerage other than the listing brokerage who wishes to act as a sub-agent for the seller, shall, prior to showing the seller's property:

(a) obtain permission from the principal broker with whom he is affiliated to act as a sub-agent;

(b) notify the listing brokerage that sub-agency is requested;

(c) enter into a written agreement with the listing brokerage consenting to the sub-agency and defining the scope of the agency; and

(d) obtain from the listing brokerage all information about the property which the listing brokerage has obtained.

6.1.11.5. A principal broker and licensees acting on his behalf who act as a property manager shall have a written property management agreement with the owner of the property defining the scope of the agency.

6.1.11.6. A principal broker and licensees acting on his behalf who represent a tenant shall have a written agreement with the tenant defining the scope of the agency.

6.1.12. Signing without legal authority. A licensee shall not sign or initial any document for a principal unless the licensee has prior written authorization in the form of a duly executed power of attorney from the principal authorizing the licensee to sign or initial documents for the principal. A copy of the power of attorney shall be attached to all documents signed or initialed for the principal by the licensee.

6.1.12.1. When signing a document for a principal, the licensee shall sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact."

6.1.12.2. When initialing a document for a principal, the licensee shall initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name)."

6.1.13. Counteroffers. A licensee shall not make a counteroffer by making changes, whiting out, or otherwise altering the provisions of the Real Estate Purchase Contract or the language that has been filled in on the blanks of the Real Estate Purchase Contract. All counteroffers to a Real Estate Purchase Contract shall be made using the State-Approved Addendum form.

R162-6-2. Standards of Practice.

6.2.1. Approved Forms. The following standard forms are approved by the Utah Real Estate Commission and the Office of the Attorney General for use by all licensees:

(a) August 5, 2003, Real Estate Purchase Contract (use of this form shall be mandatory beginning January 1, 2004);

(b) January 1, 1999 Real Estate Purchase Contract for Residential Construction;

(c) January 1, 1987, Uniform Real Estate Contract;

(d) October 1, 1983, All Inclusive Trust Deed;

(e) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(f) August 5, 2003, Addendum to Real Estate Purchase Contract;

(g) January 1, 1999, Seller Financing Addendum to Real Estate Purchase Contract;

(h) January 1, 1999, Buyer Financial Information Sheet;

(i) August 5, 2003, FHA/VA Loan Addendum to Real Estate Purchase Contract;

(j) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;

(k) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract;

(l) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

6.2.1.1. Forms Required for Closing. Principal brokers and associate brokers may fill out forms in addition to the standard state-approved forms if the additional forms are necessary to close a transaction. Examples include closing statements, and warranty or quit claim deeds.

6.2.1.2. Forms Prepared by an Attorney. Any licensee may fill out forms prepared by the attorney for the buyer or lessee or the attorney for the seller or lessor to be used in place of any form listed in R162-6.2.1 (a) through (g) if the buyer or lessee or the seller or lessor requests that other forms be used and the licensee verifies that the forms have in fact been drafted by the attorney for the buyer or lessee, or the attorney for the seller or lessor.

6.2.1.3. Additional Forms. If it is necessary for a licensee to use a form for which there is no state-approved form, for example a lease, the licensee may fill in the blanks on any form which has been prepared by an attorney, regardless of whether the attorney was employed for the purpose by the buyer, seller, lessor, lessee, brokerage, or an entity whose business enterprise is selling blank legal forms.

6.2.1.4. Standard Supplementary Clauses. There are Standard Supplementary Clauses approved by the Utah Real Estate Commission which may be added to Real Estate Purchase Contracts by all licensees. The use of the Standard Supplementary Clauses will not be considered the unauthorized practice of law.

6.2.2. Copies of Agreement. After a purchase agreement is properly signed by both the buyer and seller, it is the responsibility of each participating licensee to cause copies thereof, bearing all signatures, to be delivered or mailed to the buyer and seller with whom the licensee is dealing. The licensee preparing the document shall not have the parties sign for a final copy of the document prior to all parties signing the contract evidencing agreement to the terms thereof. After a lease is properly signed by both landlord and tenant, it is the responsibility of the principal broker to cause copies of the lease to be delivered or mailed to the landlord or tenant with whom the brokerage or property management company is dealing.

6.2.3. Residential Construction Agreement. The Real Estate Purchase Contract for Residential Construction must be used for all transactions for the construction of dwellings to be built or presently under construction for which a Certificate of Occupancy has not been issued.

6.2.4. Real Estate Auctions. A principal broker who contracts or in any manner affiliates with an auctioneer or auction company which is not licensed under the provisions of Section 61-2-1 et seq. for the purpose of enabling that auctioneer or auction company to auction real property in this state, shall be responsible to assure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions. Auctioneers and auction companies who are not licensed under the provisions of Section 61-2-1 et seq. may conduct auctions of real property located within this state upon the following conditions:

6.2.4.1. Advertising. All advertising and promotional materials associated with an auction must conspicuously

disclose that the auction is conducted under the supervision of a named principal broker licensed in this state; and

6.2.4.2. Supervision. The auction must be conducted under the supervision of a principal broker licensed in this state who must be present at the auction; and

6.2.4.3. Use of Approved Forms. Any purchase agreements used at the auction must meet the requirements of Section 61-2-20 and must be filled out by a Utah real estate licensee; and

6.2.4.4. Placement of Deposits. All monies deposited at the auction must be placed either in the real estate trust account of the principal broker who is supervising the auction or in an escrow depository agreed to in writing by the parties to the transaction.

6.2.4.5. Closing Arrangements. The principal broker supervising the auction shall be responsible to assure that adequate arrangements are made for the closing of each real estate transaction arising out of the auction.

6.2.5. Guaranteed Sales. As used herein, the term "guaranteed sales plan" includes: (a) any plan in which a seller's real estate is guaranteed to be sold or; (b) any plan whereby a licensee or anyone affiliated with a licensee will purchase a seller's real estate if it is not purchased by a third party in the specified period of a listing or within some other specified period of time.

6.2.5.1. In any real estate transaction involving a guaranteed sales plan, the licensee shall provide full disclosure as provided herein regarding the guarantee:

(a) Written Advertising. Any written advertisement by a licensee of a "guaranteed sales plan" shall include a statement advising the seller that if the seller is eligible, costs and conditions may apply and advising the seller to inquire of the licensee as to the terms of the guaranteed sales agreement. This information shall be set forth in print at least one-fourth as large as the largest print in the advertisement.

(b) Radio/Television Advertising. Any radio or television advertisement by a licensee of a "guaranteed sales plan" shall include a conspicuous statement advising if any conditions and limitations apply.

(c) Guaranteed Sales Agreements. Every guaranteed sales agreement must be in writing and contain all of the conditions and other terms under which the property is guaranteed to be sold or purchased, including the charges or other costs for the service or plan, the price for which the property will be sold or purchased and the approximate net proceeds the seller may reasonably expect to receive.

6.2.6. Agency Disclosure. In every real estate transaction involving a licensee, as agent or principal, the licensee shall clearly disclose in writing to his respective client(s) or any unrepresented parties, his agency relationship(s). The disclosure shall be made prior to the parties entering into a binding agreement with each other. The disclosure shall become part of the permanent file.

6.2.6.1. When a binding agreement is signed in a sales transaction, the prior agency disclosure shall be confirmed in the currently approved Real Estate Purchase Contract or, with substantially similar language, in a separate provision incorporated in or attached to that binding agreement.

6.2.6.1.1. The blank in paragraph 5 of the approved Real Estate Purchase Contract for "Listing Broker" shall be filled in with either the principal broker's individual name or the principal broker's brokerage name. Notwithstanding the fact that either the principal broker's name or the brokerage name may be shown in paragraph 5, filling in the name of the brokerage does not change the agency relationship with the seller.

6.2.6.2. When a lease or rental agreement is signed, a separate provision shall be incorporated in or attached to it confirming the prior agency disclosure. The agency disclosure shall be in the form stated in R162-6.2.6.1, but shall substitute terms applicable for a rental transaction for the terms "buyer", "seller", "listing agent", and "selling agent".

6.2.6.3. Disclosure to other agents. An agent who has established an agency relationship with a principal shall disclose who he or she represents to another agent upon initial contact with the other agent.

6.2.7. Duty to Inform. Sales agents and associate brokers must keep their principal broker or branch broker informed on a timely basis of all real estate transactions in which the licensee is involved, as agent or principal, in which the licensee has received funds on behalf of the principal broker or in which an offer has been written.

6.2.8. Broker Supervision. Principal brokers and associate brokers who are branch brokers shall be responsible for exercising active supervision over the conduct of all licensees affiliated with them.

6.2.8.1. A broker will not be held responsible for inadequate supervision if:

(a) An affiliated licensee violates a provision of Section 61-2-1, et seq., or the rules promulgated thereunder, in contravention of the supervising broker's specific written policies or instructions; and

(b) Reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures; and

(c) Upon learning of the violation, the broker attempted to prevent or mitigate the damage; and

(d) The broker did not participate in the violation; and

(e) The broker did not ratify the violation; and

(f) The broker did not attempt to avoid learning of the violation.

6.2.8.2. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and affiliated licensees shall not release the broker and licensees of any duties, obligations, or responsibilities.

6.2.9. Disclosure of Fees. If a real estate licensee who is acting as an agent in a transaction will receive any type of fee in connection with a real estate transaction in addition to a real estate commission, that fee must be disclosed in writing to all parties to the transaction.

6.2.10. Fees from Builders. All fees paid to a licensee for referral of prospects to builders must be paid to the licensee by the principal broker with whom he is licensed and affiliated. All fees must be disclosed as required by R162-6.2.10.

6.2.11. Fees from Manufactured Housing Dealers. If a licensee refers a prospect to a manufactured home dealer or a mobile home dealer, under terms as defined in Section 58-56-1, et seq., any fee paid for the referral of a prospect must be paid to him by the principal broker with whom he is licensed.

6.2.12. Gifts and Inducements. A gift given by a principal broker to a buyer or seller, lessor or lessee, in a real estate transaction as an inducement to use the services of a real estate brokerage, or in appreciation for having used the services of a brokerage, is permissible and is not an illegal sharing of commission. If an inducement is to be offered to a buyer or seller, lessor or lessee, who will not be obligated to pay a real estate commission in a transaction, the principal broker must notify the party who will pay the commission that the inducement will be offered. This rule does not authorize a principal broker to give any type of inducement that would violate the underwriting guidelines that apply to the loan for which a borrower has applied.

6.2.13. "Due-On-Sale" Clauses. Real estate licensees have an affirmative duty to disclose in writing to buyers and sellers the existence or possible existence of a "due-on-sale" clause in an underlying encumbrance on real property, and the potential consequences of selling or purchasing a property without

obtaining the authorization of the holder of the underlying encumbrance.

6.2.14. Personal Assistants. With the permission of the principal broker with whom the licensee is affiliated, the licensee may employ an unlicensed individual to provide services in connection with real estate transactions which do not require a real estate license, including the following examples:

(a) Clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact has been initiated by the prospect and not by the unlicensed person;

(b) At an open house, distributing preprinted literature written by a licensee, so long as a licensee is present and the unlicensed person furnishes no additional information concerning the property or financing and does not become involved in negotiating, offering, selling or filling in contracts;

(c) Acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion of, or filling in of, the documents;

(d) Placing brokerage signs on listed properties;

(e) Having keys made for listed properties; and

(f) Securing public records from the County Recorders' Offices, zoning offices, sewer districts, water districts, or similar entities.

6.2.14.1. If personal assistants are compensated for their work, they shall be compensated at a predetermined rate which is not contingent upon the occurrence of real estate transactions. Licensees may not share commissions with unlicensed persons who have assisted in transactions by performing the services listed in this rule.

6.2.14.2. The licensee who hires the unlicensed person will be responsible for supervising the unlicensed person's activities, and shall ensure that the unlicensed person does not perform activity which requires a real estate license.

6.2.14.3. Unlicensed individuals may not engage in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in R162-6.2.14.(a) above.

6.2.15. Fiduciary Duties. A principal broker and licensees acting on his behalf owe the following fiduciary duties to the principal:

6.2.15.1. Duties of a seller's or lessor's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the seller or the lessor owe the seller or the lessor the following fiduciary duties:

(a) Loyalty, which obligates the agent to act in the best interest of the seller or the lessor instead of all other interests, including the agent's own;

(b) Obedience, which obligates the agent to obey all lawful instructions from the seller or lessor;

(c) Full disclosure, which obligates the agent to tell the seller or lessor all material information which the agent learns about the buyer or lessee or about the transaction;

(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the seller or lessor which would likely weaken the seller's or lessor's bargaining position if it were known, unless the agent has permission from the seller or lessor to disclose the information. This duty does not require the agent to withhold any known material fact concerning a defect in the property or the seller's or lessor's ability to perform his obligations;

(e) Reasonable care and diligence;

(f) Holding safe and accounting for all money or property entrusted to the agent; and

(g) Any additional duties created by the agency agreement.

6.2.15.2. Duties of a buyer's or lessee's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the buyer or lessee owe the buyer or lessee the following fiduciary duties:

(a) Loyalty, which obligates the agent to act in the best interest of the buyer or lessee instead of all other interests, including the agent's own;

(b) Obedience, which obligates the agent to obey all lawful instructions from the buyer or lessee;

(c) Full Disclosure, which obligates the agent to tell the buyer or lessee all material information which the agent learns about the property or the seller's or lessor's ability to perform his obligations;

(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the buyer or lessee which would likely weaken the buyer's or lessee's bargaining position if it were known, unless the agent has permission from the buyer or lessee to disclose the information. This duty does not permit the agent to misrepresent, either affirmatively or by omission, the buyer's or lessee's financial condition or ability to perform;

(e) Reasonable care and diligence;

(f) Holding safe and accounting for all money or property entrusted to the agent; and

(g) Any additional duties created by the agency agreement.

6.2.15.3. Duties of a limited agent. A principal broker and licensees acting on his behalf who act as agent for both seller and buyer, or lessor and lessee, commonly referred to as "dual agents," are limited agents since the fiduciary duties owed to seller and to buyer, or to lessor and lessee, are inherently contradictory. A principal broker and licensees acting on his behalf may act in this limited agency capacity only if the informed consent of both buyer and seller, or lessor and lessee, is obtained.

6.2.15.3.1. In order to obtain informed consent, the principal broker or a licensee acting on his behalf shall clearly explain to both buyer and seller, or lessor and lessee, that they are each entitled to be represented by their own agent if they so choose, and shall obtain written agreement from both parties that they will each be giving up performance by the agent of the following fiduciary duties:

(a) The principal broker or a licensee acting on his behalf shall explain to buyer and seller, or lessor and lessee, that they are giving up their right to demand undivided loyalty from the agent, although the agent, acting in this neutral capacity, shall advance the interest of each party so long as it does not conflict with the interest of the other party. In the event of conflicting interests, the agent will be held to the standard of neutrality; and

(b) The principal broker or a licensee acting on his behalf shall explain to buyer and seller, or lessor and lessee, that there will be a conflict as to a limited agent's duties of confidentiality and full disclosure, and shall explain what kinds of information will be held confidential if told to a limited agent by either buyer or seller, or lessor and lessee, and what kinds of information will be disclosed if told to the limited agent by either party. The limited agent may not disclose any information given to the agent by either principal which would likely weaken that party's bargaining position if it were known, unless the agent has permission from the principal to disclose the information; and

(c) The principal broker or a licensee acting on his behalf shall explain to the buyer and seller, or lessor and lessee, that the limited agent will be required to disclose information given to the agent in confidence by one of the parties if failure to disclose the information would be a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations.

(d) The Division and the Commission shall consider use of consent language approved by the Division and the Commission to be informed consent.

6.2.15.3.2. In addition, a limited agent owes the following fiduciary duties to all parties:

(a) Obedience, which obligates the limited agent to obey all lawful instructions from either the buyer or the seller, lessor and lessee, consistent with the agent's duty of neutrality;

(b) Reasonable care and diligence;

(c) Holding safe all money or property entrusted to the limited agent; and

(d) Any additional duties created by the agency agreement.

6.2.15.4. Duties of a sub-agent. A principal broker and licensees acting on his behalf who act as sub-agents owe the same fiduciary duty to a principal as the brokerage retained by the principal.

KEY: real estate business
May 30, 2007 61-2-5.5
Notice of Continuation April 18, 2007

R162. Commerce, Real Estate.
R162-7. Enforcement.
R162-7-1. Filing of Complaint.

7.1. An aggrieved person may file a complaint in writing against a licensee; or the Division or the Commission may initiate a complaint upon its own motion for alleged violation of the provisions of these rules or of Section 61-2-1, et seq. The Division will not entertain complaints between licensees regarding claims to commissions.

R162-7-2. Notice or Complaint.

7.2. When the Division notifies a licensee of a complaint against the licensee, or when the Division notifies a licensee that it needs information from the licensee, the licensee must respond to the notice in the manner specified in the notice within ten business days after receipt of the notice from the Division. Failure to respond to a notice or complaint or to any subsequent requests for information from the Division within the required time period will be considered an additional violation of these rules and separate grounds for disciplinary action against the licensee.

R162-7-3. Investigation and Enforcement.

7.3. The investigative and enforcement activities of the Division shall include the following: investigation of information provided on new license applications and applications for license renewal; evaluation and investigation of complaints; auditing licensees' business records, including trust account records; meeting with complainants, respondents, witnesses and attorneys; making recommendations for dismissal or prosecution; preparation of cases for formal or informal hearings, restraining orders or injunctions; working with the assistant attorney general and representatives of other state and federal agencies; and entering into proposed stipulations for presentation to the Commission and the director.

R162-7-4. Corrective Notice.

7.4. In addition to disciplinary action under Section 61-2-11, the Division may give a licensee written notice of specific violations of these rules and may grant a licensee a reasonable period of time, not exceeding 30 days, to correct a defect in that licensee's practices or operations. The licensee's failure to correct the defect within the time granted shall constitute separate grounds for disciplinary action against the licensee. The Division is not required to give a corrective notice and allow an opportunity to correct a defect before it may commence disciplinary action against a licensee.

KEY: real estate business
May 30, 2007 **61-2-5.5**
Notice of Continuation April 19, 2007

R162. Commerce, Real Estate.
R162-8. Prelicensing Education.
R162-8-1. School Application for Certification.

8.1 Prelicense education credit shall be given to students only for courses provided by schools that are certified by the Division at the time the courses are taught. Applicants shall apply for school certification by submitting all forms and fees required by the Division not less than 90 days prior to a course being taught. Applications shall include at minimum the following information which will be used in determining approval:

8.1.1 Name, phone number and address of the school, the school director, and all owners of the school;

8.1.1.1 The school director shall obtain approval of the school name from the Division prior to registering that name with the Division of Corporations and Commercial Code in the Department of Commerce as a real estate education provider.

8.1.2 A description of the type of school and a description of the school's physical facilities;

8.1.2.1 Except for distance education courses, all courses must be taught in an appropriate classroom facility and not in any private residence.

8.1.3 A comprehensive course outline including a description of the course, the length of time to be spent on each subject area broken into class periods, and a minimum of three to five learning objectives for every three hours of class time;

8.1.3.1 All courses of study shall meet the minimum standards set forth in the State of Utah Standard Course Outline provided for each approved course. The school may alter the sequence of presentation of the required topics.

8.1.3.2 The school director shall certify that all courses of study will meet the minimum hourly requirement of that course.

8.1.3.3 The school director shall certify that the school will not give a student credit for more than eight credit hours per day.

8.1.4 The name and certification number of each certified instructor and/or the name and resume documenting the knowledge and expertise of each guest lecturer who will teach the course;

8.1.4.1 A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the Division academic training or experience qualifying him to teach the course.

8.1.5 An identification of whether the method of instruction will be traditional education or distance education;

8.1.6. A school seeking certification of distance education prelicensing courses shall:

8.1.6.1 submit to the Division a complete description of all course delivery methods and all media to be used;

8.1.6.2 provide course access to the Division using the same delivery methods and media that will be provided to the students;

8.1.6.3 describe specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;

8.1.6.4 describe how the students' achievement of the stated learning objectives will be measured at regular intervals;

8.1.6.5 describe how and when prelicense instructors will be available to answer student questions;

8.1.6.6 provide an attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

8.1.7 A copy of at least two final examinations of the course and the answer keys which are used to determine if the student has passed the exam, accompanied by an explanation of procedure if the student fails the final examination and thereby fails the course.

8.1.7.1 A maximum of 10% of the required class time may be spent in testing, including practice tests and the final examination. A student cannot challenge a course or any part of a course of study in lieu of attendance or active participation.

8.1.8 A list of the titles, authors and publishers of all required textbooks;

8.1.8.1 All texts, workbooks, supplements, and any other materials must be appropriate and current in their application to the required course outline.

8.1.9 Days, times and locations of classes;

8.1.9.1 A college or a university may schedule its courses within the criteria of its regular schedule, for example, quarter, semester, or other. A college quarter hour credit is the equivalent of 10 classroom hours, and a college semester hour credit is the equivalent of 15 classroom hours.

8.1.10 A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; the school's evidence of notification to candidates of the qualifying questionnaire; and the school's refund policy;

8.1.11 A copy of the statement which shall be provided to each student in capital letters no smaller than 1/4 inch containing the following language: "A student attending the (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for agents at this school;" and

8.1.12 Any other information as the Division may require.

R162-8-2. Determining Fitness for School Certification.

8.2 The Division, with the concurrence of the Commission, shall certify schools based on the honesty, integrity, truthfulness, reputation and competency of the school director and school owners.

R162-8-3. School Certification and Renewal.

8.3 The term of a school certification is twenty-four months. A certification may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current certification. School certifications not properly renewed shall expire on the expiration date.

8.3.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.

8.3.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and payment of a non-refundable reinstatement fee.

8.3.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification.

R162-8-4. School Conduct and Standards of Practice.

8.4.1 In order to maintain good standing and renew a certification, a course sponsor shall:

8.4.1.1 teach the approved course of study as outlined in the State Approved Course Outline;

8.4.1.2 require each student to attend the required number of hours and pass a final examination;

8.4.1.3 maintain a record of each student's attendance for a minimum of three years after enrollment;

8.4.1.4 not accept a student for a reduced number of hours without first having a written statement from the Division which defines the exact number of hours the student needs;

8.4.1.5 not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made. All advertising and public

notices shall be free of statements or implications which do not enhance the dignity and integrity of the real estate profession. A school shall not make disparaging remarks about a competitor's services or methods of operation;

8.4.1.6 limit approved guest lecturers who are experts in related fields to a total of 20% of the instructional hours per approved course. A guest lecturer shall provide evidence of professional qualifications to the Division prior to being used as a guest lecturer;

8.4.1.7 within 15 calendar days after the occurrence of any material change in the school which would affect its approval, the school shall give the Division written notice of that change;

8.4.1.8 not attempt by any means to obtain or use the questions on the prelicensing examinations unless the questions have been dropped from the current exam bank;

8.4.1.9 not give any valuable consideration to a real estate brokerage for having referred students to the school. A school shall not accept valuable consideration from a brokerage for having referred students to the brokerage;

8.4.1.9.1 If the school agrees, real estate brokerages may be allowed to solicit for agents at the school. No solicitation may be made during the class time nor during the student break time. Solicitation may be made only after the regularly scheduled class so that no student will be obligated to stay for the solicitation;

8.4.1.10 use only certified instructors or guest lecturers who have been registered with the Division;

8.4.1.11 provide the instructor with the approved content outline for each course and shall assure the content has been taught;

8.4.1.12 provide a course completion certificate in the form approved by the Division to each student upon the student's completion of the prelicensing course;

8.4.1.13 furnish to the Division a current roster of the school's approved instructors and guest lecturers. A school shall provide an updated roster to the Division each time there is a change in school instructors or guest lecturers;

8.4.1.14 give no more than eight credit hours per day to any student;

8.4.1.15 provide a written disclosure to any prospective student, prior to accepting payment for a prelicense course, stating that: a) a student with a criminal history may possibly not qualify for a license; b) an applicant with a criminal history may be required to appear at a hearing before the Utah Real Estate Commission and the Director of the Division of Real Estate to seek approval to license; and there is no guarantee that such an applicant will be approved; and c) all applicants for a sales agent license will be required to submit to the Division with their applications fingerprint cards that will be used in the criminal background check;

8.4.1.15.1 The school shall be required to obtain the student's signature on the written disclosure required by Section 8.4.1.15 acknowledging receipt of the disclosure. The disclosure form and acknowledgement shall be retained in the school's records and made available for inspection by the Division for a minimum of three years following the date upon which the student completed the prelicensing course; and

8.4.2 A school's owners and directors shall be responsible for the quality of instruction in the school and for adherence to the state statutes and administrative rules regarding school and instructor certification.

R162-8-5. Instructor Application for Certification.

8.5 An instructor shall not teach a prelicensing course without having been certified by the Division prior to teaching.

Applicants shall apply for instructor certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include at minimum the following information which will be used in determining approval:

8.5.1 Name and certification number of the certified prelicense school for which the applicant will work;

8.5.2 Evidence of a minimum educational level of graduation from high school or its equivalent;

8.5.3 Evidence of any combination of at least five years of full time experience and/or college-level education related to the course subject;

8.5.4 Evidence of a minimum of twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at Division Instructor Development Workshops totaling at least two days in length; and

8.5.5 Evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught;

8.5.6 To teach the sales agent prelicensing course, evidence of being a licensed sales agent or broker;

8.5.7 To teach the broker prelicensing course, evidence of being a licensed associate broker, branch broker, or principal broker;

8.5.7.1 An applicant may qualify to teach a subcourse of the broker prelicensing course by meeting the following criteria:

(a) Brokerage Management. The instructor applicant must be a licensed real estate broker and have managed a real estate office, or hold a CRB or equivalent professional designation in real estate brokerage management. The instructor applicant must have at least two years practical experience as an active real estate principal broker.

(b) Advanced Real Estate Law. The instructor applicant must be a licensed real estate broker or be a current member of the Utah State Bar or have graduated from an American Bar Association accredited law school and have at least two years real estate law experience.

(c) Advanced Appraisal. The instructor applicant must be a licensed real estate broker, or be a state-licensed or state-certified appraiser.

(d) Advanced Finance. The instructor applicant must be a licensed real estate broker or have been associated with a lending institution as a loan officer or have a degree in finance. The instructor applicant must have at least two years practical experience in real estate finance.

(e) Advanced Property Management. The instructor applicant must be a real estate licensee. The instructor applicant must have at least two years property management experience or hold a CPM or equivalent professional designation. The instructor applicant must have at least two years full-time experience as a property manager.

8.5.8 A signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the Division or its representative;

8.5.9 A signed statement agreeing not to market personal sales product; and

8.5.10 Any other information as the Division may require.

R162-8-6. Determining Fitness for Instructor Certification.

8.6 The Division, with the concurrence of the Commission, shall certify instructors based on the applicant's honesty, integrity, truthfulness, reputation, and competency.

R162-8-7. Instructor Certification Renewal.

8.7 The term of a prelicensing education instructor certification is twenty-four months. A certification may be renewed by submitting all forms and fees required by the Division prior to the certification's expiration date.

8.7.1 Certifications not properly renewed shall expire on the expiration date.

8.7.1.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements

for a timely renewal and paying a non-refundable late fee.

8.7.1.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and payment of a non-refundable reinstatement fee.

8.7.1.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification.

8.7.2 To renew an instructor certification an instructor shall, during the two years prior to renewal:

8.7.2.1 teach at least 20 hours of in-class instruction in a certified real estate course; and

8.7.2.2 attend an instructor development workshop sponsored by the Division.

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R162. Commerce, Real Estate.
R162-9. Continuing Education.
R162-9-1. Course Application for Certification.

9.1 Continuing education credit shall be given to students only for courses that are certified by the Division at the time the courses are taught. Course sponsors shall apply for course certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include at a minimum the following information which will be used in determining approval:

9.1.1 Name and contact information of the course sponsor and the name of the entity through which the course will be provided;

9.1.2 A description of the physical facility where the course will be taught;

9.1.2.1 Except for distance education courses, all courses must be taught in an appropriate classroom facility and not in a private residence.

9.1.3 The title of the course;

9.1.4 The proposed amount of credit hours for the course;

9.1.4.1 A credit hour is defined as 50 minutes within a 60-minute time period.

9.1.4.2 The minimum length of a course shall be one credit hour.

9.1.5 A statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;

9.1.6 A course outline including, for each segment of no more than 15 minutes, a description of the subject matter;

9.1.7 A minimum of three learning objectives for every three hours of class time;

9.1.8 The name and certification number of each certified instructor who will teach the course;

9.1.9 Identification of whether the method of instruction will be traditional education or distance education;

9.1.9.1 A sponsor seeking certification of a distance education course shall:

9.1.9.1.1 submit to the Division a complete description of all course delivery methods and all media to be used;

9.1.9.1.2 provide course access to the Division using the same delivery methods and media that will be provided to the students;

9.1.9.1.3 describe specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;

9.1.9.1.4 describe how and when instructors will be available to answer student questions; and

9.1.9.1.5 provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

9.1.10 Copies of all materials to be distributed to the participants;

9.1.11 The procedure for pre-registration, the tuition or registration fee and a copy of the cancellation and refund policy;

9.1.12 Except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time, which procedure shall be more extensive than having the student sign a class roll;

9.1.13 A sample of the completion certificate which shall bear the following information:

(a) Space for the licensee's name, type of license and license number, date of course;

(b) The name of the course provider, course title, hours of credit, certification number, and certification expiration date; and

(c) Space for signature of the course sponsor and a space for the licensee's signature.

9.1.14 A signed statement agreeing not to market personal sales products;

9.1.15 A signed statement agreeing to allow the course to be randomly audited on an unannounced basis by the Division or its representative;

9.1.16 A signed statement agreeing to upload, within 10 days after the end of a course offering, to the database specified by the Division, the course name, course certificate number assigned by the Division, the date the course was taught, the number of credit hours, and the names and license numbers of all students receiving continuing education credit; and

9.1.16.1 A course sponsor is not responsible for uploading information for students who fail to provide an accurate name or license number registered with the Division.

9.1.16.2 Continuing education credit will not be given to any student who fails to provide to a course sponsor an accurate name or license number registered with the Division within 7 days of attending the course.

9.1.17 Any other information as the Division may require.

R162-9-2. Determining Fitness for Course Certification.

9.2 The Division shall certify courses based on intellectual and practical content and whether the course increases the licensee's knowledge, professionalism and ability to protect and serve the public.

9.2.1 Courses in the following subjects may be certified as "core": state approved forms/contracts, ethics, agency, prevention of real estate and mortgage fraud, federal and state real estate laws, and brokers' trust accounts.

9.2.2 Courses in the following subjects may be certified as "elective":

9.2.2.1 Real estate financing, including mortgages and other financing techniques; real estate investments; real estate market measures and evaluation; real estate appraising; accounting and taxation as applied to real property; estate building and portfolio management for clients; settlement statements; real estate mathematics;

9.2.2.2 Real estate law; contract law; agency and subagency; real estate securities and syndications; regulation and management of timeshares, condominiums and cooperatives; resort and recreational properties; farm and ranch properties; real property exchanging; legislative issues that influence real estate practice; real estate license law and administrative rules;

9.2.2.3 Land development; land use, planning and zoning; construction; energy conservation in buildings; water rights; real estate environmental issues and hazards including lead-based paint, underground storage tanks, radon, etc., and how they affect real estate; real estate inspections;

9.2.2.4 Property management; leasing agreements; accounting procedures; management contracts; landlord/tenant relationships;

9.2.2.5 Americans with Disabilities Act; Fair housing; affirmative marketing;

9.2.2.6 Commercial real estate; Tenants-in-Common;

9.2.2.7 Using the computer, the Internet, business calculators, and other technologies to directly increase the licensee's knowledge, professionalism and ability to protect and serve the public;

9.2.2.8 Professional development, business success, customer relation skills, or sales promotion, including salesmanship, negotiation, sales psychology, marketing techniques related to real estate knowledge, servicing clients, communication skills;

9.2.2.9 Personal and property protection for licensees and their clients; and

9.2.2.10 Any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education.

9.2.3 Non-acceptable course subject matter includes topics such as:

9.2.3.1 Offerings in mechanical office and business skills, such as typing, speed reading, memory improvement, language report writing, advertising, or similar offerings;

9.2.3.2 Physical well-being, personal motivation, stress management, dress-for-success, or similar offerings;

9.2.3.3 Meetings held in conjunction with the general business of the licensee and his broker, employer or trade organization, such as sales meetings, in-house staff or licensee training meetings, or member orientation for professional organizations;

9.2.3.4 Courses in wealth creation or retirement planning for licensees; and

9.2.3.5 Courses that are specifically designed for exam preparation.

R162-9-3. Course Certification Renewal.

9.3 Course certifications are valid for a period of two years. A certification may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current certification. Certifications not properly renewed shall expire on the expiration date.

9.3.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.

9.3.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and payment of a non-refundable reinstatement fee.

9.3.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification.

R162-9-4. Conduct and Standards of Practice.

9.4 In order to maintain good standing and renew a certification, a course sponsor shall:

9.4.1 Upon completion of a course offering, provide a certificate of completion, in the form required by the Division, to those students who attend a minimum of 90% of the required class time;

9.4.2 Maintain for three years a record of registration of each person completing an offering and any other prescribed information regarding the offering, including exam results, if any;

9.4.3 For distance education courses, give education credit only to students who complete the course within one year of the registration date;

9.4.4 Notify the Division in writing within 15 days of any material change in a certified course, for example, curriculum, course length, instructor, refund policy, etc.; and

9.4.5 Upon completion of a course offering, provide to each student a course evaluation, in the form required by the Division, and submit the completed course evaluations to the Division within 10 days.

R162-9-5. Instructor Application for Certification.

9.5 Continuing education credit shall be given to students only for courses that are taught by an instructor who is certified by the Division at the time the courses are taught. Applicants shall apply for instructor certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include at a minimum the following information which will be used in determining approval:

9.5.1 Name and contact information of the applicant;

9.5.2 Evidence of a minimum education level of graduation from high school or its equivalent;

9.5.3 Evidence of any combination of at least three years of full time experience and/or college-level education related to the course subject;

9.5.4 Evidence of at least twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at the Division's Instructor Development Workshops totaling at least two days in length;

9.5.5 A signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the Division or its representative;

9.5.6 A signed statement agreeing not to market personal sales products; and

9.5.7 Any other information as the Division may require.

R162-9-6. Determining Fitness for Instructor Certification.

9.6 The Division with the concurrence of the Commission shall certify instructors based on the applicant's honesty, integrity, truthfulness, reputation, and competency.

R162-9-7. Instructor Certification Renewal.

9.7 Instructor certifications are valid for a period of two years. A certification may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current certification.

9.7.1 Certifications not properly renewed shall expire on the expiration date.

9.7.1.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.

9.7.1.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and paying a non-refundable reinstatement fee.

9.7.1.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification.

9.7.2 To renew an instructor certification an instructor must teach, during the previous renewal period, a minimum of 12 continuing education credit hours.

9.7.2.1 If the instructor has not taught a minimum of 12 hours during the previous renewal period, written explanation outlining the reason for not meeting the requirement and satisfactory documentation of the applicant's present level of expertise shall be provided to the Division.

KEY: continuing education
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Notice of Continuation April 18, 2007

R162. Commerce, Real Estate.
R162-102. Application Procedures.
R162-102-1. Application.

102.1.1 Initial Review - An applicant for licensure or certification as an appraiser will be required to submit, on forms provided by the Division, documentation indicating successful completion of the education and experience required by the state of Utah.

102.1.1.1 The application may be reviewed by an Appraiser Education Review Committee appointed by the Real Estate Appraiser Licensing and Certification Board to determine if the education requirement has been met.

102.1.1.2 The candidate will provide evidence of meeting the experience requirement by completing the form required by the Division.

102.1.1.3 The candidate will submit the appropriate license or certification fee at the time of submission of the education and experience forms.

102.1.2 Exam Application

102.1.2.1 Upon determining the candidate has completed the education and experience requirements, the Division will issue to the candidate a form permitting the candidate to register to sit for the examination. The permission to register to sit for the examination shall be valid for twenty-four months after issuance, or twenty-four months after May 17, 2005, whichever is longer.

102.1.2.1.1 As a prerequisite to sitting for the licensing/certification examination, the applicant will be required to submit proof of successful completion of the 15-hour National USPAP Course or its equivalent from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

102.1.2.2 The candidate will make application to take the examination by returning the application form and the appropriate testing fee to the testing service designated by the Division. If the applicant fails to take the examination, the fee will be forfeited.

102.1.3 Final Application

102.1.3.1 Within 90 days after successful completion of the exam, the appraiser applicant must return to the Division each of the following:

102.1.3.1.1 A report from the testing service indicating successful completion of the exam.

102.1.3.1.2 The license application form required by the Division. The application form shall include the applicant's business and home addresses. A post office box without a street address is unacceptable as a business or home address. The applicant may designate either address to be used as a mailing address.

102.1.3.1.3 The fee for the federal registry.

R162-102-2. Status Change.

102.2.1 A licensed or certified appraiser must notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and appropriate fees are received by the Division. Notice must be made in writing on the forms required by the Division.

102.2.1.1 Change of name requires submission of official documentation such as a marriage or divorce certificate, or driver's license.

102.2.1.2 Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. Any address may be designated as a mailing address.

102.2.2 State-licensed Appraisers, upon meeting the appropriate requirements for certification and upon filing a completed application within six months from their last renewal, will be allowed to transfer to the categories of either Certified Residential or Certified General by paying only a transfer fee.

102.2.2.1 Transfer to a certified category will not change the individual's expiration date.

R162-102-3. Renewal.

102.3.1 At least 30 days before expiration, a renewal notice shall be sent by the Division to the licensed or certified appraiser at the mailing address shown on the Division records. The applicant for renewal must return the completed renewal notice and the applicable renewal fee to the Division on or before the expiration shown on the notice.

102.3.1.1 The licensed or certified appraiser must return proof of completion of 28 hours of continuing education taken during the preceding two years.

102.3.1.1.4 All appraisers must take the 7-hour National USPAP Update Course or its equivalent at least once every two years in order to maintain a license or certification. In order to qualify as continuing education for renewal, the course must have been taken from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 7-hour National USPAP Update Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

102.3.2 If the renewal fee and documentation are not received within the prescribed time period, the license or certification shall expire.

102.3.2.1 A license or certification may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of Section 102.3.1.

102.3.2.2 After this 30-day period and until six months after the expiration date, the license or certification may be reinstated upon payment of a reinstatement fee in addition to the requirements of Section 102.3.1. It shall be grounds for disciplinary sanction if, after the expiration date, the individual continues to perform work for which a license or certification is required.

102.3.2.3 A person who does not renew a license or certification within six months after the expiration date shall be relicensed or recertified as prescribed for an original application. The applicant will receive credit for previously credited prelicensing education. Applicants for a new license or certification will be required to complete a USPAP course and retake the examination for the classification for which they are applying.

102.3.3 If the Division has received renewal documents in a timely manner but the information is incomplete, the appraiser shall be extended a 15-day grace period to complete the application.

102.3.4 Renewal while on active military service. An appraiser who is unable to renew a license or certification because active military service has prevented the completion of the appraiser's required continuing education may submit a timely application for renewal that is complete, except for proof of continuing education, and may request that the application for renewal be held in suspense pending the completion of the continuing education requirement.

102.3.4.1 The appraiser will have 120 days after completion of active military service to complete the continuing education required for the renewal and submit proof of the continuing education to the Division.

102.3.4.2 An appraiser may not act as an appraiser in Utah after the expiration of the appraiser's current license while the appraiser's application for renewal is held in suspense by the

Division pending the completion of military service and the completion of the continuing education required for renewal. The appraiser may not act as an appraiser in Utah until the appraiser submits proof of completion of the required continuing education and the appraiser's application for renewal is processed by the Division.

R162-102-4. Six-Month Temporary Permits.

102.4.1 A non-resident of this state may obtain a six-month temporary permit to perform one or more specific appraisal assignments in Utah. In order to qualify for a temporary permit, the specific appraisal assignments must be covered by a contract to provide appraisals. In order to obtain a temporary permit, an applicant must:

102.4.1.1 Submit an application in writing requesting temporary licensure or certification. The application shall include the name of the client, the specific property address(es) to be appraised, the type of property being appraised, and the estimated time to complete the assignment;

102.4.1.2 Answer and submit a "Utah Appraiser Qualifying Questionnaire" in the form designated by the Division;

102.4.1.3 Sign an irrevocable consent to service authorizing the Division to receive service of any lawful process on his behalf in any noncriminal proceeding arising out of his practice as an appraiser in this state;

102.4.1.4 Pay an application fee in the amount established by the Division; and

102.4.1.5 Provide the starting date of the appraisal assignment for which the temporary permit is being obtained.

102.4.2 A non-resident is limited to two temporary permits per calendar year, each of which may be extended one time for an additional six month period if the assignments have not been completed within the original six-month term of the temporary permit. A temporary permit may be extended by submitting any forms required by the Division.

R162-102-5. Reciprocity.

102.5.1 An individual who is licensed or certified as an appraiser by another state may be licensed or certified in Utah by reciprocity on the following conditions:

102.5.1.1 The other state must have required the applicant to satisfactorily complete classroom hours of appraisal education approved by that state which are substantially equivalent in number to the hours required for the class of licensure or certification for which he is applying in Utah;

102.5.1.2 The education must have included a course in the Uniform Standards of Professional Appraisal Practice. The course must either be the 15-hour National USPAP Course or its equivalent. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation;

102.5.1.3 The applicant must obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder and must sign an attestation that he understands and will abide by them;

102.5.1.4 The applicant must have passed an examination which has been approved by the AQB for the class of licensure or certification for which he is applying;

102.5.1.5 If the applicant resides outside of the state of Utah, he must sign an irrevocable consent to service authorizing the Division to receive service of any lawful process on his behalf in any noncriminal proceeding arising out of his practice as an appraiser in this state;

102.5.1.6 The applicant must provide a complete licensing history sent directly to the Division by his home state and any other state in which he has been licensed, which shall include the applicant's full name, home and business addresses and telephone numbers, the date first licensed, the type or types of licenses or certifications held, the date the current license or certification expires, and a statement concerning whether disciplinary action has ever been taken, or is pending, against the individual;

102.5.1.7 The applicant shall not have been convicted of a criminal offense involving moral turpitude relating to his ability to provide services as an appraiser; and

102.5.1.8 The applicant must agree, as a condition of licensure or certification, that he will furnish to the Division upon demand all records requested by the Division relating to his appraisal practice in Utah. Failure to do so will be considered grounds for revocation of license or certification.

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R162. Commerce, Real Estate.
R162-104. Experience Requirement.
R162-104-1. Measuring Experience.

104.1.1 Except for those applicants who qualify under Section 104-14, appraisal experience shall be measured in points according to the Appraisal Experience Points Schedules in Section R162-104-15 of this rule and also in time accrued.

104.1.1.1 Experience for state-licensed applicants shall have been accrued in no fewer than 12 months. Experience for the certified residential applicants shall have been accrued in no fewer than 24 months, as required by the AQB. Experience for the certified general applicants shall have been accrued in no fewer than 30 months, as required by the AQB.

104.1.1.2 Applicants for the state-licensed category shall submit proof of at least 400 points of experience and a minimum of 2000 appraisal hours of experience. Applicants for certified residential shall submit proof of at least 100 additional points and 500 additional appraisal hours accrued after state-licensed status was obtained, for a total of 500 points and 2500 appraisal hours of experience. Applicants for certified general shall submit proof of at least 200 additional points and 1000 appraisal hours accrued after state-licensed status was obtained, for a total of 600 points and 3000 appraisal hours of experience.

R162-104-2. Maximum Points Per Year.

104.2 For applicants for certification, a maximum of 400 points will be credited for any one 12-month period. For applicants for licensure, a maximum of 400 points will be credited for any one 12-month period.

R162-104-3. Time Allowed for Meeting Experience Requirement.

104.3 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application.

R162-104-4. Proof of Experience.

104.4 The Division shall require the applicant to substantiate the experience claimed using the form required by the Division.

R162-104-5. Compliance with USPAP and Licensing Requirements.

104.5 No experience credit will be given for appraisals which were performed in violation of Utah law, the law of another jurisdiction, or the administrative rules adopted by the Division and the Board.

104.5.1 No experience credit will be given for appraisals unless the appraisals were done in compliance with USPAP.

104.5.2 In order to qualify as experience credit toward certification, the additional points for certification required by Subsection R162-104.1.1.2 must have been accrued while the applicant was licensed as an appraiser in Utah, or in another state if licensure was required in that state, at the time the appraisal was performed.

104.5.3 Except for experience points claimed under Subsection R162-104.15.3, appraisals where only an exterior inspection of the subject property is performed shall be granted 25% of the credit awarded an appraisal which includes an interior inspection of the subject property. Not more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

R162-104-6. State-Licensed and State-Certified Applicants.

104.6.1 Except for those applicants who qualify under Section R162-104-14, applicants applying for licensure as State-Licensed Appraisers shall be awarded points from the Points Schedules in Section R162-104-15 for their experience prior to licensure only if the experience claimed was gained in compliance with Subection R162-105-3.

104.6.2 Applicants applying for certification as State-Certified Residential Appraisers must document at least 75% of the points submitted from the Residential Experience Points Schedule or the residential portion of the Mass Appraisal Points Schedule. No more than 25% of the total points submitted may be from the General Experience Points Schedule or from assignments listed on the Mass Appraisal Points Schedule other than 1 to 4 unit residential properties.

104.6.3 Applicants applying for certification as State-Certified General Appraisers may claim points for experience from any of the Points Schedules in Section R162-104-15, so long as at least 50% of the total points has been earned from the General Experience Points Schedule or from assignments listed on the Mass Appraisal Points Schedule other than 1 to 4 unit residential properties.

R162-104-7. Review or Supervision of Appraisals.

104.7 Review appraisals will be awarded experience credit when the appraiser has performed technical reviews of appraisals prepared by either employees, associates or others, provided the appraiser complied with Uniform Standards of Professional Appraisal Practice Standards Rule 3 when the appraiser was required to comply with the rule. The following points shall be awarded for review or supervision of appraisals:

104.7.1 Review of an appraisal which includes verification of the data, but which does not include a physical inspection of the property, commonly known as a desk review, shall be worth 30% of the points awarded to the appraisal if a separate written review appraisal report is prepared. Except as provided in Subsection R162-104.7.5, a maximum of 100 points may be earned by desk review of appraisals.

104.7.2 Review of appraisals which includes a physical inspection of the property and verification of the data, commonly known as a field review, shall be worth 50% of the points awarded to the appraisal if a separate written review appraisal report is prepared. Except as provided in Subsection R162-104.7.5, a maximum of 100 points may be earned by field review of appraisals.

104.7.3 Supervision of appraisers shall be worth 20% of the points awarded to the appraisal. A maximum of 100 points may be earned by supervision of appraisers.

104.7.4 Except as provided in Subsection R162-104.7.5, not more than 50% of the total experience required for certification may be granted under Subsections R162-104.7.1 through R162-104.7.3 and R162-104.9.1 and R162-104.9.3 combined.

104.7.5 Applicants whose experience was earned through review of appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies are not subject to the point limitations in Subsections R162-104.7.1, R162-104.7.2, and R162-104.7.4.

R162-104-8. Condemnation Appraisals.

104.8 Condemnation appraisals shall be worth an additional 50% of the points normally awarded for the appraisal if the condemnation appraisal included a before and after appraisal because of a partial taking of the property.

R162-104-9. Preliminary Valuation Estimates, Comparative Market Analysis, Real Estate Consulting Services, and Other Real Estate Experience.

104.9.1 Preliminary valuation estimates, range of value estimates or similar studies, and other real estate related experience gained by bankers, builders, city planners and managers, or other individuals may be granted credit for up to 50% of the experience required for certification in accordance with Section R162-104-14, so long as the experience

demonstrates to the Board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions.

104.9.2 Comparative market analysis by real estate licensees may be granted up to 100% experience credit toward certification in accordance with Section R162-104-14, when the analysis is prepared in conformity with USPAP Standards Rules 1 and 2 and the individual can demonstrate to the Board that he is using similar techniques as appraisers to value properties and effectively utilize the appraisal process.

104.9.3 Appraisal analysis, real estate counseling or consulting services, and feasibility analysis/study will be awarded experience credit in accordance with Section R162-104-14 for up to 50% of the experience required toward certification so long as the services were performed in accordance with USPAP Standards Rules 4 and 5.

104.9.4 Not more than 50% of the total experience required for certification may be granted under Subsections R162-104.9.1 and R162-104.9.3 and R162-104.7.1 through R162-104.7.3 combined.

R162-104-10. Experience Participation.

104.10 An applicant for certification must be able to prove more than 50% participation in the data collection, verification of data, reconciliation, analysis, identification of property and property interests, compliance with USPAP standards, and preparation and development of the appraisal report in order to count the appraisal for experience credit. With the exception of experience claimed under Subsection R162-104.15.3, experience credit will be granted to only one licensed appraiser per completed appraisal even though more than one may have participated in the development of the appraisal.

R162-104-11. Unacceptable Experience.

104.11 An applicant will not receive points toward satisfying the experience requirement for licensure or certification for performing the following:

(a) Appraisals of the value of a business as distinguished from the appraisal of commercial real estate; or

(b) Personal property appraisals.

R162-104-12. Verification of Experience.

104.12 The Board, at its discretion, may verify the claimed experience by any of the following methods: verification with the clients; submission of selected reports to the Board; and field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-104-13. Experience Review Committee.

104.13 There may be a committee appointed by the Board to review the experience claimed by applicants for licensure or certification.

104.13.1 The Committee shall:

104.13.1.1 Review all applications for adherence to the experience required for licensure or certification;

104.13.1.2 Correspond with applicants concerning submissions, if necessary; and

104.13.1.3 Make recommendations to the Division and the Board for licensure or certification approval or disapproval.

104.13.2 Committee composition. The Committee shall be composed of appraisers from the following categories: residential appraisers; commercial appraisers; farm and ranch appraisers; right-of-way appraisers; and mass appraisers.

104.13.2.1 The chairperson of the committee shall be appointed by the Board.

104.13.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.

104.13.3 New Review. If the review of an application has been performed by the Experience Review Committee, and the Board has denied the application based on insufficient experience, the applicant may request that the Board review the issue again by making a written request within thirty days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.

R162-104-14. Special Circumstances.

104.14 Applicants having experience in categories other than those shown on the Appraisal Experience Points Schedules, or applicants who believe the Experience Points Schedules do not adequately reflect their experience, or applicants who believe the Experience Points Schedules do not adequately reflect the complexity or time spent on an appraisal, may petition the Board on an individual basis for evaluation and approval of their experience as being substantially equivalent to that required for licensure or certification. Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the Board may accept the alternate experience and award the applicant an appropriate number of points for the alternate experience.

104.14.1 Fulltime elected county assessors and any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll are not subject to the limitations in Subsection R162-105.3.

R162-104-15. Appraisal Experience Points Schedules.

104.15 Points shall be awarded as follows. The point schedule in Table 1 is intended to award one experience point for every five hours of appraisal experience.

104.15.1 Residential Experience Points Schedule. The following points shall be awarded to form appraisals. Three points may be added to the points shown if the appraisal was a narrative appraisal instead of a form appraisal.

TABLE 1

(a) One-unit dwelling, above-grade living area less than 4,000 square feet, including a site	1 point
(1) One-unit dwelling, above-grade living area 4,000 square feet or more, including a site	1.5 points
(b) Multiple one-unit dwellings in the same subdivision or condominium project which are substantially similar	
(1) 1-25 dwellings	1 point per dwelling up to a maximum of 6 points
(2) Over 25 dwellings	A total of 10 points
(c) Two to four-unit dwelling	4 points
(d) Employee Relocation Counsel reports completed on currently accepted Employee Relocation Counsel form	2 points
(e) Residential lot, 1-4 unit	1 point
(f) Multiple lots in the same subdivision which are substantially similar	
(1) 1-25 lots	1 point per lot up to a maximum of 6 points
(2) Over 25 lots	A total of 10 points
(g) Small parcel up to 5 acres	1 point
(h) Vacant land, 20-500 acres as determined by the Board	4-8 points,
(i) Recreational, farm, or timber acreage suitable for a house site, up to 10 acres	2 points
Over 10 acres	3 points
(j) All other unusual structures or acreages, which are much larger or more complex than typical properties	1-7 points as determined by the Board
(k) Review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with	

investigations by government agencies	2-10 points

104.15.1.1 Government Agency Experience. Applicants whose experience was earned primarily through review of residential appraisals with no opinion of value developed as part of the review that were performed in conjunction with investigations by government agencies will be required to submit proof of having performed at least the following number of one-unit dwelling appraisals conforming to USPAP Standards 1 and 2:

104.15.1.1.1 Applicants for State-Licensed Appraiser: five.

104.15.1.1.2 Applicants for State-Certified Residential Appraiser: eight.

104.15.1.2 A maximum of 50 experience points may be earned from appraisal of vacant land.

104.15.2 General Experience Points Schedule. All appraisal reports claimed must be narrative appraisal reports. The point schedule in Table 2 is intended to award one experience point for every five hours of appraisal activity. Experience points listed in Table 2 may be increased by 50% for unique and complex properties if the applicant notes the number of extra points claimed on the Appraiser Experience Log submitted by the applicant and maintains in the workfile for the appraisal an explanation about why the extra points are claimed.

TABLE 2

(a) Apartment buildings, 5-100 units	8 points
Over 100 units	10 points
(b) Hotel or motels, 50 units or fewer	6 points
51-150 units	8 points
Over 150 units	10 points
(c) Nursing home, rest home, care facilities,	
Fewer than 80 beds	8 points
Over 80 beds	10 points
(d) Industrial or warehouse building,	
Fewer than 20,000 square feet	6 points
Over 20,000 square feet, single tenant	8 points
Over 20,000 square feet, multiple tenants	10 points
(e) Office buildings	
Fewer than 10,000 square feet	6 points
Over 10,000 square feet, single tenant	8 points
Over 10,000 square feet, multiple tenants	10 points
(f) Entire condominium projects, using income approach to value	
5- to 30-unit project	6 points
31- or more-unit project	10 points
(g) Retail buildings	
Fewer than 10,000 square feet	6 points
More than 10,000 square feet, single tenant	8 points
More than 10,000 square feet, multiple tenants	10 points
(h) Commercial, multi-unit, industrial, or other nonresidential use acreage	
1 to 99 acres	4-8 points
100 acres or more, income approach to value	10-12 points
(i) All other unusual structures or assignments which are much larger or more complex than the properties described in (a) to (h) herein.	1 to 20 points as determined by Board
(j) Entire Subdivisions or Planned Unit Developments (PUDs)	
1- to 25-unit subdivision or PUD	6 points
Over 25-unit subdivision or PUD	10 points
(k) Feasibility or market analysis, maximum 100 points	1 to 20 points as determined by Board

Farm and Ranch appraisals	Form	Narrative
(l) Separate grazing privileges or permits	4 pts.	5 pts.
(m) Irrigated cropland, pasture other than rangeland, 1 to 10 acres	2 pts.	3 pts.
11-50 acres	2.5 pts.	4 pts.
51-200 acres	3 pts.	5 pts.
201-1000 acres	5 pts.	8 pts.
More than 1000 acres	8 pts.	10 pts.
(n) Dry farm, 1 to 1000 acres	3 pts.	5 pts.
More than 1000 acres	4 pts.	8 pts.
(o) Improvements on properties other than a rural residence, maximum 2 points:		
Dwelling	1 pt.	1 pt.
Sheds	0.5 pt.	0.5 pt.
(p) Cattle ranches		
0-200 head	3 pts.	4 pts.
201-500 head	5 pts.	6 pts.
501-1000 head	6 pts.	8 pts.
More than 1000 head	8 pts.	10 pts.
(q) Sheep ranches		
0-2000 head	5 pts.	6 pts.
More than 2000 head	7 pts.	9 pts.
(r) Dairies, includes all improvements except a dwelling		
1-100 head	4 pts.	5 pts.
101-300 head	5 pts.	6 pts.
More than 300 head	6 pts.	7 pts.
(s) Orchards		
5-50 acres	6 pts.	8 pts.
More than 50 acres	8 pts.	10 pts.
(t) Rangeland/timber		
0-640 acres	4 pts.	5 pts.
More than 640 acres	6 pts.	7 pts.
(u) Poultry		
0-100,000 birds	6 pts.	8 pts.
More than 100,000 birds	8 pts.	10 pts.
(v) Mink		
0-5000 cages	6 pts.	7 pts.
More than 5000 cages	8 pts.	10 pts.
(w) Fish farms	8 pts.	10 pts.
(x) Hog farms	8 pts.	10 pts.
(y) Review of Table 2 appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies	4-20 points	

104.15.2.1 Government Agency Experience. Applicants for certification as a State-Certified General Appraiser whose experience was earned primarily through review of appraisals that are listed on Table 2 with no opinion developed as part of the review that were performed in conjunction with investigations by government agencies will be required to submit proof of having performed at least eight Table 2 appraisals conforming to USPAP Standards 1 and 2.

104.15.2.2 Appraisals on commercial or multi-unit form reports shall be worth 75% of the points normally awarded for the appraisal.

104.15.3 Mass Appraisal Experience Points Schedule. The point schedule in Table 3 is intended to award one experience point for every five hours of mass appraisal activity.

TABLE 3

(a) One-unit dwelling, above-grade living area less than 4,000 square feet	
(1) Exterior inspection, highest and best use analysis, data collection only	.1 point
(2) Interior and exterior inspection, highest and best use analysis, data collection only	.2 point
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	.75 point
(b) One-unit dwelling, above-grade living area 4,000 square feet or more	
(1) Exterior inspection, highest and best use analysis, data collection only	.15 point
(2) Interior and exterior inspection, highest and best use analysis, data collection only	.3 point
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	1 point
(c) Two to four unit dwelling	
(1) Exterior inspection, highest and best use analysis, data collection only	.3 point
(2) Interior and exterior inspection, highest and best use analysis, data collection only	.6 point
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	3 points
(d) Commercial and industrial buildings, depending on complexity	
(1) Exterior inspection, highest and best use analysis, data collection only	.2 to 1 point
(2) Interior and exterior inspection, highest and best use analysis, data	

collection only	.4 to 2 points
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	1.5 to 7.5 points
(e) Agricultural and other improvements, depending on complexity	
(1) Exterior inspection, highest and best use analysis, data collection only	.1 to .5 point
(2) Interior and exterior inspection, highest and best use analysis, data collection only	.2 to 1 point
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	.75 to 4 points
(f) Vacant land, depending on complexity	
(1) Inspection, highest and best use analysis, data collection only	.1 to .5 point
(2) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	.5 to 5 points
(3) Land segregation (division) analysis and processing, no field inspection	.05 point
(4)Land segregation (division) analysis and processing, field inspection	.1 point
(g) Data input and review for experience points claimed under Subsections R162-104-15.3(a) through (f)	.01 point
(h) Land valuation guideline	
(1) 25 or fewer parcels	2 points
(2) 26 to 500 parcels	6 points
(3) Over 500 parcels	5 additional points for each 500 parcels, up to a maximum of 25 points
(i) Assessment/sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation	
(1) Base study of 100 reviewed sales	25 points
(2) Additional increments of 100 sales	Add 5 points for each 100 additional sales, up to a maximum of 75 points
(j) Multiple Regression Model, Development and Implementation	
(1) Less than 5,000 parcels	20 points
(2) Additional increments of 500 parcels	Add 1 point for each additional 500 parcels, up to a maximum of 75 points
(k) Depreciation study and analysis	20 points
(l) Reviews of "Land Value in Use" in accordance with U.C.A. Section 59-2-505	
(1)Office review only	.05 point
(2) Field review	.1 point
(m) Natural Resource Properties, depending on complexity	
(1) Sand and Gravel, per site	1.5 to 4 points
(2) Mine	1.5 to 22 points
(3) Oil and Gas, per site	.33 to 10 points
(n) Pipelines and gas distribution properties, depending on complexity	2 to 8 points
(o) Telephone and electrics properties, depending on complexity	1 to 16 points
(p) Airline and railroad properties, depending on complexity	2 to 16 points
(q) Appraisal review/audit, depending on complexity	.5 to 25 points
(r) Capitalization rate study	16 points

104.15.3.1 Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers will receive the same number of points shown in Tables 1 and 2.

104.15.3.2 Review and supervision of appraisals by mass appraisers will receive points in accordance with Subsection R162-104.7.

104.15.3.3 Mass appraisers and mass appraisal trainees who perform 60% or more of the appraisal work will receive 100% of the points shown on Table 3. Mass appraisers and mass appraisal trainees who perform between 25% and 59% of the appraisal work will receive 50% of the points shown on Table 3. Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work will receive no credit for the appraisal assignment.

104.15.3.4 Applicants for State-Licensed Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2. Applicants for certification as a State-Certified Residential Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least eight one-unit residential appraisals conforming to USPAP Standards 1 and 2. Applicants for certification as a State-Certified General Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least eight Table 2 appraisals conforming to USPAP Standards 1 and 2.

104.15.3.5 No more than 60% of the total points submitted for licensure or certification may have been earned from Subsections R162-104.15.3(a)(1) and (2), R162-104.15.3(b)(1) and (2), R162-104.15.3(c)(1) and (2), R162-104.15.3(d)(1) and (2), R162-104.15.3(e)(1) and (2), and R162-104.15.3(f)(1) combined.

104.15.3.6 No more than 25% of the total points submitted for licensure or certification may have been earned from Subsections R162-104.15.3(f)(3) and (4) combined.

104.15.3.7 No more than 20% of the total points submitted for licensure or certification may have been earned from Subsection R162-104.15.3(g).

104.15.3.8 Mass appraisal of property with a personal property component of less than 50% of value will be allowed the full experience points shown on Table 3 for the category of property appraised. Mass appraisal of property with a personal property component of 50% to 85% of value will be allowed 50% of the experience points shown on Table 3 for the category of property appraised. Mass appraisal of property with a personal property component greater than 85% will be awarded no experience points.

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R270. Crime Victim Reparations, Administration.
R270-1. Award and Reparation Standards.
R270-1-1. Authorization and Purpose.

As provided in Section 63-25a-406 the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

R270-1-2. Funeral and Burial Award.

A. Pursuant to Subsection 63-25a-411(4)(f), total award for funeral and burial expenses is $7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.

B. Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the $7,000.

C. Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:

1. Three days in-state
2. Five days out-of-state

D. When a victim dies leaving no identifying information, claims made by a provider cannot be considered.

R270-1-3. Negligent Homicide and Hit and Run Claims.

A. Negligent homicide claims shall be considered criminally injurious conduct as defined in Subsection 63-25a-402(9).

B. Pursuant to Subsection 63-25a-402(9)(a), criminally injurious conduct shall not include victims of hit and run crimes.

R270-1-4. Counseling Awards.

A. Pursuant to Subsections 63-25a-402(20) and 63-25a-411(4)(c), out-patient mental health counseling awards are subject to limitations as follows:

1. The reparation officer shall approve a standardized treatment plan.

2. The cost of initial evaluation and testing may not exceed $300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

3. Primary victims of a crime shall be eligible for a $3500 maximum mental health counseling award.

(a) Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.

4. Secondary victims of a crime shall be eligible for a $2000 maximum mental health counseling award.

5. Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider when it appears likely that the maximum award will be reached.

6. Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

7. Inpatient hospitalization, residential and day treatment shall be reviewed by the CVR Board or contracting agency who will make recommendations to the Reparation Officers regarding treatment. The CVR Board or contracting agency will review all levels of care and assign a reimbursement percentage based on the crime. All cases having less than a $1000 balance may be determined by the Reparation Officer. Outpatient cases shall be reviewed at the same rate as inpatient reviews.

8. In-patient hospitalization shall only be considered when the treatment has been recommended by a licensed therapist in life-threatening situations. A direct relationship to the crime needs to be established. Acute in-patient hospitalization shall not exceed $600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient hospitalization. All other secondary victims of other crime types are excluded.

9. Residential and day treatment shall only be considered when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. A direct relationship to the crime needs to be established. Residential treatment shall not exceed $300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. All residential clients shall receive routine assessments from a psychiatrist and/or APRN at least once a week for medication management. Day treatment shall not exceed $200 per day and will be capped at $10,000. These charges will be considered payment in full to the provider. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for residential and day treatment. All other secondary victims of other crime types are excluded.

10. Wilderness programs shall not be covered as an appropriate treatment modality when considering inpatient hospitalization, residential or day treatment.

11. Child sexual abuse victims under the age of 13 who become perpetrators shall only be considered for mental health treatment awards directly related to the victimization. Perpetrators age 13 and over who have been child sexual abuse victims shall not be eligible for compensation. The CVR Board or contracting agency for managed mental health care shall help establish a reasonable percentage regarding victimization treatment for inpatient, residential and day treatment. Out-patient claims shall be determined by the Reparation Officer on a case by case basis upon review of the mental health treatment plan.

12. Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the State of Utah Department of Commerce, Division of Professional and Occupational Licensing, working under the supervision of a supervisor approved by the Division. Student interns otherwise eligible under 58-1-307(1)(b) Exceptions from licensure, and/or the institution/facility/agency responsible for the supervision of the student, shall not be eligible for payment under this rule for counseling services provided by the student.

13. Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

14. The following maximum amounts shall be payable for mental health counseling:

(a) up to $130 per hour for individual and family therapy performed by licensed psychiatrists, and up to $65 per hour for group therapy;

(b) up to $90 per hour for individual and family therapy performed by licensed psychologists and up to $45 per hour for group therapy;

(c) up to $70 per hour for individual and family therapy performed by a licensed master's level therapist or an Advanced Practice Registered Nurse, and up to $35 per hour for group therapy. These rates shall also apply to therapists working

towards a license and supervised by a licensed therapist;

(d) The above-mentioned rates shall apply to individuals performing treatment, and not those supervising treatment.

15. Chemical dependency specific treatment will not be compensated unless the Reparation Officer determines that it is directly related to the crime. The CVR Board may review extenuating circumstance cases.

R270-1-5. Attorney Fees.

Pursuant to Subsection 63-25a-424(2) attorney fees shall be made within the reparation award and not in addition to the award. If an award is paid in a lump sum, the attorney's fee shall not exceed 15% of the total award; if payments are awarded on an on going basis, attorney fees will be paid when warrants are generated but not to exceed 15%. When appeal hearing denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

R270-1-6. Reparation Awards.

Pursuant to Section 63-25a-403, reparation awards can be made to victims of violent crime where restitution has been ordered by the court but appears unlikely the restitution can be paid within a reasonable time period. However, notification of the award will be sent to the courts, prosecuting attorneys, Board of Pardons or probation and parole counselors indicating any restitution monies collected up to the amount of the award will be forwarded to the Crime Victim Reparations Trust Fund.

R270-1-7. Abortion.

Expenses for an abortion that is permitted pursuant to Sections 76-7-301 through 76-7-325 shall be eligible for a reparation award as long as all the requirements of Section 63-25a-411 have been met.

R270-1-8. Emergency Awards.

Pursuant to Section 63-25a-422, emergency awards up to $1000 can be granted. No time limit is required for filing an emergency claim. Processing of emergency claims is three to five days.

R270-1-9. Loss of Earnings.

A. Pursuant to Subsection 63-25a-411(4)(d), the 66-2/3% of the person's weekly salary or wages is calculated on gross earnings.

B. Loss of earnings for primary and secondary victims may be reimbursed for up to a maximum of twelve (12) weeks work loss, at an amount not to exceed the maximum allowed per week by Worker's Compensation guidelines in effect at the time of work loss. Reference should be made to Section R270-1-11 for guidelines on sick leave, annual leave or bereavement leave as a collateral source. The Crime Victim Reparations Board may review extenuating circumstances on loss of earnings claims.

R270-1-10. Moving, Transportation Expenses.

A. Pursuant to Subsection 63-25a-411(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to $2000. Board approval is needed where extenuating circumstances exist.

B. Transportation expenses up to $1000 are allowed for crime-related travel including, but not limited to, participation in court hearings and parole hearings as well as medical or mental health visits for primary and secondary victims. The Board may approve travel expenses in excess of $1000 where extenuating circumstances exist.

R270-1-11. Collateral Source.

A. Pursuant to Section 63-25a-413, sick leave and annual leave shall be considered as a collateral source. If there are extenuating circumstances, the director may make an exception to this requirement.

B. Crime Victim Reparations Trust Fund monies shall be used before State Social Services contract monies when considering out-of-pocket expenses in child sexual abuse cases, if the individuals qualify as victims. If the victim qualifies for Medicaid, the contract monies should be used first.

C. Crime Victim Reparations Trust Fund monies shall be used before the Utah Medical Assistance Program funds when considering allowable benefits for victims of violent crime.

R270-1-12. Record Retention.

A. Pursuant to Section 63-25a-401, retention of Crime Victim Reparations annual report and crime victim case files shall be as follows:

1. Annual reports and other statistical information shall be retained in office for a period of three years and then transferred to State Archives.

2. Crime victim case files shall be retained in office as needed for administrative use. After closure or denial of a case file, case file shall be retained in office for one year and then transferred to State Archives. Case files will be retained in the State Records Center for eleven years and then destroyed.

R270-1-13. Awards.

A. Pursuant to Section 63-25a-421, when billing from the providers exceeds the maximum allowed, the Reparation Officer shall pay the bills by the date of service. The Reparation Officer shall solicit input from the victim when making this determination. When the services and the billings have occurred at the same time, the Reparation Officer shall determine payment on a percentage basis.

R270-1-14. Essential Personal Property.

Pursuant to Subsection 63-25a-411(4)(h), essential personal property covers all personal articles necessary and essential for the health and safety of the victim. The Reparation Officer may allow up to $1500 for replacement of such items as eyeglasses, hearing aids, burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. The board shall review any exceptions over $1500.

R270-1-15. Subrogation.

Pursuant to Section 63-25a-419, subrogation monies collected from the perpetrator, insurance, etc., will be placed in the Crime Victim Reparations Trust Fund and will not be credited toward a particular victim or claimant award amount.

R270-1-16. Unjust Enrichment.

A. Pursuant to Subsection 63-25a-410(1)(d), the following criteria shall be used when considering claims involving possible unjust enrichment of an offender:

1. Unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award.

2. Awards shall not be denied on the basis that the offender would be unjustly enriched, if the victim cooperates with investigation and prosecution of the crime and does what is possible to prevent access by the offender to substantial compensation.

3. Payment to third party providers shall be made to prevent monies intended for victim expenses be used by or on behalf of the offender.

4. Collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender shall be examined. However, the victim shall not be penalized for failure of an offender to meet legal obligations to pay for the cost of the victim's recovery.

5. Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount

of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

R270-1-17. Prescription or Over-the-Counter Medications.

A. Reimbursement of prescription or over-the-counter medications used in conjunction with mental health therapy shall be considered only for the duration of an approved Treatment Plan.

B. Reimbursement of prescription or over-the-counter medications used in conjunction with medical treatment shall be considered only during the course of treatment by the physician.

C. Medication management rates shall be limited to a maximum of $62.50 per thirty minute session.

R270-1-18. Peer Review Committee.

A. A volunteer Peer Review Committee may be established to review issues and/or provide input to Crime Victim Reparations staff on out-patient mental health counseling claims. The composition, duties, and responsibilities of this Committee shall be defined by the Crime Victim Reparations Board by written internal policy and procedure.

R270-1-19. Medical Awards.

A. Pursuant to Subsection 63-25a-411(4)(b), medical awards are subject to limitations as follows:

1. All medical costs must be related directly to the victimization and all treatment must be considered usual and customary.

2. The reparation officer reserves the right to audit any and all billings associated with medical care.

3. The reparation officer will not pay any interest, finance, or collection fees as part of the award.

4. After the effective date of this rule, in-patient hospital medical bills shall be reimbursed at a rate established between the CVR office and individual hospitals and shall be considered payment in full. A Memorandum of Agreement shall be signed and kept on file.

5. Child endangerment examinations for children that have been exposed to drugs shall be paid for when the health and safety of the child is at risk and no other collateral source is available. The cost of the exam needs to be an expense incurred by the victim. The writing of evidentiary reports and any form of lab testing shall not be covered as part of the examination.

R270-1-20. Misconduct.

Pursuant to Subsections 63-25a-402(22) and 63-25a-412(1)(b) misconduct shall be considered conduct which contributed to the victim's injury or death or conduct which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in misconduct, the CVR staff shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim or the ability of the victim to have reasonably avoided the incident upon which the claim is based.

R270-1-21. Three Year Limitation.

Pursuant to Subsections 63-25a-406(1)(c) and 63-25a-428(2) a claim for benefits expires and no further payments will be made with regard to the claim after three years have elapsed from the date of application with the CVR office. All claimants who have filed a claim for benefits with the CVR office prior to the effective date of this rule shall be notified in writing of the three year limitation for payment of benefits. Any claimant who filed a claim for benefits more than two and one-half years prior to the effective date of this rule, other than a claim for benefits for permanent disability or loss of support, shall be notified in writing that they have six months in which to submit any remaining expenses before the three year limitation is imposed and the claim is closed. Claims for benefits for permanent disability or loss of support filed prior to the effective date of this rule shall not be subject to the three year limitation. The Crime Victim Reparations Officers may review extenuating circumstances on claims that have been closed because of the Three Year Limitation rule.

R270-1-22. Sexual Assault Forensic Examinations.

A. Pursuant to Subsections 63-25a-402(19) and 63-25a-411(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by the CVR office in the amount of $300.00 without photo documentation and up to $600.00 with a photo examination. The CVR office may also pay for the cost of medication and up to 85% of the hospital expenses. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations:

1. A sexual assault forensic examination shall be reported to law enforcement.

2. Victims shall not be charged for sexual assault forensic examinations.

3. The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations.

4. The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.

5. CVR may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault.

6. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider.

7. The application or billing for the sexual assault forensic examination must be submitted to CVR within one year of the examination.

8. The billing for the sexual assault forensic examination shall:

a. identify the victim by name, address, date of birth, Social Security number, telephone number, patient number;

b. indicate the claim is for a sexual assault forensic examination; and

c. itemize services and fees for services.

9. All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before CVR Trust Fund monies are used. Pursuant to Subsection 63-25a-411(i), the Director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source.

10. Evidence will be collected only with the permission of the victim or the legal guardian of the victim. Permission shall not be required in instances where the victim is unconscious, mentally incapable of consent or intoxicated.

11. Restitution for the cost of the sexual assault forensic examination may be pursued by the CVR office.

12. Payment for sexual assault forensic examinations shall be considered for the following:

a. Fees for the collection of evidence, for forensic documentation only, to include:

i. history;

ii. physical; and

iii. collection of specimens and wet mount for sperm.

b. Emergency department services to include:

i. emergency room, clinic room or office room fee;

ii. cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease;

iii. serum blood test for pregnancy;

iv. morning after pill or high dose oral contraceptives for the prevention of pregnancy; and

v. treatment for the prevention of sexually transmitted disease up to four weeks.

13. The victim of a sexual assault that is requesting payment by CVR for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the CVR office.

R270-1-23. Loss of Support Awards.

A. Pursuant to Subsection 63-25a-411(4)(g), loss of support awards shall be covered on death claims only.

R270-1-24. Rent Awards.

A. Pursuant to Subsection 63-25a-411(4)(a), victims of domestic violence or child abuse may be awarded for actual rent expenses for up to three months, not to exceed a maximum rent award of $1800, if the following conditions apply:

1. The perpetrator was living with the victim at the time of the crime or the rent assistance appears directly related to the victim's ability to distance herself/himself from the perpetrator.

2. It appears reasonable that the perpetrator was assisting or was solely responsible for rent.

3. The victim agrees that the perpetrator is not allowed on the premises.

4. The victim submits a safety plan to CVR and the plan is approved by CVR.

5. The victim submits a self-sufficiency plan to CVR and the plan is approved by CVR.

6. The need for rent assistance is directly related to and caused by the crime upon which the claim is based.

B. No victim shall receive more than one rent award in their lifetime.

R270-1-25. Secondary Victim.

Secondary victims who are not primary victims pursuant to Subsections 63-25a-402(37) and who are traumatically affected by criminally injurious conduct shall be eligible for compensation as prescribed by the CVR Board. Secondary victims include only immediate family members (spouse, father, mother, stepparents, child, brother, sister, stepchild, stepbrother, stepsister, or legal guardian) and anyone residing in the household at the time of the crime who was traumatically affected by the crime. The CVR Board may review requests by other individuals who are not immediate family members or do not reside in the household.

R270-1-26. Victim Services.

A. Pursuant to Subsection 63-25a-406(1)(j), there is established a Victim Services Grant Program.

B. For purposes of Subsection 63-25a-406(1)(j), "sufficient reserve" means enough funds to sustain the operation of the Office of Crime Victim Reparations, including administrative costs and reparations payments, for one year.

C. The CVR Board shall annually determine whether a sufficient reserve exists in the Crime Victim Reparation Fund. If a sufficient reserve does not exist, the CVR Board shall not authorize the Victim Services Grant Program for that year. If a sufficient reserve does exist, the CVR Board may authorize the Victim Services Grant Program for that year.

D. When the Victim Services Grant Program is authorized, the CVR Board:

1. shall determine the amount available for the Victim Services Grant Program for that year;

2. shall announce the availability of grant funds through a request for proposals or other similar competitive process approved by the Board; and

3. may establish funding priorities and shall include any priorities in the announcement of grant funds.

E. Requests for funding shall be submitted on a form approved by the CVR Board.

F. The CVR Board shall establish a process to review requests for funding and shall make final decisions regarding the approval, modification, or denial of requests for funding. The CVR Board may award less than the amount determined in Subsection (D)(1). The decisions of the CVR Board may not be appealed.

G. All awards shall be for a period of not more than one year. An award by the CVR Board shall not constitute a commitment for funding in future years. The CVR Board may limit funding for ongoing projects.

H. Award recipients shall submit quarterly reports to the Office of Crime Victim Reparations on forms established by the Director. The CVR staff shall monitor all victim services grants and provide regular reports to the CVR Board.

R270-1-27. Nontraditional Cultural Services.

Cultural services rendered in accordance with recognized spiritual or religious methods of healing, legally available in the state of Utah, may be considered for payment. Since a reasonable and customary schedule of charges has not been established, the reparation officer may require the following: a written itemized description of each procedure, function and/or activity performed and an explanation of its benefit to the victim; the location and time involved to perform such services; and a summary of qualifications and experience which allows the service provider to perform the services. Services shall be requested in lieu of traditional treatment methods. Awards shall be deducted from the claimant's outpatient mental health award and shall remain within the allowed limits set upon that benefit. The fund will not pay for intoxicating or psychotropic substances unless prescribed by a medical practitioner licensed to do so. Claim will be denied if no healing benefit can be identified.

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R277. Education, Administration.
R277-419. Pupil Accounting.
R277-419-1. Definitions.

A. "Aggregate Membership" means the sum of all days in membership during a school year for the student, program, school, LEA, or state.

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

C. "Compulsory school age" means:

(1) a person who is at least five years old and no more than 17 years old on or before September 1;

(2) with respect to special education, a person who is at least three years old and no more than 21 years old on or before September 1.

D. "Data Clearinghouse" means the electronic data collection system used by the USOE to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

E. "Electronic high school" means a rigorous program offering 9-12 grade level courses delivered over the Internet and coordinated by the USOE.

F. "Influenza pandemic (pandemic)" means a global outbreak of serious illness in people. It may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

G. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

H. "Membership" means a public school student is on the current roll of a public school class or public school as of a given date:

(1) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(2) Removal from the roll does not mean that the LEA should delete the student's record, only that the student should no longer be counted in membership.

I. "Minimum School Program (MSP)" means public school programs for kindergarten, elementary, and secondary schools described in Section 53A-17a-103(5).

J. "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

K. "Retained senior" means a student beyond the general compulsory education age who is authorized at the discretion of the LEA to remain in enrollment as a high school senior in the year(s) after the cohort has graduated due to:

(1) sickness;

(2) hospitalization;

(3) pending court investigation or action or both; or

(4) other extenuating circumstances beyond the control of the student.

L. "S1" means the record maintained by the USOE containing individual student demographic and school membership data in a Data Clearinghouse file.

M. "S2" means the record maintained by the USOE containing individual student data related to participation in a special education program in a Data Clearinghouse file.

N. "School day" means:

(1) a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the following constraints:

(2)(a) All school day calculations shall exclude lunch periods and pass time between classes but may include recess periods that include organization or instruction from school staff.

(b) Each day that satisfies hourly instruction time shall count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

O. "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

P. "School year" means the 12 month period from July 1 through June 30.

Q. "Self-contained" means a public school student with an IEP who receives 180 minutes or more of special education services during a typical school day.

R. "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.

S. "SSID" means Statewide Student Identifier.

T. "UCAT" means any public institution of higher education affiliated with the Utah College of Applied Technology.

U. "Unexcused absence" means an absence charged to a student when the student was not physically present at school at any of the times attendance checks were made in accordance with Section R277-419-3B(3) and the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.

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

W. "Virtual education" means the use of information and communication technologies to offer educational opportunities to students in a manner that transcends traditional limitations of time and space with respect to their relationships with teachers, peers, and instructional materials.

X. "Year End upload" means the Data Clearinghouse file due annually by July 15 from school districts and charter schools to the USOE for the prior school year.

Y. "YIC" means Youth in Custody.

Z. "YICSIS" means YIC Student Information System.

R277-419-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the State Board of Education, by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities, Section 53A-1-402(1)(e) which directs the Board to establish rules and standards regarding cost-effectiveness, school budget formats and financial, statistical, and student accounting requirements, and Section 53A-1-404(2) which directs that local school board auditing standards shall include financial accounting and student accounting. This rule is further authorized by Section 53A-1-301(3)(d) which directs the Superintendent to present to the Governor and the Legislature data on the funds allocated to school districts, and Section 53A-3-404 which requires annual financial reports from all school districts.

B. The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-3. Minimum School Days, LEA Records, and Audits.

A. Minimum standards for school days

(1) LEAs shall conduct school for at least 990 instructional hours and 180 school days each school year; exceptions to the number of days for individual students and schools are provided for in R277-419-7.

(2) The required days and hours may be offered at any time during the school year, consistent with the law.

(3) Health Department Emergency or Pandemic

(a) The Board may waive the day and hour requirement, following a vote of Board members, pursuant to a directive from

the Utah State Health Department or a local health department, that results in the closure of a school in the event of a pandemic or other public health emergency.

(b) In the event that the Board is unable to meet in a timely manner, the State Superintendent of Public Instruction may issue a waiver following consultation with a majority of Board members.

(c) The waiver may be for a designated time period and for specific areas, school districts, or schools in the state, as determined by the health department directive.

(d) The waiver may allow for school districts to continue to receive state funds for pupil services and reimbursements.

(e) The waiver by the Board or State Superintendent of Public Instruction shall direct school districts to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(f) The waiver shall direct school districts to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(g) The Board may encourage school districts to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

(4) Minimum standards shall apply to all public schools in all settings unless Utah law or this rule provides for specific exceptions. Local boards are encouraged to provide adequate days and hours in the school district's yearly calendar to avoid the necessity of a waiver request except in the most extreme circumstances.

B. Official records

(1) To determine student membership, LEAs shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

(a) entry date;

(b) exit date;

(c) exit or high school completion status;

(d) whether or not an absence was excused; and

(e) disability status (resource or self-contained, if applicable).

(2)(a) Computerized or manually produced records for Career and Technical Education (CTE) programs shall be kept by teacher, class and Classification of Instructional Program (CIP) code.

(b) These records shall clearly and accurately show for each student in a CTE class the:

(i) entry date;

(ii) exit date; and

(iii) excused or unexcused status of absence.

(3) A minimum of one attendance check shall be made by each public school each school day.

C(1) Due to school activities requiring schedule and program modification during the first days and last days of the school year, an LEA may report for the first five days, aggregate days of membership equal to the number recorded for the second five-day period of the school year.

(2) For the last three-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding three-day period.

(3) Schools shall continue instructional activities throughout required calendared instruction days.

D. Audits

(1) An independent auditor shall be employed under contract by each LEA to audit its student accounting records annually and report the findings to the LEA board of education and to the Finance and Statistics Section of the USOE;

(2) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the USOE in cooperation with the State Auditor's Office and published under the heading of APP C-5;

(3) The USOE shall review student membership and fall enrollment audits as they relate to the allocation of state funds and may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-4. Student Membership.

A. Eligibility

(1) In order to generate membership for funding through the MSP for any clock hour of instruction on any school day, a student shall:

(a) not have previously earned a basic high school diploma or certificate of completion;

(b) not be enrolled in a YIC program with a YIC service code other than RSM, ISI-1 or ISI-2;

(c) not have unexcused absences on all of the prior ten consecutive school days;

(d) be a resident of Utah as defined under Sections 53A-2-201 through 213;

(e) be of compulsory school age or a retained senior;

(f)(i) be expected to attend a regular learning facility operated or recognized by the LEA on each regularly scheduled school day; or

(ii) have direct instructional contact with a licensed educator provided by the LEA at an LEA-sponsored center for tutorial assistance or at the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

(A) injury, illness, surgery, suspension, pregnancy, pending court investigation or action; or

(B) an LEA determination that home instruction is necessary.

(2) Students may generate MSP funding by participation in an LEA-sponsored or LEA-supported virtual education program other than the Utah Electronic High School that is consistent with the student's SEOP, has been approved by the student's counselor, and includes regular face-to-face instruction or facilitation by a designated employee of the LEA.

B. Reporting

(1) LEAs shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership shall be expressed in days.

(3) YIC membership for traditional and special education students shall be reported via YICSIS, but special education membership for YIC students shall be reported via the Data Clearinghouse.

C. Calculations

(1) If a student was enrolled for only part of the school day or only part of the school year, the student's membership shall be prorated according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(2) For students in grades 2 through 12, days in membership shall be calculated by the LEA using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student

was enrolled for only 900 hours during the school year, the student's aggregate membership would be (900/990)*180, and the LEA would report 164 days.

(3) For students in grade 1, the first term of the formula shall be adjusted to use 810 hours as the denominator.

(4) For students in kindergarten, the first term of the formula shall be adjusted to use 450 hours as the denominator.

D. Constraints

(1) The sum of regular and self-contained special education membership days may not exceed 180 days;

(2) The sum of regular and resource special education membership days may not exceed 360 days.

E. Exceptions

LEAs may also count a student in membership for the equivalent in hours of up to:

(1) one period each school day, if the student has been:

(a) released by school upon parent's request during the school day for religious instruction or individual learning activity consistent with the student's SEOP; or

(b) exempted from school attendance under 53A-11-102 for home schooling and participates in one or more extracurricular activities under R277-438;

(2) two periods each school day for time spent in bus travel during the regular school day to and from UCAT facilities, if the student is enrolled in CTE instruction consistent with the student's SEOP;

(3) four periods each school day, if the student is enrolled in a YIC program with a YIC secure service code of ISI-2. State-funded YIC programs operating in facilities that provide residential care may receive funding for a maximum of 205 days, with prior USOE approval;

(4) all periods each school day, if the student is enrolled in:

(a) a concurrent enrollment program that satisfies all the criteria of R277-713;

(b) a private school without religious affiliation under a contract initiated by an LEA which directs that the instruction be paid by public funds. Contracts shall be approved by the LEA board in an open meeting.

(c) a foreign exchange student program under 53A-2-206(2)(i)(B).

(d) Electronic High School or UCAT classes for credit which meet curriculum requirements, consistent with the student's SEOP and following written school counselor approval.

(e) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP:

(i) students may only be counted in (S1) membership and shall not have an S2 record;

(ii) the S2 record for these students shall only be submitted by the Utah Schools for the Deaf and the Blind.

R277-419-5. High School Completion Status.

A. LEAs shall use the following decision rules and associated codes in the Data Clearinghouse to indicate the high school completion or exit status of each student who leaves the Utah public education system:

(1) dropped out (DO), when no other status code legitimately represents the reason for departure or absence from school;

(2) died (DE);

(3) expelled (EX);

(4) graduated with a high school diploma, (G*) by satisfying one of the options specified in R277-705-4B;

(5) received a certificate of completion (CT):

(a) to qualify for a certificate, a student shall be in membership in twelfth grade on the last day of the school year; and

(b) meet any additional criteria established by the LEA consistent with its authority under R277-705-4C;

(6) suspended (SU);

(7) transferred out of state (TO);

(8) transferred out of the country (TC);

(9) transferred to a private school (TP);

(10) transferred to home schooling (TH);

(11)(a) U.S. citizen who enrolled in another country as a foreign exchange student (FE);

(b) non-U.S. citizen who enrolled in a Utah public school as a foreign exchange student under Section 53A-2-206(2)(i)(B) shall be identified by resident status (F), not by an exit code;

(12) withdrawn (WD) due to a situation so serious that educational services cannot be continued even under the conditions of R277-419-4(A)(1)(f)(ii).

B. LEAs shall report the high school completion status or exit code of each student to the USOE as specified in Data Clearinghouse documentation.

R277-419-6. Student Identification and Tracking.

A(1) Pursuant to Section 53A-1-603.5, LEAs shall use the SSID system maintained by the USOE to assign every public school student a unique student identifier; and

(2) shall display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

B(1) LEAs shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(2)(a) Names shall be transcribed from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;

(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

(c) Schools or school districts may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the USOE.

C. The USOE and LEAs shall track students and maintain data using students' legal names.

D. If there is a compelling need to protect a student by using an alias, the LEA should exercise discretion in recording the name of the student.

E. The SSID shall be an arbitrary number and may not contain any personally identifying information about the student.

R277-419-7. Variances.

A. An exception for school attendance for public school students may be made at the discretion of the local board, in the length of the school day or year, for students with compelling circumstances. The time an excepted student is required to attend school shall be established by the student's IEP or SEOP.

B. Emergency/activity/weather-related exigency time shall be planned for in an LEA's annual calendaring. If school is closed for any reason, the instructional time missed shall be made up under the emergency/activity time as part of the minimum required time to qualify for full MSP funding.

C. Staff Planning, Professional Development, Student Assessment Time, and Parent-Teacher and Student Education Plan (SEP) Conferences.

(1) To provide planning and professional development time for staff, LEAs may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in R277-419-1N, are satisfied.

(2) Schools may conduct parent-teacher and student education plan conferences during the school day.

(3) Such conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year. Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(4) LEAs may designate no more than 12 instructional days at the beginning of the school year or at the end of the school year or both for the assessment of students entering or completing kindergarten. If instruction days are designated for kindergarten assessment:

(a) the days shall be designated by the LEA board in an open meeting;

(b) adequate notice and explanation shall be provided to kindergarten parents well in advance of the assessment period;

(c) assessment shall be conducted by qualified school employees consistent with Section 53A-3-410; and

(d) assessment time per student shall be adequate to justify the forfeited instruction time.

(5) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with the local board of education, consistent with Utah law and Board administrative rules.

(6) Total instructional time and school calendars shall be approved by local boards in an open meeting.

D. A school participating in the School Professional Development Days Pilot Program, consistent with R277-418, may use a maximum of 22 hours of the 990 hours of student instructional time required under R277-419-3A(1) for professional development days. Use of this time, consistent with R277-418, requires prior Board approval.

E. A school using a modified 45-day 15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if a school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

KEY: education finance, school enrollment

May 9, 2007	**Art X Sec 3**
Notice of Continuation October 18, 2002	**53A-1-401(3)**
	53A-1-402(1)(e)
	53A-1-404(2)
	53A-1-301(3)(d)
	53A-3-404
	53A-3-410

R277. Education, Administration.
R277-459. Classroom Supplies Appropriation.
R277-459-1. Definitions.

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

B. "Classroom teacher" means a permanent teacher position filled by one teacher or two or more job-sharing teachers employed by a school district, the Utah Schools for the Deaf and the Blind, and charter schools. These teachers are licensed personnel, and paid on the teachers' salary schedule or a charter school salary schedule. Teachers shall be employed for an entire contract period. The teacher's primary responsibility shall be to provide instructional or a combination of instructional and counseling services to students in public schools. Specific categories of staff to be included may be changed, therefore, current definitions may be found in the most recent legislation.

C. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information; and

(6) a record of disciplinary action taken against the educator.

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63-2-302 or 304 and is accessible only to specific designated individuals.

D. "Field trip" means a district, or school authorized excursion for educational purposes.

E. "Teaching supplies and materials" means both expendable and nonexpendable items that are used for educational purposes by teachers in classroom activities and may include such items as:

(1) paper, pencils, workbooks, notebooks, supplementary books and resources;

(2) laboratory supplies, e.g. photography materials, chemicals, paints, bulbs (both light and flower), thread, needles, bobbins, wood, glue, sandpaper, nails and automobile parts;

(3) laminating supplies, chart paper, art supplies, and mounting or framing materials;

(4) This definition should be broadly construed in so far as the materials are used by the teacher for instructional purposes in classrooms, lab settings, or in conjunction with field trips.

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

R277-459-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for school programs, and by state legislation which provides a designated appropriation for teacher classroom supplies and materials.

B. The purpose of this rule is to distribute money through school districts, the Utah Schools for the Deaf and the Blind, and charter schools to classroom teachers for school materials and supplies and field trips.

R277-459-3. Distribution of Funds.

A. The USOE shall generate from the CACTUS database a teacher count of the full-time classroom teachers as defined above for each school district, the Utah Schools for the Deaf and the Blind, and charter schools as of November 1 of each year.

B. The USOE shall distribute funds through each school district, the Utah Schools for the Deaf and the Blind, and charter schools proportionally per eligible position to the extent of the appropriation.

C. Individual teachers shall designate the uses for their allocations within the criteria of this rule. Districts and other eligible schools shall develop procedures and timelines to facilitate the intent of the appropriation.

D. Each school district shall ensure that each eligible individual has the opportunity to receive the proportionate share of the appropriation.

E. If a teacher has not spent or committed to spend the individual allocation by April 1, the school or district may make the excess funds available to other teachers or may reserve the money for use by teachers the following years.

F. These funds are to supplement, not supplant, existing funds for these purposes.

G. These funds are to be accounted for by the district or eligible school using state or district procurement and accounting policies.

H. These funds and supplies purchased with the funds are the property of the school district, the Utah Schools for the Deaf and the Blind, and charter schools. Employees may not claim personal ownership of materials purchased with these public funds.

R277-459-4. Other Provisions.

A. Districts, the Utah Schools for the Deaf and the Blind, and charter schools shall allow, but not require, teachers to jointly use their allocations.

B. Districts, the Utah Schools for the Deaf and the Blind, and charter schools shall allow part-time or job-sharing teachers a proportionate allocation.

KEY: teachers, supplies
May 9, 2007 **Art X Sec 3**
Notice of Continuation July 6, 2005 **53A-1-402(1)(b)**

R277. Education, Administration.
R277-503. Licensing Routes.
R277-503-1. Definitions.

A. "Alternative Routes to Licensure (ARL) advisors" mean a USOE specialist with specific professional development and educator licensing expertise, and a USOE-designated curriculum specialist.

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

C. "Competency-based" means a teacher training approach structured for an individual to master and demonstrate content and teaching skills and knowledge at the individual's own pace and sometimes in alternative settings.

D. "Educational Testing Service (ETS)" is a worldwide educational testing and measurement organization.

E. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

F. "Letter of authorization" means a formal approval given to an individual such as an out-of-state candidate or a first year ARL candidate who is employed by a school district/charter school in a position requiring a professional educator license who has not completed the requirements for an ARL license or a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements. A teacher working under a letter of authorization cannot be designated highly qualified under R277-520-1G.

G. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to applicants who have also met all ancillary requirements established by law or rule.

H. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) requirements established by law or rule;

(2) three years of successful education experience within a five-year period; and

(3) satisfaction of requirements under R277-522 for teachers employed after January 1, 2003.

I. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school.

J. "National Association of State Directors of Teacher Education and Certification (NASDTEC)" is an educator information clearinghouse that maintains an interstate reciprocity agreement and database for its members regarding educators whose licenses have been suspended or revoked.

K. "National Council for Accreditation of Teacher Education (NCATE)" is a nationally recognized organization which accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

L. "NCLB core academic subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

M. "Pedagogical knowledge" means practices and strategies of teaching, classroom management, preparation and planning that go beyond an educator's content knowledge of an academic discipline.

N. "Praxis II - Principles of Learning and Teaching" is a standards-based test provided by ETS and designed to assess a beginning teacher's pedagogical knowledge. This test is used by many states as part of their teacher licensing process. Colleges and universities may use this test as an exit exam from teacher education programs. All Utah Level 1 license holders employed or reemployed after January 1, 2003 shall pass this test prior to the issuance of a Level 2 professional educator license consistent with R277-522-1H(3).

O. "Regional accreditation" means formal approval of a school that has met standards considered to be essential for the operation of a quality school program by the following organizations:

(1) Middle States Commission on Higher Education;

(2) New England Association of Schools and Colleges;

(3) North Central Association Commission on Accreditation and School Improvement;

(4) Northwest Commission on Colleges and Universities;

(5) Southern Association of Colleges and Schools; and

(6) Western Association of Schools and colleges: Senior College Commission.

P. "Restricted endorsement" means a qualification based on content area knowledge obtained through a USOE-approved program of study or test and shall be available only to teachers in necessarily existent small school settings and teachers in youth in custody programs.

Q. "State-approved Endorsement Plan (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator.

R. "Teacher Education Accreditation Council (TEAC)" is a nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

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

R277-503-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board, Section 53A-1-402(1)(a) which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide minimum eligibility requirements for applicants for teacher licenses and to provide explanation and criteria of various teacher licensing routes. The rule also provides criteria and procedures for licensed teachers to earn endorsements and the requirement for all applicants for licenses to have and pass criminal background checks.

R277-503-3. USOE Licensing Eligibility.

A. Traditional college/university license - A license applicant shall have completed an approved college/university teacher preparation program, been recommended for licensing, and shall have satisfied all other requirements for educator licensing required by law; or

B. Alternative Licensing Route

(1) A license applicant shall have a bachelors degree or higher from an accredited higher education institution in an area related to the position he seeks; and

(2) A license applicant shall have skills, talents or abilities, as evaluated by the employing entity, making the applicant appropriate for a licensed teaching position and eligible to participate in an ARL program.

(3) While beginning an alternative licensing program, an applicant shall be approved for employment under a letter of authorization for a maximum of one school year and may be employed under an ARL license for an additional two years. An ARL program may not exceed three school years. ARL candidates who receive ARL licensure status may be designated

highly qualified under R277-520-1G.

C. All license applicants seeking a Level 1 Utah educator license or an area of concentration or an endorsement in an NCLB core academic subject area after March 3, 2007 shall submit passing score(s) on a rigorous Board-designated content test, where tests are available, prior to the issuance of a renewable license or endorsement.

(1) Early childhood (K-3) and elementary majors (1-8) are required to submit a passing score from a rigorous Board-designated content test.

(2) Secondary teachers are required to submit passing scores on a rigorous Board-designated content test(s), where test(s) are available, for each endorsement NCLB core academic area to be posted on the license.

(3) An applicant shall submit electronic or original documentation of USOE-designated passing score(s).

D. Any educator seeking a Utah Level 1 license who submits a score below the final Utah state passing score on the test designated in R277-503-3C shall be issued a nonrenewable conditional Level 1 license. If the educator fails to submit a passing score on a rigorous Board-designated content test during the three-year duration of the conditional Level 1 license, the educator's license or endorsement shall lapse on the educator's renewal date.

E. The credentials and documentation of experience of applicants for Level 2 and 3 professional educator licenses shall be evaluated by the USOE to determine the appropriate license level.

R277-503-4. Licensing Routes.

Applicants who seek Utah licenses shall successfully complete accredited programs or legislatively mandated programs consistent with this rule.

A. Institution of higher education teacher preparation programs shall be:

(1) Nationally accredited by:

(a) NCATE; or

(b) TEAC; or

(2) Regionally accredited competency-based teacher preparation programs as provided under R277-503-1N.

B. USOE Alternative Routes to Licensure (ARL)

(1) To be eligible to begin the ARL program, an applicant for an elementary or early childhood school position shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas. Elementary curriculum areas are provided under R277-700-4. To proceed from temporary license status, an ARL applicant shall submit a score on the ETS Praxis II Elementary Education Content Knowledge Examination (0014) to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(2) To be eligible to begin the ARL program, applicants for secondary school positions shall hold a degree major or major equivalent directly related to the assignment. To proceed from temporary license status an ARL license applicant shall submit a score on identified ETS Praxis II Applicable Content Knowledge test(s) where available to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(3) Licensing by Agreement

(a) An individual employed by a school district shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district.

(b) An applicant shall obtain an ARL application for licensing from the USOE or USOE web site.

(c) After evaluation of candidate transcript(s), and rigorous Board-designated content test score, the USOE ARL advisors and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

(d) The USOE ARL advisors may identify institution of higher education courses, district inservice classes, Board-approved training, or Board-approved competency tests to prepare or indicate content, content-specific, and developmentally-appropriate pedagogical knowledge required for licensing.

(e) The employing school district shall assign a trained mentor to work with the applicant for licensing by agreement.

(f) The school district shall supervise and assess the license applicant's classroom performance during a minimum one school year full-time employment experience. The district may request assistance from a institution of higher education or the USOE in the monitoring and assessment.

(g) The school district shall assess the license applicant's disposition as a teacher following a minimum one school year full-time teaching experience. The district may request assistance in this assessment; and

(h) The USOE ARL advisors shall annually review and evaluate the license applicant following training, assessments or course work, and the full-time teaching experience and evaluation by the school district.

(i) Consistent with evidence and documentation received, the USOE ARL advisor may recommend the license applicant to the Board for a Level 1 educator license.

(4) USOE Licensing by Competency

(a) A school district employs an individual as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district who satisfies the minimum requirements of R277-503-3.

(b) An employing school district, in consultation with the applicant and the USOE, shall identify Board-approved content knowledge and pedagogical knowledge examinations. The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.

(c) The employing school district shall assign a trained mentor to work with the applicant for licensing by competency.

(d) The school district shall monitor and assess the license applicant's classroom performance during a minimum one-year full-time teaching experience.

(e) The school district shall assess the license applicant's disposition for teaching following a minimum one-year full-time teaching experience.

(f) The school district may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.

(g) Following the one-year training period, the school district and USOE shall verify all aspects of preparation (content knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching) to the USOE.

(h) If all evidence/documentation is complete, the USOE shall recommend the applicant for a Level 1 educator license.

(5) USOE ARL candidates under R277-503-4B(3) and (4) may teach under a letter of authorization for a maximum of one year. The letter of authorization shall expire after the first year on June 30 when the ARL candidate submits documentation of progress in the program, and the candidate shall be issued an ARL license.

(6) The ARL license may be extended annually for two subsequent school years with documentation of progress in the ARL program.

(7) Documentation shall include, specifically, a copy of the supervisor's successful end-of-year evaluation, copies of transcripts and test results or both showing completion of required coursework, verification of working with a trained mentor, and satisfaction of the full-time full year experience.

C. School district/charter school specific competency-based licenses:

(1) A local board/charter school board may apply to the Board for a letter of authorization to fill a position in the district.

(2) The employing school district/charter school shall request a letter of authorization no later than 60 days after the date of the individual's first day of employment.

(3) The application for the letter of authorization from the local board/charter school board for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by completion of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, results or scores of a rigorous state core academic subject test, similar to the test required under R277-503-3E, in each of the core academic subjects in which the teacher teaches.

(4) The application for the letter of authorization from the local board/charter school board for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the local board/charter school board.

(5) Following receipt of documentation and consistent with Section 53A-6-104.5(2), the USOE shall approve a district/charter school specific competency-based license.

(6) If an individual with a district/charter school specific competency-based license leaves the district before the end of the employment period, the district shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The individual's district/charter school specific competency-based license shall be valid only in the district/charter school that originally requested the letter of authorization and for the individual originally employed under the letter of authorization or district/charter school specific competency-based license.

(8) The written copy of the district/charter school specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER SCHOOL SPECIFIC COMPETENCY-BASED LICENSE.

(9) A school district/charter school may change the assignment of a school district/charter school specific competency-based license holder but notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified or highly qualified.

(10) School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).

R277-503-5. Endorsement Routes.

A. An applicant shall successfully complete one of the following for endorsement:

(1) a USOE-approved institution of higher education educator preparation program with endorsement(s); or

(2) assessment, approval and recommendation by a designated and subject-appropriate USOE specialist under a SAEP. The USOE shall be responsible for final recommendation and approval; or

(3) a USOE-approved Utah institution of higher education or Utah school district-sponsored endorsement program which includes content knowledge and content-specific pedagogical knowledge approved by the USOE. The university or school district shall be responsible for final review and recommendation. The USOE shall be responsible for final approval.

B. A restricted endorsement shall be available and limited to teachers in necessarily existent small schools as determined under R277-445, and teachers in youth in custody programs. 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.

C. All provisions that directly affect the health and safety of students required for endorsements, such as prerequisites for drivers education teachers or coaches, shall apply to applicants seeking endorsements through all routes under this rule.

D. Prior to an individual taking courses, exams or seeking a recommendation in the ARL licensing program, the individual shall have school district/charter school and USOE authorization.

R277-503-6. Additional Provisions.

A. All programs or assessments used in applicant preparation shall meet national professional educator standards such as those developed by NCATE, TEAC or competency-based regional accreditation.

B. All educators licensed under this rule shall also:

(1) complete the background check required under Section 53A-6-401;

(2) satisfy the professional development requirements of R277-502; and

(3) be subject to all Utah licensing requirements and professional standards.

C. An applicant may satisfy the student teaching/clinical experience requirement for licensing through successful completion of either the licensing by agreement or by competency route.

KEY: teachers, alternative licensing
May 9, 2007 **Art X Sec 3**
Notice of Continuation March 29, 2007 **53A-1-402(1)(a)**
53A-1-401(3)

R277. Education, Administration.
R277-612. Foreign Exchange Students.
R277-612-1. Definitions.

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

B. "Foreign exchange student" means a student sponsored by an agency approved by the district's local school board or charter school's governing board, subject to the limitation of Section 53A-2-206(2).

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

R277-612-2. 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-2-206(2) which directs the Board to make rules to administer the cap on the number of foreign exchange students for purposes of apportioning state monies for the students, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to administer the cap on the number of foreign exchange students that may be counted by school districts and charter schools for state funding. An additional purpose of the rule is to provide guidance to school districts and charter schools in working with exchange student agencies and accepting foreign exchange students to provide for safety and fairness to the exchange students and Utah public school students.

R277-612-3. Foreign Exchange Student Cap.

A. School districts and charter schools shall be compensated from a specific legislative appropriation designated annually to pay the costs of educating foreign exchange students who meet all criteria of the law.

B. School districts and charter schools are encouraged to enroll foreign exchange students and report those enrollment numbers annually to the USOE in the October 1 Superintendents' Report.

C. When the number of reported foreign exchange students reaches 250 in a school year, the USOE may notify school districts of quotas in enrolling foreign exchange students or may seek funding for a USOE employee to promote the program among school districts and charter schools and ensure that all requirements of the law are satisfied by foreign exchange student agencies, foreign exchange students, school districts and charter schools.

D. School districts and charter schools shall include in their report to the USOE only foreign exchange students that satisfy all requirements of 53A-2-206(6) and school district/charter school policies. School districts/charter schools may enroll foreign exchange students who do not qualify for state monies and pay the costs of those students with other school district/charter school funds or charge the students tuition.

R277-612-4. School District Policy for Working with Foreign Exchange Student Agencies and Protecting Foreign Exchange Students and Utah Students.

A. School districts and charter schools that enroll foreign exchange students shall have a policy that satisfies the requirements of 53A-2-206(6) in addition to other provisions which create a safe environment for foreign exchange students and school district/charter school students.

B. Each school district/charter school shall, prior to accepting students through the foreign exchange student agency, require and maintain from each foreign exchange student entity from which the district/charter school accepts students, a sworn affidavit of compliance that the agency has complied with all applicable policies of the local board of education or the charter school including the following:

(1) agency has complied with all applicable policies of the local board of education/charter school governing board;

(2) a household study, including a background check consistent with 53A-3-410, of all adult residents has been completed of each household where foreign exchange students will reside and the information has been reviewed and concerns satisfied by an appropriate school district employee;

(3) a background study assures that the exchange student will receive proper care and supervision in a safe environment;

(iv) host parents have received training appropriate to their positions, including information about enhanced criminal penalties under Subsection 76-5-406(10) for persons who are in a position of special trust;

(4) a representative of the exchange student agency shall visit each student's place of residence at least monthly during the student's stay in Utah;

(5) the agency will cooperate with school and other public authorities to ensure that no exchange student becomes an unreasonable burden upon the public schools or other public agencies;

(6) each exchange student will be given, in the exchange student's native language, names and telephone numbers of agency representatives and others who could be called at any time if a serious problem occurs; and

(7) alternate placements are readily available so that no student is required to remain in a household if conditions appear to exist which unreasonably endanger the student's welfare.

C. Each school district/charter school that accepts foreign exchange students shall provide each approved foreign exchange student agency with a list of names and telephone numbers of individuals not associated with the agency who could be called by an exchange student in the event of a serious problem.

D. The agency shall make a copy of the list provided by the school district/charter school to each foreign exchange student in the student's native language.

KEY: foreign exchange students, enrollment
May 9, 2007 **Art X Sec 3**
53A-2-206(2)
53A-1-401(3)

R277. Education, Administration.
R277-746. Driver Education Programs for Utah Schools.
R277-746-1. Definitions.

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

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

R277-746-2. 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-13-201(4) which directs the Board to prescribe rules for driver education classes in the public schools and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for local school districts conducting automobile driver education.

R277-746-3. Standards and Procedures.

A. Local school boards and school districts shall comply with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS ORGANIZATION, ADMINISTRATION, AND STANDARDS, Revised, December, 2006, as required by R277-100-5C, and available from the USOE Driver Education Specialist and at all school district offices.

B. The Board shall act in accordance with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS ORGANIZATION, ADMINISTRATION, AND STANDARDS, Utah State Office of Education, Revised, December, 2006, to determine and evaluate standards and operating procedures for automobile driver education programs conducted by local school districts.

KEY: driver education
May 9, 2007 53A-13-201(4)
Notice of Continuation March 12, 2003 53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan must be incorporated by reference into these rules. Copies of the Utah State Implementation Plan are available at the Utah Department of Environmental Quality, Division of Air Quality.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on March 8, 2006, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on July 6, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on January 5, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on November 3, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on January 3, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on July 6, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Transportation Conformity Consultation.

The Utah State Implementation Plan, Section XII, Transportation Conformity Consultation, as most recently amended by the Utah Air Quality Board on May 2, 2007, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. R307-110-26 Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on May 5, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on November 3, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-36. Section XXIII, Interstate Transport.

The Utah State Implementation Plan, Section XXIII, Interstate Transport, as most recently adopted by the Utah Air Quality Board on February 7, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
May 2, 2007 19-2-104(3)(e)
Notice of Continuation March 15, 2007

R307. Environmental Quality, Air Quality.
R307-220. Emission Standards: Plan for Designated Facilities.
R307-220-1. Incorporation by Reference.

Pursuant to 42 U.S.C. 7411(d), the Federal Clean Air Act Section 111(d), the following sections hereby incorporate by reference the Utah plan for designated facilities. Copies of the plan are available at the Division of Air Quality and the Division of Administrative Rules.

R307-220-2. Section I, Municipal Solid Waste Landfills.

Section I, Municipal Solid Waste Landfills, as most recently adopted by the Air Quality Board on September 3, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-220-3. Section II, Hospital, Medical, Infectious Waste Incinerators.

Section II, Hospital, Medical, Infectious Waste Incinerators, as most recently adopted by the Air Quality Board on November 12, 1998, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-220-4. Section III, Small Municipal Waste Combustion Units.

Section III, Small Municipal Waste Combustion Units, as most recently adopted by the Air Quality Board on October 2, 2002, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-220-5. Section IV, Coal-Fired Electric Generating Units.

Section IV, Coal-Fired Electric Generating Units, as most recently adopted by the Air Quality Board on March 14, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, landfills, incinerators, electric generating units
May 9, 2007 19-2-104(3)(q)
Notice of Continuation March 15, 2007

R307. Environmental Quality, Air Quality.
R307-424. Permits: Mercury Requirements for Electric Generating Units.
R307-424-1. Purpose and Applicability.

The purpose of R307-424 is to regulate mercury emissions from any coal-fired electric generating unit (EGU). R307-424 applies to any coal-fired electric generating unit as defined in 40 CFR 60.24.

R307-424-2. Part 70 Permit.

Sources meeting the applicability requirements of R307-424-1 above, and also meeting the applicability requirements of R307-415-4, are required to obtain a mercury (Hg) budget permit in accordance with R307-224-2(1)(a).

R307-424-3. Offset Requirement: Mercury.

Sources meeting the applicability requirements of R307-424-1 above and making application for an approval order under R307-401 shall, in addition to any other requirement for obtaining such approval order, obtain an enforceable offset for any potential increase in mercury emissions in accordance with the following:

(1) The permitted increase in mercury emissions, considering the application of any control method or device, shall be offset by mercury emission credits at a ratio of 1 to 1.1 respectively.

(2) The averaging period for such determinations shall be a 12-month period.

(3) Mercury emission credits must be obtained from an EGU located within the State of Utah, excluding any EGU located on Indian lands within the State.

(4) To preserve reductions in mercury emissions as credits for use in offsetting potential increases, the executive secretary must identify such credits in an order issued pursuant to R307-401 and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reduction credits, and to record any transfers of, or liens on, these rights.

(5) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable.

(6) The quantity of mercury emission reductions to be used for credit will be determined in accordance with 40 CFR part 75, or will be based on the best available data reported to the executive secretary. To the extent that the EGU has been subject to the requirements of part 75, mercury emissions data shall be the average of the 3 highest annual amounts over the most recent 5-year period. Mercury emission reductions made prior to December 31, 1999 shall not be creditable for such purpose.

(7) R307-424-3 shall not apply to any EGU for which a valid approval order was issued prior to November 17, 2006.

R307-424-4. Emission Rates.

(1) By no later than December 31, 2012, the owner or operator of any EGU with an input heat capacity in excess of 1,500 MMbtu per hour and having commenced operations prior to November 17, 2006, shall demonstrate compliance with at least one of the following:

(a) A maximum emission rate of 6.50×10^{-7} pounds mercury per million btu heat input; or

(b) A minimum of 90% control of total mercury emissions.

(2) Compliance with (1) above shall be based on an annual averaging period beginning January 1 and ending December 31.

(a) Beginning January 1, 2013, compliance shall be determined using the monitoring and recordkeeping requirements incorporated under R307-224-2. Upon completion of each year's fourth quarterly report, an assessment shall be made for the entire calendar year and reported to the executive secretary within 30 days.

(b) Where it is necessary to determine the mercury content of the coal or coals burned, the owner or operator shall use the appropriate ASTM method, and shall measure at least one representative sample each month. Records of such testing shall be kept for a period of at least five years, and shall be made available to the executive secretary upon request.

(3) Should an EGU be unable to achieve the maximum emission rate or the minimum control efficiency described in (1) above, despite proper operation of the unit in conjunction with a baghouse as well as wet or dry flue gas de-sulfurization, the owner or operator may petition the executive secretary for a modification to the compliance limitation for the unit in accordance with R307-401.

(a) Such petition shall be received no later than the date upon which the compliance assessment required under (2)(a) above is due.

(b) Any such determination by the executive secretary will be made on a case-by-case basis, taking into consideration energy, environmental and economic impacts and other costs. It will be based on the best information and analytical techniques available.

KEY: air pollution, electric generating unit, mercury
May 9, 2007 **19-2-101**
19-2-104(1)(a)
19-2-104(3)(e)
40 CFR 60.24

R309. Environmental Quality, Drinking Water.
R309-105. Administration: General Responsibilities of Public Water Systems.
R309-105-1. Purpose.

The purpose of this rule is to set forth the general responsibilities of public water systems, water system owners and operators.

R309-105-2 Authority.
R309-105-3 Definitions.
R309-105-4 General.
R309-105-5 Exemptions from Monitoring Requirements.
R309-105-6 Construction of Public Drinking Water Facilities.
R309-105-7 Source Protection Plans.
R309-105-8 Existing Water System Facilities.
R309-105-9 Minimum Pressure.
R309-105-10 Operation and Maintenance Procedures.
R309-105-11 Operator Certification.
R309-105-12 Cross Connection Control.
R309-105-13 Finished Water Quality.
R309-105-14 Operational Reports.
R309-105-15 Annual Reports.
R309-105-16 Reporting Test Results.
R309-105-17 Record Maintenance.
R309-105-18 Emergencies.

R309-105-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-105-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-105-4. General.

Water suppliers are responsible for the quality of water delivered to their customers. In order to give the public reasonable assurance that the water which they are consuming is satisfactory, the Board has established rules for the design, construction, water quality, water treatment, contaminant monitoring, source protection, operation and maintenance of public water supplies.

R309-105-5. Exemptions from Monitoring Requirements.

(1) The applicable requirements specified in R309-205, R309-210 and R309-215 for monitoring shall apply to each public water system, unless the public water system meets all of the following conditions:

(a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(c) Does not sell water to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce.

(2) When a public water system supplies water to one or more other public water systems, the Executive Secretary may modify the monitoring requirements imposed by R309-205, R309-210 and R309-215 to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(3) In no event shall the Executive Secretary authorize modifications in the monitoring requirements which are less stringent than requirements established by the Federal Safe Drinking Water Act.

R309-105-6. Construction of Public Drinking Water Facilities.

The following requirements pertain to the construction of public water systems.

(1) Approval of Engineering Plans and Specifications

(a) Complete plans and specifications for all public drinking water projects, as described in R309-500-5, shall be approved in writing by the Executive Secretary prior to the commencement of construction. A 30-day review time should be assumed.

(b) Appropriate engineering reports, supporting information and master plans may also be required by the Executive Secretary as needed to evaluate the proposed project. A certificate of convenience and necessity or an exemption therefrom, issued by the Public Service Commission, shall be filed with the Executive Secretary prior to approval of any plans or specifications for projects described in R309-105-6(3)(a).

(2) Acceptable Design and Construction Methods

(a) The design and construction methods of all public drinking water facilities shall conform to the applicable standards contained in R309-500 through R309-550 of these rules. The Executive Secretary may require modifications to plans and specifications before approval is granted.

(b) There may be times in which the requirements of the applicable standards contained in R309-500 through R309-550 are not appropriate. Thus, the Executive Secretary may grant an "exception" to portions of these standards if it can be shown that the granting of such an exception will not jeopardize the public health.

(c) Alternative or new treatment techniques may be developed which are not specifically addressed by the applicable standards contained in R309-500 through R309-550. These treatment techniques may be accepted by the Executive Secretary if it can be shown that:

(i) They will result in a finished water meeting the requirements of R309-200 of these regulations.

(ii) The technique will produce finished water which will protect public health to the same extent provided by comparable treatment processes outlined in the applicable standards contained in R309-204 and R309-500 through R309-550.

(iii) The technique is as reliable as any comparable treatment process governed by the applicable standards contained in R309-204 and R309-500 through R309-550.

(3) Description of "Public Drinking Water Project"

Refer to R309-500-5 for the description of a public drinking water project and R309-500-6 for required items to be submitted for plan approval.

(4) Specifications for the drilling of a public water supply well may be prepared and submitted by a licensed well driller holding a current Utah Well Driller's Permit if authorized by the Executive Secretary.

(5) Drawing Quality and Size

Drawings which are submitted shall be compatible with Division of Drinking Water Document storage. Drawings which are illegible or of unusual size will not be accepted for review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".

(6) Requirements After Approval of Plans for Construction

After the approval of plans for construction, and prior to operation of any facilities dealing with drinking water, the items required by R309-500-9 shall be submitted and an operating permit received.

R309-105-7. Source Protection.

(1) Public Water Systems are responsible for protecting their sources of drinking water from contamination. R309-600 and R309-605 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to

protect their sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide they are necessary.

(2) R309-600 applies to ground-water sources and to ground-water sources which are under the direct influence of surface water which are used by PWSs to supply their systems with drinking water.

(3) R309-605 applies to PWSs which obtain surface water prior to treatment and distribution and to PWSs obtaining water from ground-water sources which are under the direct influence of surface water. However, compliance with this rule is voluntary for public transient non-community water systems to the extent that they are using existing surface water sources of drinking water.

R309-105-8. Existing Water System Facilities.

(1) All public water systems shall deliver water meeting the applicable requirements of R309-200 of these rules.

(2) Existing facilities shall be brought into compliance with R309-500 through R309-550 or shall be reliably capable of delivering water meeting the requirements of R309-200.

(3) In situations where a water system is providing water of unsatisfactory quality, or when the quality of the water or the public health is threatened by poor physical facilities, the water system management shall solve the problem(s).

R309-105-9. Minimum Water Pressure.

(1) Unless otherwise specifically approved by the Executive Secretary, no water supplier shall allow any connection to the water system where the dynamic water pressure at the point of connection will fall below 20 psi during the normal operation of the water system. Water systems approved prior to January 1, 2007, are required to maintain the above minimum dynamic water pressure at all locations within their distribution system. Existing public drinking water systems, approved prior to January 1, 2007, which expand their service into new areas or supply new subdivisions shall meet the minimum dynamic water pressure requirements in R309-105-9(2) at any point of connection in the new service areas or new subdivisions.

(2) Unless otherwise specifically approved by the Executive Secretary, new public drinking water systems constructed after January 1, 2007 shall be designed and shall meet the following minimum water pressures at points of connection:

(a) 20 psi during conditions of fire flow and fire demand experienced during peak day demand;

(b) 30 psi during peak instantaneous demand; and

(c) 40 psi during peak day demand.

(3) Individual home booster pumps are not allowed as indicated in R309-540-5(4)(c).

R309-105-10. Operation and Maintenance Procedures.

All routine operation and maintenance of public water supplies shall be carried out with due regard for public health and safety. The following sections describe procedures which shall be used in carrying out some common operation and maintenance procedures.

(1) Chemical Addition

(a) Water system operators shall determine that all chemicals added to water intended for human consumption are suitable for potable water use and comply with ANSI/NSF Standard 60.

(b) No chemicals or other substances shall be added to public water supplies unless the chemical addition facilities and chemical type have been reviewed and approved by the Division of Drinking Water.

(c) Chlorine, when used in the distribution system, shall be added in sufficient quantity to achieve either "breakpoint" and yield a detectable free chlorine residual or a detectable combined chlorine residual in the distribution system at points to be determined by the Executive Secretary. Residual checks shall be taken daily by the operator of any system using disinfectants. The Executive Secretary may, however, reduce the frequency of residual checks if he determines that this would be an unwarranted hardship on the water system operator and, furthermore, the disinfection equipment has a verified record of reliable operation. Suppliers, when checking for residuals, shall use test kits and methods which meet the requirements of the U.S. EPA. The "DPD" test method is recommended for free chlorine residuals. Information on the suppliers of this equipment is available from the Division of Drinking Water.

(2) New and Repaired Mains

(a) All new water mains shall meet the requirements of R309-550-6 with regard to materials of construction. All products in contact with culinary water shall comply with ANSI/NSF Standard 61.

(b) All new and repaired water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-92. The chlorine solution shall be flushed from the water main with potable water prior to the main being placed in use.

(c) All products used to recoat the interiors of storage structures and which may come in contact with culinary water shall comply with ANSI/NSF Standard 61.

(3) Reservoir Maintenance and Disinfection

After a reservoir has been entered for maintenance or re-coating, it shall be disinfected prior to being placed into service. Procedures given in AWWA Standard C651-92 shall be followed in this regard.

(4) Spring Collection Area Maintenance

(a) Spring collection areas shall be periodically cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Executive Secretary. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product manufacturer certifies that no harmful substance will be imparted to the water; and 3) only when spring development meets the requirements of these rules (see R309-515-7).

(5) Security

All water system facilities such as spring junction boxes, well houses, reservoirs, and treatment facilities shall be secure.

(6) Seasonal Operation

Water systems operated seasonally shall be disinfected and flushed according to the techniques given in AWWA Standard C651-92 and C652-92 prior to each season's use. A satisfactory bacteriologic sample shall be achieved prior to use. During the non-use period, care shall be taken to close all openings into the system.

(7) Pump Lubricants

All oil lubricated pumps for culinary wells shall utilize mineral oils suitable for human consumption as determined by the Executive Secretary. To assure proper performance, and to prevent the voiding of any warranties which may be in force, the water supplier should confirm with individual pump manufacturers that the oil which is selected will have the necessary properties to perform satisfactorily.

R309-105-11. Operator Certification.

All community and non-transient non-community water systems or any public system that employs treatment techniques for surface water or ground water under the direct influence of surface water shall have an appropriately certified operator in

accordance with the requirements of these rules. Refer to R309-300, Certification Rules for Water Supply Operators, for specific requirements.

R309-105-12. Cross Connection Control.

(1) The water supplier shall not allow a connection to his system which may jeopardize its quality and integrity. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of Chapter 6 of the 2006 International Plumbing Code and its amendments as adopted by the Department of Commerce under R156-56 shall be met with respect to cross connection control and backflow prevention.

(2) Each water system shall have a functioning cross connection control program. The program shall consist of five designated elements documented on an annual basis. The elements are:

(a) a legally adopted and functional local authority to enforce a cross connection control program (i.e., ordinance, bylaw or policy);

(b) providing public education or awareness material or presentations;

(c) an operator with adequate training in the area of cross connection control or backflow prevention;

(d) written records of cross connection control activities, such as, backflow assembly inventory; and

(e) test history and documentation of on-going enforcement (hazard assessments and enforcement actions) activities.

(3) Suppliers shall maintain, as proper documentation, an inventory of each pressure atmospheric vacuum breaker, double check valve, reduced pressure zone principle assembly, and high hazard air gap used by their customers, and a service record for each such assembly.

(4) Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work as specified in R309-305. Suppliers shall maintain, as proper documentation, records of these inspections. This testing responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the device tested.

(5) Suppliers serving areas also served by a pressurized irrigation system shall prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code.

R309-105-13. Finished Water Quality.

All public water systems are required to monitor their water according to the requirements of R309-205, R309-210 and R309-215 to determine if the water quality standards of R309-200 have been met. Water systems are also required to keep records and, under certain circumstances, give public notice as required in R309-220.

R309-105-14. Operational Reports.

(1) Treatment techniques for acrylamide and epichlorohydrin.

(a) Each public water system shall certify annually in writing to the Executive Secretary (using third party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified in R309-215-8(2)(c).

(b) Certifications may rely on manufacturers data.

(2)(a) All water systems using chemical addition or specialized equipment for the treatment of drinking water shall regularly complete operational reports. This information shall be evaluated to confirm that the treatment process is being done properly, resulting in successful treatment.

(b) The information to be provided, and the frequency at which it is to be gathered and reported, will be determined by the Executive Secretary.

R309-105-15. Annual Reports.

All community water systems shall be required to complete annual report forms furnished by the Division of Drinking Water. The information to be provided should include: the status of all water system projects started during the previous year; water demands met by the system; problems experienced; and anticipated projects.

R309-105-16. Reporting Test Results.

(1) If analyses are made by certified laboratories other than the state laboratory, these results shall be forwarded to the Division as follows:

(a) The supplier shall report to the Division the analysis of water samples which fail to comply with the Primary Drinking Water Standards of R309-200. Except where a different reporting period is specified in R309-205, R309-210 or R309-215, this report shall be submitted within 48 hours after the supplier receives the report from his lab. The Division may be reached at (801)536-4200.

(b) Monthly summaries of bacteriologic results shall be submitted within ten days following the end of each month.

(c) All results of TTHM samples shall be reported to the Division within 10 days of receipt of analysis for systems monitoring pursuant to R309-210-9.

(d) For all samples other than samples showing unacceptable results, bacteriologic samples or TTHM samples, the time between the receipt of the analysis and the reporting of the results to the Division shall not exceed 40 days.

(e) Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

(2) Disinfection byproducts, maximum residual disinfectant levels and disinfection byproduct precursors and enhanced coagulation or enhanced softening. This section applies to the reporting requirements of R309-210-8, R309-215-12 and R309-215-13. For the reporting requirements of R309-210-9, R309-210-10 and R309-215-15 are contained within R309-210-9, R309-210-10 and R309-215-15, respectively.

(a) Systems required to sample quarterly or more frequently shall report to the State within 10 days after the end of each quarter in which samples were collected. Systems required to sample less frequently than quarterly shall report to the State within 10 days after the end of each monitoring period in which samples were collected. The Executive Secretary may choose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information.

(b) Disinfection byproducts. Systems shall report the information specified.

(i) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) on a quarterly or more frequent basis shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of all samples taken in the last quarter.

(D) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters.

(E) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(ii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than quarterly (but at least annually) shall report:

(A) The number of samples taken during the last year.

(B) The location, date, and result of each sample taken during the last monitoring period.

(C) The arithmetic average of all samples taken over the last year.

(D) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than annually shall report:

(A) The location, date, and result of the last sample taken.

(B) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iv) Systems monitoring for chlorite under the requirements of R309-210-8(2) shall report:

(A) The number of entry point samples taken each month for the last 3 months.

(B) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter.

(C) For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system.

(D) Whether, based on R309-210-8(6)(b)(ii), the MCL was violated.

(v) System monitoring for bromate under the requirements of R309-210-8(2) shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year.

(D) Whether, based on R309-210-8(6)(b)(iii), the MCL was violated.

(c) Disinfectants. Systems shall report the information specified to the Executive Secretary within ten days after the end of each month the system serves water to the public, except as otherwise noted:

(i) Systems monitoring for chlorine or chloramines under the requirements of R309-210-8(3)(a) shall report and certify, by signing the report form provided by the Executive Secretary, that all the information provided is accurate and correct and that any chemical introduced into the drinking water complies with ANSI/NSF Standard 60:

(A) The number of samples taken during each month of the last quarter.

(B) The monthly arithmetic average of all samples taken in each month for the last 12 months.

(C) The arithmetic average of all monthly averages for the last 12 months.

(D) The additional data required in R309-210-8(3)(a)(ii).

(E) Whether, based on R309-210-8(6)(c)(i), the MRDL was violated.

(ii) Systems monitoring for chlorine dioxide under the requirements of R309-210-8(3) shall report:

(A) The dates, results, and locations of samples taken during the last quarter.

(B) Whether, based on R309-210-8(6)(c)(ii), the MRDL was violated.

(C) Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

(d) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Systems shall report the information specified.

(i) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and required to meet the enhanced coagulation or enhanced softening requirements in R309-215-13(2)(b) or (c) shall report:

(A) The number of paired (source water and treated water) samples taken during the last quarter.

(B) The location, date, and results of each paired sample and associated alkalinity taken during the last quarter.

(C) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal.

(D) Calculations for determining compliance with the TOC percent removal requirements, as provided in R309-215-13(3)(a).

(E) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in R309-215-13(2) for the last four quarters.

(ii) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and meeting one or more of the alternative compliance criteria in R309-215-13(1)(b) or (c) shall report:

(A) The alternative compliance criterion that the system is using.

(B) The number of paired samples taken during the last quarter.

(C) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter.

(D) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in R309-215-13(1)(b)(i) or (iii) or of treated water TOC for systems meeting the criterion in R309-215-13(1)(b)(ii).

(E) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in R309-215-13(1)(b)(v) or of treated water SUVA for systems meeting the criterion in R309-215-13(1)(b)(vi).

(F) The running annual average of source water alkalinity for systems meeting the criterion in R309-215-13(1)(b)(iii) and of treated water alkalinity for systems meeting the criterion in R309-215-13(1)(c)(i).

(G) The running annual average for both TTHM and HAA5 for systems meeting the criterion in R309-215-13(1)(b)(iii) or (iv).

(H) The running annual average of the amount of magnesium hardness removal (as $CaCO_3$, in mg/L) for systems meeting the criterion in R309-215-13(1)(c)(ii).

(I) Whether the system is in compliance with the particular alternative compliance criterion in R309-215-13(1)(b) or (c).

(3) The public water system, within 10 days of completing the public notification requirements under R309-220 for the initial public notice and any repeat notices, shall submit to the Division a certification that it has fully complied with the public notification regulations. The public water system shall include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.

(4) All samples taken in accordance with R309-215-6 shall be submitted within 10 days following the end of the operational period specified for that particular treatment. Finished water samples results for the contaminant of concern that exceed the Primary Drinking Water Standards of R309-200, shall be reported to the Division within 48 hours after the supplier receives the report. The Division may be reached at (801) 536-4000.

(5) Documentation of operation and maintenance for point-of-use or point-of -entry treatment units shall be provided to the Division annually. The Division shall receive the documentation by January 31 annually.

R309-105-17. Record Maintenance.

All public water systems shall retain on their premises or at convenient location near their premises the following records:

(1) Records of microbiological analyses and turbidity analyses made pursuant to this Section shall be kept for not less than five years. Records of chemical analyses made pursuant to this Section shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

(a) The date, place and time of sampling, and the name of the person who collected the sample;

(b) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample or other special purpose sample.

(c) Date of analysis;

(d) Laboratory and person responsible for performing analysis;

(e) The analytical technique/method used; and

(f) The results of the analysis.

(2) Lead and copper recordkeeping requirements.

(a) Any water system subject to the requirements of R309-210-6 shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Executive Secretary determinations, and any other information required by R309-210-6.

(b) Each water system shall retain the records required by this section for no fewer than 12 years.

(3) Records of action taken by the system to correct violations of primary drinking water regulations shall be kept for a period not less than three years after the last action taken with respect to the particular violation involved.

(4) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, State or Federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.

(5) Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

(6) Records that concern the tests of a backflow prevention assembly and location shall be kept by the system for a minimum of not less than five years from the date of the test.

(7) Copies of public notices issued pursuant to R309-220 and certifications made to the Executive Secretary agency pursuant to R309-105-16 shall be kept for three years after issuance.

(8) Copies of monitoring plans developed pursuant to these rules shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under R309-105-17(1), except as otherwise specified. In all cases the monitoring plans shall be kept as long as the any associated report.

(9) A water system must retain a complete copy of your IDSE report submitted under this section for 10 years after the date that you submitted your IDSE report. If the Executive Secretary modifies the R309-210-10 monitoring requirements that you recommended in your IDSE report or if the Executive Secretary approves alternative monitoring locations, you must keep a copy of the Executive Secretary's notification on file for 10 years after the date of the Executive Secretary's notification. You must make the IDSE report and any Executive Secretary notification available for review by the Executive Secretary or the public.

(10) A water system must retain a complete copy of its 40/30 certification submitted under this R309-210-9 for 10 years after the date that you submitted your certification. You must make the certification, all data upon which the certification is based, and any Executive Secretary notification available for review by the Executive Secretary or the public.

(11) A water subject to the disinfection profiling requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

(12) A water system subject to the disinfection benchmarking requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

R309-105-18. Emergencies.

(1) The Executive Secretary or the local health department shall be informed by telephone by a water supplier of any "emergency situation". The term "emergency situation" includes the following:

(a) The malfunction of any disinfection facility such that a detectable residual cannot be maintained at all points in the distribution system.

(b) The malfunction of any "complete" treatment plant such that a clearwell effluent turbidity greater than 5 NTU is maintained longer than fifteen minutes.

(c) Muddy or discolored water (which cannot be explained by air entrainment or re-suspension of sediments normally deposited within the distribution system) is experienced by a significant number of individuals on a system.

(d) An accident has occurred which has, or could have, permitted the entry of untreated surface water and/or other contamination into the system (e.g. break in an unpressurized transmission line, flooded spring area, chemical spill, etc.)

(e) A threat of sabotage has been received by the water supplier or there is evidence of vandalism or sabotage to any public drinking water supply facility which may affect the quality of the delivered water.

(f) Any instance where a consumer reports becoming sick by drinking from a public water supply and the illness is substantiated by a doctor's diagnosis (unsubstantiated claims should also be reported to the Division of Drinking Water, but this is not required).

(2) If an emergency situation exists, the water supplier shall then contact the Division in Salt Lake City within eight hours. Division personnel may be reached at all times through 801-536-4123.

(3) All suppliers are advised to develop contingency plans to cope with possible emergency situations. In many areas of the state the possibility of earthquake damage shall be realistically considered.

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R309. Environmental Quality, Drinking Water.
R309-110. Administration: Definitions.
R309-110-1. Purpose.

The purpose of this rule is to define certain terms and expressions that are utilized throughout all rules under R309. Collectively, those rules govern the administration, monitoring, operation and maintenance of public drinking water systems as well as the design and construction of facilities within said systems.

R309-110-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-110-3. Acronyms.

As used in R309:
"AF" means Acre Foot.
"AWOP" means Area Wide Optimization Program.
"AWWA" means American Water Works Association.
"BAT" means Best Available Technology.
"C" means Residual Disinfectant Concentration.
"CCP" means Composite Correction Program.
"CCR" means Consumer Confidence Report.
"CEU" means Continuing Education Unit.
"CFE" means Combined Filter Effluent.
"CFR" means Code of Federal Regulations.
"cfs" means Cubic Feet Per Second.
"CPE" means Comprehensive Performance Evaluation.
"CT" means Residual Concentration multiplied by Contact Time.
"CTA" means Comprehensive Technical Assistance.
"CWS" means Community Water System.
"DBPs" means Disinfection Byproducts.
"DE" means Diatomaceous Earth.
"DTF" means Data Transfer Format.
"DWSP" means Drinking Water Source Protection.
"EP" means Entry Point.
"EPA" means Environmental Protection Agency.
"ERC" means Equivalent Residential Connection.
"FBRR" means Filter Backwash Recycling Rule.
"fps" means Feet Per Second
"FR" means Federal Register.
"gpd" means Gallons Per Day.
"gpm" means Gallons Per Minute.
"gpm/sf" means Gallons Per Minute Per Square Foot.
"GWR" means Ground Water Rule.
"GWUDI" means Ground Water Under Direct Influence of Surface Water.
"HAA5s" means Haloacetic Acids (Five).
"HPC" means Heterotrophic Plate Count.
"ICR" means Information Collection Rule of 40 CRF 141 subpart M.
"IESWTR" means Interim Enhanced Surface Water Treatment Rule.
"IFE" means Individual Filter Effluent.
"LT1ESWTR" means Long Term 1 Enhanced Surface Water Treatment Rule.
"LT2ESWTR" means Long Term 2 Enhanced Surface Water Treatment Rule.
"MCL" means Maximum Contaminant Level.
"MCLG" means Maximum Contaminant Level Goal.
"M and R" means Monitoring and Reporting.
"MDBP" means Microbial-Disinfection Byproducts.
"M/DBP Cluster" means Microbial-Disinfectants/Disinfection Byproducts Cluster.
"MG" means Million Gallons.
"MGD" means Million Gallons Per Day.
"mg/L" means Milligrams Per Liter
"MRDL" means Maximum Residual Disinfectant Level.
"MRDLG" means Maximum Residual Disinfectant Level Goal.
"NCWS" means Non-Community Water System.
"NTNC" means Non-Transient Non-Community.
"NTU" means Nephelometric Turbidity Unit.
"PN" means Public Notification.
"POE" means Point-of-Entry.
"POU" means Point-of-Use.
"PWS" means Public Water System.
"PWS-ID" means Public Water System Identification Number.
"RTC" means Return to Compliance.
"SDWA" means Safe Drinking Water Act.
"SDWIS/FED" means Safe Drinking Water Information System/Federal Version.
"SDWIS/STATE" means Safe Drinking Water Information System/State Version.
"SNC" means Significant Non-Compliance.
"Stage 1 DBPR" means Stage 1 Disinfectants and Disinfection Byproducts Rule.
"Stage 2 DBPR" means Stage 2 Disinfectants and Disinfection Byproducts Rule.
"Subpart H" means A PWS using SW or GWUDI.
"Subpart P" means A PWS using SW or GWUDI and serving at least 10,000 people.
"Subpart S" means Provisions of 40 CRF 141 subpart S commonly referred to as the Information Collection Rule.
"Subpart T" means A PWS using SW or GWUDI and serving less than 10,000 people.
"SUVA" means Specific Ultraviolet Absorption.
"SW" means Surface Water.
"SWAP" means Source Water Assessment Program.
"SWTR" means Surface Water Treatment Rule.
"T" means Contact Time.
"TA" means Technical Assistance.
"TCR" means Total Coliform Rule.
"TNCWS" means Transient Non-Community Water System.
"TNTC" means Too Numerous To Count.
"TOC" means Total Organic Carbon.
"TT" means Treatment Technique.
"TTHM" means Total Trihalomethanes.
"UAC" means Utah Administrative Code.
"UPDWR" means Utah Public Drinking Water Rules (R309 of the UAC).
"WCP" means Watershed Control Program.
"WHP" means Wellhead Protection.

R309-110-4. Definitions.

As used in R309:
"Action Level" means the concentration of lead or copper in drinking water tap samples (0.015 mg/l for lead and 1.3 mg/l for copper) which determines, in some cases, the corrosion treatment, public education and lead line replacement requirements that a water system is required to complete.
"AF" means acre foot and is the volume of water required to cover an acre to a depth of one foot (one AF is equivalent to 325,851 gallons).
"Air gap" The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, catch basin, plumbing fixture or other device and the flood level rim of the receptacle. This distance shall be two times the diameter of the effective opening for openings greater than one inch in diameter where walls or obstructions are spaced from the nearest inside edge of the pipe opening a distance greater than three times the diameter of the

effective openings for a single wall, or a distance greater than four times the diameter of the effective opening for two intersecting walls. This distance shall be three times the diameter of the effective opening where walls or obstructions are closer than the distances indicated above.

"ANSI/NSF" refers to the American National Standards Institute and NSF International. NSF International has prepared at least two health effect standards dealing with treatment chemicals added to drinking water and system components that will come into contact with drinking water, these being Standard 60 and Standard 61. The American National Standards Institute acts as a certifying agency, and determines which laboratories may certify to these standards.

"Approval" unless indicated otherwise, shall be taken to mean a written statement of acceptance from the Executive Secretary.

"Approved" refers to a rating placed on a system by the Division and means that the public water system is operating in substantial compliance with all the Rules of R309.

"Average Yearly Demand" means the amount of water delivered to consumers by a public water system during a typical year, generally expressed in MG or AF.

"AWWA" refers to the American Water Works Association located at 6666 West Quincy Avenue, Denver, Colorado 80235. Reference within these rules is generally to a particular Standard prepared by AWWA and which has completed the ANSI approval process such as ANSI/AWWA Standard C651-92 (AWWA Standard for Disinfecting Water Mains).

"Backflow" means the undesirable reversal of flow of water or mixtures of water and other liquids, gases, or other substances into the distribution pipes of the potable water supply from any source. Also see backsiphonage, backpressure and cross-connection.

"Backpressure" means the phenomena that occurs when the customer's pressure is higher than the supply pressure, This could be caused by an unprotected cross connection between a drinking water supply and a pressurized irrigation system, a boiler, a pressurized industrial process, elevation differences, air or steam pressure, use of booster pumps or any other source of pressure. Also see backflow, backsiphonage and cross connection.

"Backsiphonage" means a form of backflow due to a reduction in system pressure which causes a subatmospheric or negative pressure to exist at a site or point in the water system. Also see backflow and cross-connection.

"Bag Filters" are pressure-driven separation devices that remove particle matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

"Bank Filtration" is a water treatment process that uses a well to recover surface water that has naturally infiltrated into ground water through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

"Best Available Technology" (BAT) means the best technology, treatment techniques, or other means which the Executive Secretary finds, after examination under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting MCLs for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon for all these chemicals except vinyl chloride. Central treatment using packed tower aeration is also identified as BAT for synthetic organic chemicals.

"Board" means the Drinking Water Board.

"Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation fo the State.

"Breakpoint Chlorination" means addition of chlorine to water until the chlorine demand has been satisfied. At this point, further addition of chlorine will result in a free residual chlorine that is directly proportional to the amount of chlorine added beyond the breakpoint.

"C" is short for "Residual Disinfectant Concentration."

"Capacity Development" means technical, managerial, and financial capabilities of the water system to plan for, achieve, and maintain compliance with applicable drinking water standards.

"Cartridge filters" are pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

"cfs" means cubic feet per second and is one way of expressing flowrate (one cfs is equivalent to 448.8 gpm).

"Class" means the level of certification of Backflow Prevention Technician (Class I, II or III).

"Coagulation" is the process of destabilization of the charge (predominantly negative) on particulates and colloids suspended in water. Destabilization lessens the repelling character of particulates and colloids and allows them to become attached to other particles so that they may be removed in subsequent processes. The particulates in raw waters (which contribute to color and turbidity) are mainly clays, silt, viruses, bacteria, fulvic and humic acids, minerals (including asbestos, silicates, silica, and radioactive particles), and organic particulate.

"Collection area" means the area surrounding a ground-water source which is underlain by collection pipes, tile, tunnels, infiltration boxes, or other ground-water collection devices.

"Combined distribution system" is the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

"Commission" means the Operator Certification Commission.

"Community Water System" (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Compliance cycle" means the nine-year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle began January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; the third begins January 1, 2011 and ends December 31, 2019.

"Compliance period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period ran from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; and the third is from January 1, 1999 to December 31, 2001.

"Comprehensive Performance Evaluation" (CPE) is a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with these rules, the comprehensive performance evaluation must consist of at least the following

components: Assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

"Confirmed SOC contamination area" means an area surrounding and including a plume of SOC contamination of the soil or water which previous monitoring results have confirmed. The area boundaries may be determined by measuring 3,000 feet horizontally from the outermost edges of the confirmed plume. The area includes deeper aquifers even though only the shallow aquifer is the one contaminated.

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion of the filtration area in which discrete bacterial colonies can not be distinguished.

"Consecutive system" is a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system or one or more consecutive systems.

"Contaminant" means any physical, chemical biological, or radiological substance or matter in water.

"Continuing Education Unit" (CEU) means ten contact hours of participation in, and successful completion of, an organized and approved continuing education experience under responsible sponsorship, capable direction, and qualified instruction. College credit in approved courses may be substituted for CEUs on an equivalency basis.

"Conventional Surface Water Treatment" means a series of processes including coagulation, flocculation, sedimentation, filtration and disinfection resulting in substantial particulate removal and inactivation of pathogens.

"Controls" means any codes, ordinances, rules, and regulations that a public water system can cite as currently in effect to regulate potential contamination sources; any physical conditions which may prevent contaminants from migrating off of a site and into surface or ground water; and any site with negligible quantities of contaminants.

"Corrective Action" refers to a rating placed on a system by the Division and means a provisional rating for a public water system not in compliance with the Rules of R309, but making all the necessary changes outlined by the Executive Secretary to bring them into compliance.

"Corrosion inhibitor" means a substance capable of reducing the corrosiveness of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Criteria" means the conceptual standards that form the basis for DWSP area delineation to include distance, ground-water time of travel, aquifer boundaries, and ground-water divides.

"Criteria threshold" means a value or set of values selected to represent the limits above or below which a given criterion will cease to provide the desired degree of protection.

"Cross-Connection" means any actual or potential connection between a drinking (potable) water system and any other source or system through which it is possible to introduce into the public drinking water system any used water, industrial fluid, gas or substance other than the intended potable water. For example, if you have a pump moving non-potable water and hook into the drinking water system to supply water for the pump seal, a cross-connection or mixing may lead to contamination of the drinking water. Also see backsiphonage, backpressure and backflow.

"Cross Connection Control Program" means the program administered by the public water system in which cross connections are either eliminated or controlled.

"Cross Connection Control Commission" means the duly constituted advisory subcommittee appointed by the Board to advise the Board on Backflow Technician Certification and the Cross Connection Control Program of Utah.

"CT" or "CT_{calc}" is the product of "residual disinfectant concentration" (C) in mg/l determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T." If a public water system applies disinfectant at more than one point prior to the first customer, the summation of each CT value for each disinfectant sequence before or at the first customer determines the total percent inactivation or "Total Inactivation Ratio." In determining the Total Inactivation Ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point(s).

"$CT_{req'd}$" is the CT value required when the log reduction credit given the filter is subtracted from the (3-log) inactivation requirement for Giardia lamblia or the (4-log) inactivation requirement for viruses.

"$CT_{99.9}$" is the CT value required for 99.9 percent (3-log) inactivation of Giardia lamblia cysts. $CT_{99.9}$ for a variety of disinfectants and conditions appear in Tables 1.1-1.6, 2.1, and 3.1 of Section 141.74(b)(3) in the code of Federal Regulations (also available from the Division).

"Designated person" means the person appointed by a public water system to ensure that the requirements of their Drinking Water Source Protection Plan(s) for ground water sources and/or surface water sources are met.

"Desired Design Discharge Rate" means the discharge rate selected for the permanent pump installed in a public drinking water well source. This pumping rate is selected by the water system owner or engineer and can match or be the same rate utilized during the constant rate pump test required by R309-515 and R309-600 to determine delineated protection zones. For consideration of the number of permanent residential connections or ERC's that a well source can support (see Safe Yield) the Division will consider 2/3 of the test pumping rate as the safe yield.

"Direct Employment" means that the operator is directly compensated by the drinking water system to operate that drinking water system.

"Direct Filtration" means a series of processes including coagulation and filtration, but excluding sedimentation, resulting in substantial particulate removal.

"Direct Responsible Charge" means active on-site control and management of routine maintenance and operation duties. A person in direct responsible charge is generally an operator of a water treatment plant or distribution system who independently makes decisions during normal operation which can affect the sanitary quality, safety, and adequacy of water delivered to customers. In cases where only one operator is employed by the system, this operator shall be considered to be in direct responsible charge.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income which is less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax commission from federal individual income tax returns excluding zero exemptions returns.

"Discipline" means type of certification (Distribution or Treatment).

"Disinfectant Contact Time" ("T" in CT calculations) means the time in minutes that it takes water to move from the point of disinfectant application or the previous point of

disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured. Where only one "C" is measured, "T" is the time in minutes that it takes water to move from the point of disinfectant application to a point before or at where residual disinfectant concentration ("C") is measured. Where more than one "C" is measured, "T" is (a) for the first measurement of "C," the time in minutes that it takes water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured and (b) for subsequent measurements of "C," the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines must be calculated by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

"Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents (see also Primary Disinfection and Secondary Disinfection).

"Disinfection profile" is a summary of daily Giardia lamblia inactivation through the treatment plant.

"Distribution System" means the use of any spring or well source, distribution pipelines, appurtenances, and facilities which carry water for potable use to consumers through a public water supply. Systems which chlorinate groundwater are in this discipline.

"Distribution System Manager" means the individual responsible for all operations of a distribution system.

"Division" means the Utah Division of Drinking Water, who acts as staff to the Board and is also part of the Utah Department of Environmental Quality.

"Dose Equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission of Radiological Units and Measurements (ICRU).

"Drinking Water" means water that is fit for human consumption and meets the quality standards of R309-200. Common usage of terms such as culinary water, potable water or finished water are synonymous with drinking water.

"Drinking Water Project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses which has at least fifteen service connections or serves an average of twenty-five individuals daily for at least sixty days of the year and includes collection, treatment, storage, and distribution facilities under the control of the operator and used primarily with the system and collection, pretreatment or storage facilities used primarily in connection with the system but not under such control.

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project.

"Drinking Water Regional Planning" means a county wide water plan, administered locally by a coordinator, who facilitates the input of representatives of each public water system in the county with a selected consultant, to determine how each public water system will either collectively or individually comply with source protection, operator certification, monitoring (including consumer confidence reports), capacity development (including technical, financial and managerial aspects), environmental issues, available funding and related studies.

"Dual sample set" is a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an IDSE under R309-210-9 and determining compliance with the TTHM and HAA5 MCLs under R309-210-10.

"DWSP Program" means the program to protect drinking water source protection zones and management areas from contaminants that may have an adverse effect on the health of persons.

"DWSP Zone" means the surface and subsurface area surrounding a ground-water or surface water source of drinking water supplying a PWS, over which or through which contaminants are reasonably likely to move toward and reach such water source.

"Emergency Storage" means that storage tank volume which provides water during emergency situations, such as pipeline failures, major trunk main failures, equipment failures, electrical power outages, water treatment facility failures, source water supply contamination, or natural disasters.

"Engineer" means a person licensed under the Professional Engineers and Land Surveyors Licensing Act, 58-22 of the Utah Code, as a "professional engineer" as defined therein.

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

"Equalization Storage" means that storage tank volume which stores water during periods of low demand and releases the water under periods of high demand. Equalization storage provides a buffer between the sources and distribution for the varying daily water demands. Typically, water demands are high in the early morning or evening and relatively low in the middle of the night. A rule-of-thumb for equalization storage volume is that it should be equal to one average day's use.

"Equivalent Residential Connection" (ERC) is a term used to evaluate service connections to consumers other than the typical residential domicile. Public water system management is expected to review annual metered drinking water volumes delivered to non-residential connections and estimate the equivalent number of residential connections that these represent based upon the average of annual metered drinking water volumes delivered to true single family residential connections. This information is utilized in evaluation of the system's source and storage capacities (refer to R309-510).

"Executive Secretary" means the Executive Secretary of the Board as appointed and with authority outlined in 19-4-106 of the Utah Code.

"Existing ground-water source of drinking water" means a public supply ground-water source for which plans and specifications were submitted to the Division on or before July 26, 1993.

"Existing surface water source of drinking water" means a public supply surface water source for which plans and specifications were submitted to the Division on or before June 12, 2000.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"Filter profile" is a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts verus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

"Financial Assistance" means a drinking water project loan, credit enhancement agreement, interest buy-down agreement or hardship grant.

"Finished water" is water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of

corrosion control chemicals).

"Fire Suppression Storage" means that storage tank volume allocated to fire suppression activities. It is generally determined by the requirements of the local fire marshal, expressed in gallons, and determined by the product of a minimum flowrate in gpm and required time expressed in minutes.

"First draw sample" means a one-liter sample of tap water, collected in accordance with an approved lead and copper sampling site plan, that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

"Flash Mix" is the physical process of blending or dispersing a chemical additive into an unblended stream. Flash Mixing is used where an additive needs to be dispersed rapidly (within a period of one to ten seconds). Common usage of terms such as "rapid mix" or "initial mix" are synonymous with flash mix.

"Floc" means flocculated particles or agglomerated particles formed during the flocculation process. Flocculation enhances the agglomeration of destabilized particles and colloids toward settleable (or filterable) particles (flocs). Flocculated particles may be small (less than 0.1 mm diameter) micro flocs or large, visible flocs (0.1 to 3.0 mm diameter).

"Flocculation" means a process to enhance agglomeration of destabilized particles and colloids toward settleable (or filterable) particles (flocs). Flocculation begins immediately after destabilization in the zone of decaying mixing energy (downstream from the mixer) or as a result of the turbulence of transporting flow. Such incidental flocculation may be an adequate flocculation process in some instances. Normally flocculation involves an intentional and defined process of gentle stirring to enhance contact of destabilized particles and to build floc particles of optimum size, density, and strength to be subsequently removed by settling or filtration.

"Flowing stream" is a course of running water flowing in a definite channel.

"fps" means feet per second and is one way of expressing the velocity of water.

"G" is used to express the energy required for mixing and for flocculation. It is a term which is used to compare velocity gradients or the relative number of contacts per unit volume per second made by suspended particles during the flocculation process. Velocity gradients G may be calculated from the following equation: G = square root of the value(550 times P divided by u times V). Where: P = applied horsepower, u = viscosity, and V = effective volume.

"GAC10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with R309-210-10 MCLs under R309-200-5(3)(i)(A) shall be 120 days.

"GAC20" means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.

"Geologist" means a person licensed under the Professional Geologist Licensing Act, 58-76 of the Utah Code, as a "professional geologist" as defined therein.

"Geometric Mean" the geometric mean of a set of N numbers X_1, X_2, X_3,...., X_N is the Nth root of the product of the numbers.

"gpd" means gallons per day and is one way of expressing average daily water demands experienced by public water systems.

"gpm" means gallons per minute and is one way of expressing flowrate.

"gpm/sf" means gallons per minute per square foot and is one way of expressing flowrate through a surface area.

"Grade" means any one of four possible steps within a certification discipline of either water distribution or water treatment. Grade I indicates knowledge and experience requirements for the smallest type of public water supply. Grade IV indicates knowledge and experience levels appropriate for the largest, most complex type of public water supply.

"Gross Alpha Particle Activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

"Gross Beta Particle Activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

"ground water of high quality" means a well or spring producing water deemed by the Executive Secretary to be of sufficiently high quality that no treatment is required. Such sources shall have been designed and constructed in conformance with these rules, have been tested to establish that all applicable drinking water quality standards (as given in rule R309-200) are reliably and consistently met, have been deemed not vulnerable to natural or man-caused contamination, and the public water system management have established adequate protection zones and management policies in accordance with rule R309-600.

"ground water of low quality" means a well or spring which, as determined by the Executive Secretary, cannot reliably and consistently meet the drinking water quality standards described in R309-200. Such sources shall be deemed to be a low quality ground water source if any of the conditions outlined in subsection R309-505-8(1) exist. Ground water that is classified "UDI" is a subset of this definition and requires "conventional surface water treatment" or an acceptable alternative.

"Ground Water Source" means any well, spring, tunnel, adit, or other underground opening from or through which ground water flows or is pumped from subsurface water-bearing formations.

"Ground Water Under the Direct Influence of Surface Water" or "UDI" or "GWUDI" means any water beneath the surface of the ground with significant occurrence of insects or other macro organisms, algae, or large-diameter pathogens such as Giardia lamblia, or Cryptosporidium, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence will be determined for individual sources in accordance with criteria established by the Executive Secretary. The determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well or spring construction and geology with field evaluation.

"Haloacetic acids"(five) (HAA5) mean the sum of the concentrations in mg/L of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

"Hardship Grant" means a grant of monies to a political subdivision that meets the drinking water project loan considerations whose project is determined by the Board to not be economically feasible unless grant assistance is provided. A hardship grant may be authorized in the following forms:

(1) a Planning Advance which will be required to be repaid at a later date, to help meet project costs incident to planning to determine the economic, engineering and financial feasibility of a proposed project;

(2) a Design Advance which will be required to be repaid at a later date, to help meet project costs incident to design including, but not limited to, surveys, preparation of plans, working drawings, specifications, investigations and studies; or

(3) a Project Grant which will not be required to be repaid.

"Hardship Grant Assessment" means an assessment applied to loan recipients. The assessment shall be calculated as a

percentage of principal. Hardship grant assessment funds shall be subject to the requirements of UAC R309-700 for hardship grants.

"Hotel, Motel or Resort" shall include tourist courts, motor hotels, resort camps, hostels, lodges, dormitories and similar facilities, and shall mean every building, or structure with all buildings and facilities in connection, kept, used, maintained as, advertised as, or held out to the public to be, a place where living accommodations are furnished to transient guests or to groups normally occupying such facilities on a seasonal or short term basis.

"Hydrogeologic methods" means the techniques used to translate selected criteria and criteria thresholds into mappable delineation boundaries. These methods include, but are not limited to, arbitrary fixed radii, analytical calculations and models, hydrogeologic mapping, and numerical flow models.

"Initial compliance period" means the first full three-year compliance period which begins at least 18 months after promulgation, except for contaminants listed in R309-200-5(3)(a), Table 200-2 numbers 19 to 33; R309-200-5(3)(b), Table 200-3 numbers 19 to 21; and R309-200-5(1)(c), Table 200-1 numbers 1, 5, 8, 11 and 18, initial compliance period means the first full three-year compliance after promulgation for systems with 150 or more service connections (January 1993-December 1995), and first full three-year compliance period after the effective date of the regulation (January 1996-December 1998) for systems having fewer than 150 service connections.

"Intake", for the purposes of surface water drinking water source protection, means the device used to divert surface water and also the conveyance to the point immediately preceding treatment, or, if no treatment is provided, at the entry point to the distribution system.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and a political subdivision, for the purpose of reducing the cost of financing incurred by a political subdivision on bonds issued by the subdivision for drinking water project costs.

"Labor Camp" shall mean one or more buildings, structures, or grounds set aside for use as living quarters for groups of migrant laborers or temporary housing facilities intended to accommodate construction, industrial, mining or demolition workers.

"Lake / reservoir" refers to a natural or man made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

"Land management strategies" means zoning and non-zoning controls which include, but are not limited to, the following: zoning and subdivision ordinances, site plan reviews, design and operating standards, source prohibitions, purchase of property and development rights, public education programs, ground water monitoring, household hazardous waste collection programs, water conservation programs, memoranda of understanding, written contracts and agreements, and so forth.

"Land use agreement" means a written agreement, memoranda or contract wherein the owner(s) agrees not to locate or allow the location of uncontrolled potential contamination sources or pollution sources within zone one of new wells in protected aquifers or zone one of surface water sources. The owner(s) must also agree not to locate or allow the location of pollution sources within zone two of new wells in unprotected aquifers and new springs unless the pollution source agrees to install design standards which prevent contaminated discharges to ground water. This restriction must be binding on all heirs, successors, and assigns. Land use agreements must be recorded with the property description in the local county recorder's office. Refer to R309-600-13(2)(d).

Land use agreements for protection areas on publicly owned lands need not be recorded in the local county recorder office. However, a letter must be obtained from the Administrator of the land in question and meet the requirements described above.

"Large water system" for the purposes of R309-210-6 only, means a water system that serves more than 50,000 persons.

"Lead free" means, for the purposes of R309-210-6, when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead; when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead; and when used with respect to plumbing fittings and fixtures intended by the manufacturer to dispense water for human ingestion refers to fittings and fixtures that are in compliance with standards established in accordance with 42 U.S.C. 300 g-6(e).

"Lead service line" means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.

"Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

"Locational running annual average (LRAA)" is the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

"Major Bacteriological Routine Monitoring Violation" means that no routine bacteriological sample was taken as required by R309-210-5(1).

"Major Bacteriological Repeat Monitoring Violation" - means that no repeat bacteriological sample was taken as required by R309-210-5(2).

"Major Chemical Monitoring Violation" - means that no initial background chemical sample was taken as required in R309-515-4(5).

"Management area" means the area outside of zone one and within a two-mile radius where the Optional Two-mile Radius Delineation Procedure has been used to identify a protection area.

For wells, land may be excluded from the DWSP management area at locations where it is more than 100 feet lower in elevation than the total drilled depth of the well.

For springs and tunnels, the DWSP management area is all land at elevation equal to or higher than, and within a two-mile radius, of the spring or tunnel collection area. The DWSP management area also includes all land lower in elevation than, and within 100 horizontal feet, of the spring or tunnel collection area. The elevation datum to be used is the point of water collection. Land may also be excluded from the DWSP management area at locations where it is separated from the ground water source by a surface drainage which is lower in elevation than the spring or tunnel collection area.

"Man-Made Beta Particle and Photon Emitters" means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, "NBS Handbook 69," except the daughter products of thorium-232, uranium-235 and uranium-238.

"Maximum Contaminant Level" (MCL) means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

"Maximum residual disinfectant level" (MRDL) means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a PWS is in compliance with the MRDL when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a PWS is in

compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as MCLs pursuant to UT Code S 19-4-104. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in R309-200-5(3), operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections.

"Maximum residual disinfectant level goal" (MRDLG) means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are non-enforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

"Medium-size water system" for the purposes of R309-210-6 only, means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.

"Membrane filtration" is a pressure or vacuum driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes that common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

"Metropolitan area sources" means all sources within a metropolitan area. A metropolitan area is further defined to contain at least 3,300 year round residents. A small water system which has sources within a metropolitan system's service area, may have those sources classified as a metropolitan area source.

"MG" means million gallons and is one way of expressing a volume of water.

"MGD" means million gallons per day and is one way of expressing average daily water demands experienced by public water systems or the capacity of a water treatment plant.

"mg/L" means milligrams per liter and is one way of expressing the concentration of a chemical in water. At small concentrations, mg/L is synonymous with "ppm" (parts per million).

"Minor Bacteriological Routine Monitoring Violation" means that not all of the routine bacteriological samples were taken as required by R309-210-5(1).

"Minor Bacteriological Repeat Monitoring Violation" means that not all of the repeat bacteriological samples were taken as required by R309-210-5(2).

"Minor Chemical Monitoring Violation" means that the required chemical sample(s) was not taken in accordance with R309-205 and R309-210.

"Modern Recreation Camp" means a campground accessible by any type of vehicular traffic. The camp is used wholly or in part for recreation, training or instruction, social, religious, or physical education activities or whose primary purpose is to provide an outdoor group living experience. The site is equipped with permanent buildings for the purpose of sleeping, a drinking water supply under pressure, food service facilities, and may be operated on a seasonal or short term basis. These types of camps shall include but are not limited to privately owned campgrounds such as youth camps, church camps, boy or girl scout camps, mixed age groups, family group camps, etc.

"Near the first service connection" means one of the service connections within the first 20 percent of all service connections that are nearest to the treatment facilities.

"Negative Interest" means a loan having loan terms with an interest rate at less than zero percent. The repayment schedule for loans having a negative interest rate will be prepared by the Board.

"New ground water source of drinking water" means a public supply ground water source of drinking water for which plans and specifications are submitted to the Division after July 26, 1993.

"New surface water source of drinking water" means a public supply surface water source of drinking water for which plans and specifications are submitted to the Division after June 12, 2000.

"New Water System" means a system that will become a community water system or non-transient, non-community water system on or after October 1, 1999.

"Non-Community Water System" (NCWS) means a public water system that is not a community water system. There are two types of NCWS's: transient and non-transient.

"Non-distribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which a coliform-positive sample was taken.

"Nonpoint source" means any diffuse source of contaminants or pollutants not otherwise defined as a point source.

"Non-Transient Non-Community Water System" (NTNCWS) means a public water system that regularly serves at least 25 of the same nonresident persons per day for more than six months per year. Examples of such systems are those serving the same individuals (industrial workers, school children, church members) by means of a separate system.

"Not Approved" refers to a rating placed on a system by the Division and means the water system does not fully comply with all the Rules of R309 as measured by R309-400.

"NTU" means Nephelometric Turbidity Units and is an acceptable method for measuring the clarity of water utilizing an electronic nephelometer (see "Standard Methods for Examination of Water and Wastewater").

"Operator" means a person who operates, repairs, maintains, and is directly employed by a public drinking water system.

"Operator Certification Commission" means the Commission appointed by the Board as an advisory Commission on public water system operator certification.

"Operating Permit" means written authorization from the Executive Secretary to actually start utilizing a facility constructed as part of a public water system.

"Optimal corrosion control treatment" for the purposes of R309-210-6 only, means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

"Package Plants" refers to water treatment plants manufactured and supplied generally by one company which are reportedly complete and ready to hook to a raw water supply line. Caution, some plants do not completely comply with all requirements of these rules and will generally require additional equipment.

"PCBs" means a group of chemicals that contain polychlorinated biphenyl.

"Peak Day Demand" means the amount of water delivered to consumers by a public water system on the day of highest consumption, generally expressed in gpd or MGD. This peak day will likely occur during a particularly hot spell in the summer. In contrast, some systems associated with the skiing

industry may experience their "Peak Day Demand" in the winter.

"Peak Hourly Flow" means the maximum hourly flow rate from a water treatment plant and utilized when the plant is preparing disinfection profiling as called for in R309-215-14(2).

"Peak Instantaneous Demand" means calculated or estimated highest flowrate that can be expected through any water mains of the distribution network of a public water system at any instant in time, generally expressed in gpm or cfs (refer to section R309-510-9).

"Person" means an individual, corporation, company, association, partnership; municipality; or State, Federal, or tribal agency.

"Picocurie" (pCi) means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

"Plan Approval" means written approval, by the Executive Secretary, of contract plans and specifications for any public drinking water project which have been submitted for review prior to the start of construction (see also R309-500-7).

"Plant intake" refers to the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

"Plug Flow" is a term to describe when water flowing through a tank, basin or reactors moves as a plug of water without ever dispersing or mixing with the rest of the water flowing through the tank.

"Point of Disinfectant Application" is the point where the disinfectant is applied and water downstream of that point is not subject to re-contamination by surface water runoff.

"Point of Diversion"(POD) is the point at which water from a surface source enters a piped conveyance, storage tank, or is otherwise removed from open exposure prior to treatment.

"Point-of-Entry Treatment Device" means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

"Point-of-Use Treatment Device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

"Point source" means any discernible, confined, and discrete source of pollutants or contaminants, including but not limited to any site, pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, animal feeding operation with more than ten animal units, landfill, or vessel or other floating craft, from which pollutants are or may be discharged.

"Political Subdivision" means any county, city, town, improvement district, metropolitan water district, water conservancy district, special service district, drainage district, irrigation district, separate legal or administrative entity created under Title 11, Chapter 13, Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of Utah.

"Pollution source" means point source discharges of contaminants to ground or surface water or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in excess of "applicable threshold planning quantities" as specified in SARA Title III. Examples of possible pollution sources include, but are not limited to, the following: storage facilities that store the liquid forms of extremely hazardous substances, septic tanks, drain fields, class V underground injection wells, landfills, open dumps, landfilling of sludge and septage, manure piles, salt piles, pit privies, drain lines, and animal feeding operations with more than ten animal units.

The following definitions are part of R309-600 and clarify the meaning of "pollution source:"

(1) "Animal feeding operation" means a lot or facility where the following conditions are met: animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if they use a common area, or if they use a common system for the disposal of wastes.

(2) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(3) "Extremely hazardous substances" means those substances which are identified in the Sec. 302(EHS) column of the "TITLE III LIST OF LISTS - Consolidated List of Chemicals Subject to Reporting Under SARA Title III," (EPA 550-B-96-015). A copy of this document may be obtained from: NCEPI, PO Box 42419, Cincinnati, OH 45202. Online ordering is also available at http://www.epa.gov/ncepihom/orderpub.html.

"Potential contamination source" means any facility or site which employs an activity or procedure which may potentially contaminate ground or surface water. A pollution source is also a potential contamination source.

"ppm" means parts per million and is one way of expressing the concentration of a chemical in water. At small concentrations generally used, ppm is synonymous with "mg/l" (milligrams per liter).

"Practical Quantitation Level" (PQL) means the required analysis standard for laboratory certification to perform lead and copper analyses. The PQL for lead is .005 milligrams per liter and the PQL for copper is 0.050 milligrams per liter.

"Presedimentation" is a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

"Primary Disinfection" means the adding of an acceptable primary disinfectant during the treatment process to provide adequate levels of inactivation of bacteria and pathogens. The effectiveness is measured through "CT" values and the "Total Inactivation Ratio." Acceptable primary disinfectants are, chlorine, ozone, and chlorine dioxide (see also "CT" and "$CT_{99.9}$").

"Principal Forgiveness" means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan. The terms for principal forgiveness will be as directed by R309-705-8, and by the Board.

"Project Costs" include the cost of acquiring and constructing any drinking water project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way; engineering or architectural fees, legal fees, fiscal agent's and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the political subdivision, the Board or the Department of Environmental Quality, in connection with the issuance of obligation of the political subdivision to evidence any loan made to it under the law.

"Protected aquifer" means a producing aquifer in which the following conditions are met:

(1) A naturally protective layer of clay, at least 30 feet in thickness, is present above the aquifer;

(2) the PWS provides data to indicate the lateral continuity of the clay layer to the extent of zone two; and

(3) the public supply well is grouted with a grout seal that extends from the ground surface down to at least 100 feet below the surface, and for a thickness of at least 30 feet through the protective clay layer.

"Public Drinking Water Project" means construction, addition to, or modification of any facility of a public water system which may affect the quality or quantity of the drinking water (see also section R309-500-6).

"Public Water System" (PWS) means a system, either publicly or privately owned, providing water through constructed conveyances for human consumption and other domestic uses, which has at least 15 service connections or serves an average of at least 25 individuals daily at least 60 days out of the year and includes collection, treatment, storage, or distribution facilities under the control of the operator and used primarily in connection with the system, or collection, pretreatment or storage facilities used primarily in connection with the system but not under his control (see 19-4-102 of the Utah Code Annotated). All public water systems are further categorized into three different types, community (CWS), non-transient non-community (NTNCWS), and transient non-community (TNCWS). These categories are important with respect to required monitoring and water quality testing found in R309-205 and R309-210 (see also definition of "water system").

"Raw Water" means water that is destined for some treatment process that will make it acceptable as drinking water. Common usage of terms such as lake or stream water, surface water or irrigation water are synonymous with raw water.

"Recreational Home Developments" are subdivision type developments wherein the dwellings are not intended as permanent domiciles.

"Recreational Vehicle Park" means any site, tract or parcel of land on which facilities have been developed to provide temporary living quarters for individuals utilizing recreational vehicles. Such a park may be developed or owned by a private, public or non-profit organization catering to the general public or restricted to the organizational or institutional member and their guests only.

"Regional Operator" means a certified operator who is in direct responsible charge of more than one public drinking water system.

"Regionalized Water System" means any combination of water systems which are physically connected or operated or managed as a single unit.

"Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem" (mrem) is 1/1000 of a rem.

"Renewal Course" means a course of instruction, approved by the Subcommittee, which is a prerequisite to the renewal of a Backflow Technician's Certificate.

"Repeat compliance period" means any subsequent compliance period after the initial compliance period.

"Replacement well" means a public supply well drilled for the sole purpose of replacing an existing public supply well which is impaired or made useless by structural difficulties and in which the following conditions are met:

(1) the proposed well location shall be within a radius of 150 feet from an existing ground water supply well; and

(2) the PWS provides a copy of the replacement application approved by the State Engineer (refer to Section 73-3-28 of the Utah Code).

"Required reserve" means funds set aside to meet requirements set forth in a loan covenant/bond indenture.

"Residual Disinfectant Concentration" ("C" in CT calculations) means the concentration of disinfectant, measured in mg/L, in a representative sample of water.

"Restricted Certificate" means that the operator has qualified by passing an examination but is in a restricted certification status due to lack of experience as an operator.

"Roadway Rest Stop" shall mean any building, or buildings, or grounds, parking areas, including the necessary toilet, hand washing, water supply and wastewater facilities intended for the accommodation of people using such facilities while traveling on public roadways. It does not include scenic view or roadside picnic areas or other parking areas if these are properly identified

"Routine Chemical Monitoring Violation" means no routine chemical sample(s) was taken as required in R309-205, R309-210 and R309-215.

"Safe Yield" means the annual quantity of water that can be taken from a source of supply over a period of years without depleting the source beyond its ability to be replenished naturally in "wet years".

"Sanitary Seal" means a cap that prevents contaminants from entering a well through the top of the casing.

"scfm/sf" means standard cubic foot per minute per square foot and is one way of expressing flowrate of air at standard density through a filter or duct area.

"Secondary Disinfection" means the adding of an acceptable secondary disinfectant to assure that the quality of the water is maintained throughout the distribution system. The effectiveness is measured by maintaining detectable disinfectant residuals throughout the distribution system. Acceptable secondary disinfectants are chlorine, chloramine, and chlorine dioxide.

"Secondary Maximum Contaminant Level" means the advisable maximum level of contaminant in water which is delivered to any user of a public water system.

"Secretary to the Subcommittee" means that individual appointed by the Executive Secretary to conduct the business of the Subcommittee.

"Sedimentation" means a process for removal of solids before filtration by gravity or separation.

"Semi-Developed Camp" means a campground accessible by any type of vehicular traffic. Facilities are provided for both protection of site and comfort of users. Roads, trails and campsites are defined and basic facilities (water, flush toilets and/or vault toilets, tables, fireplaces or tent pads) are provided. These camps include but are not limited to National Forest campgrounds, Bureau of Reclamation campgrounds, and youth camps.

"Service Connection" means the constructed conveyance by which a dwelling, commercial or industrial establishment, or other water user obtains water from the supplier's distribution system. Multiple dwelling units such as condominiums or apartments, shall be considered to have a single service connection, if fed by a single line, for the purpose of microbiological repeat sampling; but shall be evaluated by the supplier as multiple "equivalent residential connections" for the purpose of source and storage capacities.

"Service Factor" means a rating on a motor to indicate an increased horsepower capacity beyond nominal nameplate capacity for occasional overload conditions.

"Service line sample" means a one-liter sample of water collected in accordance with R309-210-6(3)(b)(iii), that has been standing for at least 6 hours in a service line.

"Single family structure" for the purposes of R309-210-6 only, means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

"Small water system" means a public water system that serves 3,300 persons or fewer.

"Specialist" means a person who has successfully passed the written certification exam and meets the required

experience, but who is not in direct employment with a Utah public drinking water system.

"Stabilized drawdown" means that there is less than 0.5 foot of change in water level measurements in a pumped well for a minimum period of six hours.

"Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

"SOCs" means synthetic organic chemicals.

"Stabilized Drawdown" means the drawdown measurements taken during a constant-rate yield and drawdown test as outlined in subsection R309-515-14(10)(b) are constant (no change).

"Stock Tight" means a type of fence that can prevent the passage of grazing livestock through its boundary. An example of such fencing is provided by design drawing 02838-3 titled "Cattle Exclosure" designed by the U.S. Department of the Interior, Bureau of Land Management, Division of Technical Services (copies available from the Division).

"Subcommittee" means the Cross Connection Control Subcommittee.

"Supplier of water" means any person who owns or operates a public water system.

"Surface Water" means all water which is open to the atmosphere and subject to surface runoff (see also section R309-515-5(1)). This includes conveyances such as ditches, canals and aqueducts, as well as natural features.

"Surface Water Systems" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to filtration and disinfection (Federal SWTR subpart H) and the requirements of R309-215 "Monitoring and Water Quality: Treatment Plant Monitoring Requirements."

"Surface Water Systems (Large)" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to filtration and disinfection and serve a population of 10,000 or greater (Federal SWTR subpart P and L) and the requirements of R309-215 "Monitoring and Water Quality: Treatment Plant Monitoring Requirements."

"Surface Water Systems (Small)" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to filtration and disinfection and serve a population less than 10,000 (Federal SWTR subpart L, T and P (sanitary survey requirements)) and the requirements of R309-215 "Monitoring and Water Quality: Treatment Plant Monitoring Requirements."

"Susceptibility" means the potential for a PWS (as determined at the point immediately preceding treatment, or if no treatment is provided, at the entry point to the distribution system) to draw water contaminated above a demonstrated background water quality concentration through any overland or subsurface pathway. Such pathways may include cracks or fissures in or open areas of the surface water intake, and/or the wellhead, and/or the pipe/conveyance between the intake and the water distribution system or treatment.

"SUVA" means Specific Ultraviolet Absorption at 254 nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV_{254}) (in m^{-1}) by its concentration of dissolved organic carbon (DOC) (in mg/L).

"System with a single service connection" means a system which supplies drinking water to consumers via a single service line.

"T" is short for "Contact Time" and is generally used in conjunction with either the residual disinfectant concentration (C) in determining CT or the velocity gradient (G) in determining mixing energy GT.

"Ten State Standards" refers to the Recommended Standards For Water Works, 1997 by the Great Lakes Upper Mississippi River Board of State Public Health and Environmental Managers available from Health Education Services, A Division of Health Research Inc., P.O. Box 7126, Albany, New York 12224, (518)439-7286.

"Time of travel" means the time required for a particle of water to move in the producing aquifer from a specific point to a ground water source of drinking water. It also means the time required for a particle of water to travel from a specific point along a surface water body to an intake.

"Total Inactivation Ratio" is the sum of all the inactivation ratios calculated for a series of disinfection sequences, and is indicated or shown as: "Summation sign $(CT_{calc})/(CT_{req'd})$." A total inactivation ratio equal to or greater than 1.0 is assumed to provide the required inactivation of Giardia lamblia cysts. $CT_{calc}/CT_{99.9}$ equal to 1.0 provides 99.9 percent (3-log) inactivation, whereas CT_{calc}/CT_{90} equal to 1.0 only provides 90 percent (1-log) inactivation.

"Too numerous to count" (TNTC) means that the total number of bacterial colonies exceeds 200 on a 47 mm diameter membrane filter used for coliform detection.

"Total Organic Carbon" (TOC) means total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

"Total Trihalomethanes" (TTHM) means the MCL for trihalomethanes. This is the sum of four of ten possible isomers of chlorine/bromine/methane compounds, all known as trihalomethanes (THM). TTHM is defined as the arithmetic sum of the concentrations in micro grams per liter of only four of these (chloroform, bromodichloromethane, dibromochloromethane, and bromoform) rounded to two significant figures. This measurement is made by samples which are "quenched," meaning that a chlorine neutralizing agent has been added, preventing further THM formation in the samples.

"Training Coordinating Committee" means the voluntary association of individuals responsible for environmental training in the state of Utah.

"Transient Non-Community Water System" (TNCWS) means a non-community public water system that does not serve 25 of the same nonresident persons per day for more than six months per year. Examples of such systems are those, RV park, diner or convenience store where the permanent nonresident staff number less than 25, but the number of people served exceeds 25.

"Treatment Plant" means those facilities capable of providing any treatment to any waterserving a public drinking water system. (Examples would include but not be limited to disinfection, conventional surface water treatment, alternative surface water treatment methods, corrosion control methods, aeration, softening, etc.).

"Treatment Plant Manager" means the individual responsible for all operations of a treatment plant.

"Trihalomethanes" (THM) means any one or all members of this class of organic compounds.

"Trihalomethane Formation Potential" (THMFP) - these samples are collected just following disinfection and measure the highest possible TTHM value to be expected in the water distribution system. The formation potential is measured by not neutralizing the disinfecting agent at the time of collection, but storing the sample seven days at 25 degrees C prior to analysis. A chlorine residual must be present in these samples at the end of the seven day period prior to analysis for the samples to be considered valid for this test. Samples without a residual at the end of this period must be resampled if this test is desired.

"Turbidity Unit" refers to NTU or Nephelometric Turbidity Unit.

"Two-stage lime softening" is a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

"UDI" means under direct influence (see also "Ground Water Under the Direct Influence of Surface Water").

"Uncovered finished water storage facility" is a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens except residual disinfection and is directly open to the atmosphere.

"Unprotected aquifer" means any aquifer that does not meet the definition of a protected aquifer.

"Unregulated Contaminant" means a known or suspected disease causing contaminant for which no maximum contaminant level has been established.

"Unrestricted Certificate" means that a certificate of competency issued by the Executive Secretary when the operator has passed the appropriate level written examination and has met all certification requirements at the discipline and grade stated on the certificate.

"Virus" means a virus of fecal origin which is infectious to humans.

"Waterborne Disease Outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system, as determined by the appropriate local or State agency.

"Watershed" means the topographic boundary that is the perimeter of the catchment basin that contributes water through a surface source to the intake structure. For the purposes of surface water DWSP, if the topographic boundary intersects the state boundary, the state boundary becomes the boundary of the watershed.

"Water Supplier" means a person who owns or operates a public drinking water system.

"Water System" means all lands, property, rights, rights-of-way, easements and related facilities owned by a single entity, which are deemed necessary or convenient to deliver drinking water from source to the service connection of a consumer(s). This includes all water rights acquired in connection with the system, all means of conserving, controlling and distributing drinking water, including, but not limited to, diversion or collection works, springs, wells, treatment plants, pumps, lift stations, service meters, mains, hydrants, reservoirs, tanks and associated appurtenances within the property or easement boundaries under the control of or controlled by the entity owning the system.

In accordance with R309, certain water systems may be exempted from monitoring requirements, but such exemption does not extend to submittal of plans and specifications for any modifications considered a public drinking water project.

"Wellhead" means the physical structure, facility, or device at the land surface from or through which ground water flows or is pumped from subsurface, water-bearing formations.

"Wholesale system" is a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

"Zone of Influence" corresponds to area of the upper portion of the cone of depression as described in "Groundwater and Wells," second edition, by Fletcher G. Driscoll, Ph.D., and published by Johnson Division, St. Paul, Minnesota.

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R309. Environmental Quality, Drinking Water.
R309-210. Monitoring and Water Quality: Distribution System Monitoring Requirements.
R309-210-1. Purpose.

The purpose of this rule is to outline the monitoring requirements for public water systems with regard to their distribution systems.

R309-210-2. Authority.
R309-210-3. Definitions.
R309-210-4. General distribution system monitoring requirements.
R309-210-5. Microbiological Monitoring.
R309-210-6. Lead and Copper Monitoring.
R309-210-7. Asbestos Distribution System Monitoring.
R309-210-8. Disinfection Byproducts - Stage 1 Requirements.
R309-210-9. Disinfection Byproducts - Initial Distribution System Evaluations (IDSE).
R309-210-10. Disinfection Byproducts - Stage 2 Requirements.

R309-210-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-210-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-210-4. General.

(1) All public water systems are required to monitor their water to determine if they comply with the requirements for water quality stated in R309-200. In exceptional circumstances the Executive Secretary may modify the monitoring requirements given herein as is deemed appropriate.

(2) The Executive Secretary may determine compliance or initiate compliance actions based upon analytical results and other information compiled by authorized representatives.

(3) If the water fails to meet minimum standards, then certain public notification procedures must be carried out, as outlined in R309-220. Water suppliers must also keep analytical records in their possession, for a required length of time, as outlined in R309-105-17.

(4) All samples shall be taken at representative sites as specified herein for each contaminant or group of contaminants.

(5) For the purpose of determining compliance, samples may only be considered if they have been analyzed by the State of Utah primacy laboratory or a laboratory certified by the Utah State Health Laboratory.

(6) Measurements for pH, temperature, turbidity and disinfectant residual may, under the direction of the direct responsible operator, be performed by any water supplier or their representative.

(7) All samples must be marked either: routine, repeat, check or investigative before submission of such samples to a certified laboratory. Routine, repeat, and check samples shall be considered compliance purpose samples.

(8) All sample results can be sent to the Division of Drinking Water either electronically or in hard copy form.

(9) Lead and Copper data must be submitted to the Division of Drinking Water using forms provided by the Division.

(10) Unless otherwise required by the Board, the effective dates on which required monitoring shall be initiated are identical to the dates published in 40 CFR 141 on July 1, 2001 by the Office of the Federal Register.

(11) Exemptions from monitoring requirements shall only be granted in accordance with R309-105-5.

R309-210-5. Microbiological Monitoring.

(1) Routine Microbiological Monitoring Requirements Applicable to all public water systems (community, non-transient non-community and transient non-community).

(a) Community water systems shall monitor for total coliforms at a frequency based on the population served, as follows:

TABLE 210-1
TOTAL COLIFORM MONITORING FREQUENCY
FOR PUBLIC WATER SYSTEMS

Population served			Minimum number of samples per month
25	to	1,000	1
1,001	to	2,500	2
2,501	to	3,300	3
3,301	to	4,100	4
4,101	to	4,900	5
4,901	to	5,800	6
5,801	to	6,700	7
6,701	to	7,600	8
7,601	to	8,500	9
8,501	to	12,900	10
12,901	to	17,200	15
17,201	to	21,500	20
21,501	to	25,000	25
25,001	to	33,000	30
33,001	to	41,000	40
41,001	to	50,000	50
50,001	to	59,000	60
59,001	to	70,000	70
70,001	to	83,000	80
83,001	to	96,000	90
96,001	to	130,000	100
130,001	to	220,000	120
220,001	to	320,000	150
320,001	to	450,000	180
450,001	to	600,000	210
600,001	to	780,000	240
780,001	to	970,000	270
970,001	to	1,230,000	300
1,230,001	to	1,520,000	330
1,520,001	to	1,850,000	360
1,850,001	to	2,270,000	390
2,270,001	to	3,020,000	420
3,020,001	to	3,960,000	450
3,960,001	or	more	480

The 25 - 1,000 population figure includes public water systems which have at least 15 service connections, but serve fewer than 25 persons.

(b) Non-transient non-community water systems shall monitor for total coliforms as follows:

(i) A system using only ground water (except ground water under the direct influence of surface water) and serving 1,000 or fewer shall monitor each calendar quarter that the system provides water to the public.

(ii) A system using only ground water (except ground water under the direct influence of surface water) and serving more than 1,000 persons during any month shall monitor at the same frequency as a like-sized community water system, as specified in Table 210-1. The Executive Secretary may reduce the monitoring frequency for any month the system serves 1,000 persons or fewer. In no case may the required monitoring be reduced to less than once per calendar quarter.

(iii) A system using surface water, in total or in part, shall monitor at the same frequency as a like-sized community water system, as specified in Table 210-1.

(iv) A system using ground water under the direct influence of surface water shall monitor at the same frequency as a like-sized community water system, as specified in Table 210-1. The system shall begin monitoring at this frequency beginning six months after the Executive Secretary determines

that the ground water is under the direct influence of surface water.

(c) Non-community water systems shall monitor for total coliforms as specified in R309-210-5(1)(b).

(d) The samples shall be collected at points which are representative of water throughout the distribution system according to a written sampling plan. This plan is subject to the approval of the Executive Secretary.

(e) A public water system shall collect samples at regular time intervals throughout the month, except that a system which uses only ground water (except ground water under the direct influence of surface water) and serves 4,900 persons or fewer, may collect all required samples on a single day if they are taken from different sites.

(f) A public water system that uses inadequately treated surface water or inadequately treated ground water under the direct influence of surface water shall collect and analyze for total coliforms at least one sample each day the turbidity level of the source water exceeds 1 NTU. This sample shall be collected near the first service connection from the source. The system shall collect the sample within 24 hours of the time when the turbidity level was first exceeded. The sample shall be analyzed within 30 hours of collection. Sample results from this coliform monitoring shall be included in determining total coliform compliance for that month. The Executive Secretary may extend the 24 hour limitation if the system has a logistical problem that is beyond the system's control. In the case of an extension the Executive Secretary shall specify how much time the system has to collect the sample.

(2) Procedures if a Routine Sample is Total Coliform-Positive

(a) Repeat sampling -

The water system shall collect a set of repeat samples within 24 hours of being notified of the total coliform-positive sample result. The number of repeat samples required to be taken is specified in Table 210-2. The Executive Secretary may extend the 24 hour limitation if the system has a logistical problem that is beyond its control. In the case of an extension the Executive Secretary shall specify how much time the system has to collect the repeat samples.

TABLE 210-2
REPEAT AND ADDITIONAL SAMPLE MONITORING FREQUENCY

Population Served by the system	# Routine Samples per month	# Repeats for each Total-Coliform Positive sample Within 24 hours	# Samples in ADDITION to the Routine samples the following month
25-1000/See Note 1 below	1	4	4
1000-2500	2	3	3
2501-3300	3	3	2
3301-4100	4	3	1
greater than 4100	5 or more	3	No additional samples required. Refer to Table 210-1 for # of Routine samples

NOTE 1: The population category 25 - 1000 includes all non-transient non-community and non-community water systems. Non-transient non-community and non-community systems are only are required to sample once per calendar quarter on a routine basis for those quarters the system is in operation.

Repeat and Additional Routine samples are only required if a Routine Sample is Total Coliform-Positive.

(b) Repeat sampling locations -

The system shall collect the repeat samples from the following locations:

(i) One from the original sample site;

(ii) One within 5 service connections upstream;

(iii) One within 5 service connections downstream;

(iv) If required, one from any site mentioned above.

If a total coliform-positive sample is at the end of the distribution system, or next to the end of the distribution system, the Executive Secretary may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site.

(c) The system shall collect all repeat samples on the same day, except that the Executive Secretary may allow a system with a single service connection to collect the required set of repeat samples on consecutive days.

(d) Additional repeat samples - If one or more repeat samples in a set is total coliform-positive, the system shall collect an additional set of repeat samples as specified in (a), (b) and (c) of this subsection. The additional repeat samples shall be collected within 24 hours of being notified of the positive result, unless the Executive Secretary extends the time limit because of a logistical problem. The system shall repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the total coliform MCL has been exceeded and notifies the Executive Secretary and begins the required public notification.

(e) If a system collecting fewer than five routine samples per month has one or more total coliform-positive samples and the Executive Secretary does not invalidate the sample under R309-210-5(4), it shall collect at least five routine samples during the next month the system provides water to the public. Refer to Table 210-2 for the number of additional samples required.

(i) The Executive Secretary may waive the requirement to collect five routine samples the next month the system provides water to the public if the Executive Secretary has determined why the sample was total coliform-positive and establishes that the system has corrected the problem or will correct the problem before the end of the next month the system serves water to the public. In this case:

(A) The Executive Secretary shall document this decision in writing; and

(B) The Executive Secretary or his representative shall sign the document; and

(C) The Executive Secretary will make the document available to the EPA and the public.

(ii) The Executive Secretary cannot waive the additional samples in the following month solely because all repeat samples are total coliform-negative.

(iii) If the additional samples in the following month are waived, a system shall still take the minimum number of routine samples required in Table 210-1 of R309-210-5(1) before the end of the next month and use it to determine compliance with the total coliform MCL.

(f) Samples to be included in calculations - Results of all routine and repeat samples not invalidated in writing by the Executive Secretary shall be included in determining compliance with the total coliform MCL.

(g) Samples not to be included in calculations - Special purpose and investigative samples, such as those taken to determine the efficiency of disinfection practices following such operations as pipe replacement or repair, may not be used to determine compliance with the MCL for total coliforms. These samples shall be identified as special purpose or investigative at the time of collection.

(3) Response to violation

(a) A public water system which has exceeded the MCL for total coliforms as specified in R309-200-5(6) shall report the violation to the Executive Secretary no later than the end of the next business day after it learns of the violation, and notify the public in accordance with R309-220.

(b) A public water system which has failed to comply with a coliform monitoring requirement shall report the monitoring violation to the Executive Secretary within ten days after the

system discovers the violation and notify the public in accordance with R309-220.

(4) Invalidation of Total Coliform-Positive Samples

An invalidated total coliform-positive sample does not count towards meeting the minimum monitoring requirements of R309-210-5(1) and R309-210-5(2). A total coliform-positive sample may not be invalidated solely on the basis of all repeat samples being total coliform-negative.

(a) The Executive Secretary may invalidate a total coliform-positive sample only if one of the following conditions are met:

(i) The laboratory establishes that improper sample analysis caused the total coliform-positive result; or

(ii) On the basis of the results of repeat samples collected as required in R309-210-5(2), the total coliform-positive sample resulted from a non-distribution system plumbing problem on the basis that all repeat samples taken at the same tap as the original total coliform-positive are total coliform-positive, but all repeat samples within five service connections are total coliform-negative; or

(iii) Substantial grounds exist to establish that the total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case:

(A) The Executive Secretary shall document this decision in writing; and

(B) The Executive Secretary or his representative shall sign the document; and

(C) The Executive Secretary will make the document available to the EPA and the public. The system shall still collect the required repeat samples as outlined in R309-210-5(2) in order to determine compliance with the MCL.

(b) A laboratory shall invalidate a total coliform sample (unless total coliforms are detected) if the results are indeterminate because of possible interference. A system shall collect and have analyzed, another total coliform sample from the same location as the original sample within 24 hours of being notified of the indeterminate result. The system shall continue to resample within 24 hours of notification of indeterminate results and have the samples analyzed until a valid sample result is obtained. The 24-hour time limit may be waived by the Executive Secretary on a case-by-case basis if the system has logistical problems beyond its control. Interference for each type of analysis is listed below.

(i) The sample produces a turbid culture in the absence of gas production when using an analytical method where gas formation is examined.

(ii) The sample produces a turbid culture in the absence of an acid reaction when using the Presence-Absence Coliform Test.

(iii) The sample exhibits confluent growth or produces colonies too numerous to count when using an analytical method using a membrane filter.

(5) Fecal coliforms/Escherichia coli (E. coli) testing

(a) If any routine sample, repeat sample or additional sample is total coliform-positive, the system shall have the total coliform-positive culture medium analyzed to determine if fecal coliforms are present. The system may test for E. coli in lieu of fecal coliforms.

(b) Notification of Executive Secretary and public - If fecal coliforms or E. coli are confirmed present (as per R309-200-5(6)(b)), the system shall notify the Executive Secretary by the end of the day when the system is notified of the test results. If the system is notified after the Division of Drinking Water has closed, the system shall notify the Executive Secretary before the close of the next business day and begin public notification using the mandatory health effects language R309-220) within 72 hours.

(c) The Executive Secretary may allow a system to forego the analysis for fecal coliforms or E. coli, if the system assumes that the total coliform positive sample is fecal coliform-positive or E. coli-positive. The system must notify the Executive Secretary of this decision and begin the required public notification.

(6) Best Available Technology

The Executive Secretary may require an appropriate treatment process using the best available technology (BAT) in order to bring the water into compliance with the maximum contaminant level for microbiological quality. The BAT will be determined by the Executive Secretary.

R309-210-6. Lead and Copper Monitoring.

(1) General requirements.

(a) Applicability and effective dates

(i) The requirements of R309-210-6. unless otherwise indicated, apply to community water systems and non-transient non-community water systems (hereinafter referred to as water systems or systems).

(ii) The requirements in R309-210-6(2), R309-210-6(4), and R309-210-6(7) shall take effect December 7, 1992.

(b) R309-210-6 establishes a treatment technique that includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education. These requirements are triggered, in some cases, by lead and copper action levels measured in samples collected at consumers' taps.

(c) Corrosion control treatment requirements

(i) All water systems shall install and operate optimal corrosion control treatment. However, any water system that complies with the applicable corrosion control treatment requirements specified by the Executive Secretary under R309-210-6(2) and R309-210-6(4)(a) shall be deemed in compliance with this treatment requirement.

(d) Source water treatment requirements

Any system exceeding the lead or copper action level shall implement all applicable source water treatment requirements specified by the Executive Secretary under R309-210-6(4)(b).

(e) Lead service line replacement requirements

Any system exceeding the lead action level after implementation of applicable corrosion control and source water treatment requirements shall complete the lead service line replacement requirements contained in R309-210-6(4)(c).

(f) Public education requirements

Any system exceeding the lead action level shall implement the public education requirements contained in R309-210-6(7).

(g) Monitoring and analytical requirements

Tap water monitoring for lead and copper, monitoring for water quality parameters, source water monitoring for lead and copper, and analyses of the monitoring results shall be completed in compliance with R309-210-6(3), R309-210-6(5), R309-210-6(6) and R309-200-8.

(h) Reporting requirements

Systems shall report to the Executive Secretary any information required by the treatment provisions of this subpart and R309-210-6(8).

(i) Recordkeeping requirements

Systems shall maintain records in accordance with R309-105-17(2).

(j) Violation of primary drinking water rules

Failure to comply with the applicable requirements of R309-210-6., including requirements established by the Executive Secretary pursuant to these provisions, shall constitute a violation of the primary drinking water regulations for lead and/or copper.

(2) Applicability of corrosion control treatment steps to small, medium-size and large water systems.

(a) Systems shall complete the applicable corrosion control treatment requirements described in R309-210-6(4)(a)

by the deadlines established in this section.

(i) A large system (serving greater than 50,000 persons) shall complete the corrosion control treatment steps specified in R309-210-6(2)(d), unless it is deemed to have optimized corrosion control under R309-210-6(2)(b)(ii) or (b)(iii).

(ii) A small system (serving less than 3300 persons) and a medium-size system (serving greater than 3,300 and less than 50,000 persons) shall complete the corrosion control treatment steps specified in R309-210-6(2)(e), unless it is deemed to have optimized corrosion control under R309-210-6(2)(b)(i), (b)(ii), or (b)(iii).

(b) A system is deemed to have optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this section if the system satisfies one of the criteria in paragraphs (b)(i) through (b)(iii) of this section. Any such system deemed to have optimized corrosion control under this paragraph, and which has treatment in place, shall continue to operate and maintain optimal corrosion control treatment and meet any requirements that the Executive Secretary determines appropriate to ensure optimal corrosion control treatment is maintained.

(i) A small or medium-size water system is deemed to have optimized corrosion control if the system meets the lead and copper action levels during each of two consecutive six-month monitoring periods conducted in accordance with R309-210-6(3).

(ii) Any water system may be deemed by the Executive Secretary to have optimized corrosion control treatment if the system demonstrates to the satisfaction of the Executive Secretary that it has conducted activities equivalent to the corrosion control steps applicable to such system under this section. If the Executive Secretary makes this determination, it shall provide the system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with R309-210-6(4)(a)(vi). Water systems deemed to have optimized corrosion control under this paragraph shall operate in compliance with the Executive Secretary designated optimal water quality control parameters in accordance with R309-210-6(4)(a)(vii) and continue to conduct lead and copper tap and water quality parameter sampling in accordance with R309-210-6(3)(d)(iii) and R309-210-6(5)(d), respectively. A system shall provide the Executive Secretary with the following information in order to support a determination under this paragraph:

(A) the results of all test samples collected for each of the water quality parameters in R309-210-6(4)(a)(iii)(C).

(B) a report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in R309-210-6(4)(a)(iii)(A), the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

(C) a report explaining how corrosion control has been installed and how it is being maintained to insure minimal lead and copper concentrations at consumers' taps; and

(D) the results of tap water samples collected in accordance with R309-210-6(3) at least once every six months for one year after corrosion control has been installed.

(iii) Any water system is deemed to have optimized corrosion control if it submits results of tap water monitoring conducted in accordance with R309-210-6(3) and source water monitoring conducted in accordance with R309-210-6(6) that demonstrates for two consecutive six-month monitoring periods that the difference between the 90th percentile tap water lead level computed under R309-200-5(2)(c), and the highest source water lead concentration, is less than the Practical Quantitation Level (PQL) for lead as specified in R309-104-8.

(A) Those systems whose highest source water lead level is below the Method Detection Limit may also be deemed to have optimized corrosion control under this paragraph if the 90th percentile tap water lead level is less than or equal to the Practical Quantitation Level for lead for two consecutive 6-month monitoring periods.

(B) Any water system deemed to have optimized corrosion control in accordance with this paragraph shall continue monitoring for lead and copper at the tap no less frequently than once every three calendar years using the reduced number of sites specified in R309-210-6(3)(c) and collecting the samples at times and locations specified in R309-210-6(3)(d)(iv)(D). Any such system that has not conducted a round of monitoring pursuant to R309-210-6(3)(d) since September 30, 1997, shall complete a round of monitoring pursuant to this paragraph no later than September 30, 2000.

(C) Any water system deemed to have optimized corrosion control pursuant to this paragraph shall notify the Executive Secretary in writing pursuant to R309-210-6(8)(a)(iii) of any change in treatment or the addition of a new source. The Executive Secretary may require any such system to conduct additional monitoring or to take other action the Executive Secretary deems appropriate to ensure that such systems maintain minimal levels of corrosion in the distribution system.

(D) As of July 12, 2001, a system is not deemed to have optimized corrosion control under this paragraph, and shall implement corrosion control treatment pursuant to paragraph (b)(iii)(E) of this section unless it meets the copper action level.

(E) Any system triggered into corrosion control because it is no longer deemed to have optimized corrosion control under this paragraph shall implement corrosion control treatment in accordance with the deadlines in paragraph (e) of this section. Any such large system shall adhere to the schedule specified in that paragraph for medium-size systems, with the time periods for completing each step being triggered by the date the system is no longer deemed to have optimized corrosion control under this paragraph.

(c) Any small or medium-size water system that is required to complete the corrosion control steps due to its exceedance of the lead or copper action level may cease completing the treatment steps whenever the system meets both action levels during each of two consecutive monitoring periods conducted pursuant to R309-210-6(3) and submits the results to the Executive Secretary. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the system (or the Executive Secretary, as the case may be) shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety. The Executive Secretary may require a system to repeat treatment steps previously completed by the system where the Executive Secretary determines that this is necessary to implement properly the treatment requirements of this section. The Executive Secretary shall notify the system in writing of such a determination and explain the basis for its decision. The requirement for any small or medium size system to implement corrosion control treatment steps in accordance with paragraph (e) of this section (including systems deemed to have optimized corrosion control under paragraph (b)(i) of this section) is triggered whenever any small or medium size system exceeds the lead or copper action level.

(d) Treatment steps and deadlines for large systems

Except as provided in R309-210-6(2)(b)(ii) and (b)(iii), large systems shall complete the following corrosion control treatment steps by the indicated dates.

(i) Step 1: The system shall conduct initial monitoring (R309-210-6(3)(d)(i) and R309-210-6(5)(b)) during two consecutive six-month monitoring periods by January 1, 1993.

(ii) Step 2: The system shall complete corrosion control studies (R309-210-6(4)(a)(iii)) by July 1, 1994.

(iii) Step 3: The Executive Secretary shall designate optimal corrosion control treatment (R309-210-6(4)(a)(iv)) by January 1, 1995.

(iv) Step 4: The system shall install optimal corrosion control treatment (R309-210-6(4)(a)(v)) by January 1, 1997.

(v) Step 5: The system shall complete follow-up sampling (R309-210-6(3)(d)(ii) and R309-210-6(5)(c)) by January 1, 1998.

(vi) Step 6: The Executive Secretary shall review installation of treatment and designate optimal water quality control parameters (R309-210-6(4)(a)(vi)) by July 1, 1998.

(vii) Step 7: The system shall operate in compliance with the Executive Secretary specified optimal water quality control parameters (R309-210-6(4)(a)(vii)) and continue to conduct tap sampling (R309-210-6(3)(d)(iii) and R309-210-6(5)(d)).

(e) Treatment steps and deadlines for small and medium-size systems

Except as provided in R309-210-6(2)(b), small and medium-size systems shall complete the following corrosion control treatment steps by the indicated time periods.

(i) Step 1: The system shall conduct initial tap sampling (R309-210-6(3)(d)(i) and R309-210-6(5)(b) until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring under R309-210-6(3)(d)(iv). A system exceeding the lead or copper action level shall recommend optimal corrosion control treatment (R309-210-6(4)(a)(i)) within six months after it exceeds one of the action levels.

(ii) Step 2: Within 12 months after a system exceeds the lead or copper action level, the Executive Secretary may require the system to perform corrosion control studies (R309-210-6(4)(a)(ii)). If the Executive Secretary does not require the system to perform such studies, the Executive Secretary shall specify optimal corrosion control treatment (R309-210-6(4)(a)(iv)) within the following time-frames:

(A) for medium-size systems, within 18 months after such system exceeds the lead or copper action level,

(B) for small systems, within 24 months after such system exceeds the lead or copper action level.

(iii) Step 3: If the Executive Secretary requires a system to perform corrosion control studies under step 2, the system shall complete the studies (R309-210-6(4)(a)(iii)) within 18 months after the Executive Secretary requires that such studies be conducted.

(iv) Step 4: If the system has performed corrosion control studies under step 2, the Executive Secretary shall designate optimal corrosion control treatment (R309-210-6(4)(a)(iv)) within 6 months after completion of step 3.

(v) Step 5: The system shall install optimal corrosion control treatment (R309-210-6(4)(a)(v)) within 24 months after the Executive Secretary designates such treatment.

(vi) Step 6: The system shall complete follow-up sampling (R309-210-6(3)(d)(ii) and R309-210-6(5)(c)) within 36 months after the Executive Secretary designates optimal corrosion control treatment.

(vii) Step 7: The Executive Secretary shall review the system's installation of treatment and designate optimal water quality control parameters (R309-210-6(4)(a)(vi)) within 6 months after completion of step 6.

(viii) Step 8: The system shall operate in compliance with the Executive Secretary-designated optimal water quality control parameters (R309-210-6(4)(a)(vii)) and continue to conduct tap sampling (R309-210-6(3)(d)(iii) and R309-210-6(5)(d)).

(3) Monitoring requirements for lead and copper in tap water.

(a) Sample site location

(i) By the applicable date for commencement of monitoring under R309-210-6(3)(d)(i), each water system shall complete a materials evaluation of its distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficiently large to ensure that the water system can collect the number of lead and copper tap samples required in R309-210-6(3)(c). All sites from which first draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(ii) A water system shall use the information on lead, copper, and galvanized steel when conducting a materials evaluation. When an evaluation of this information is insufficient to locate the requisite number of lead and copper sampling sites that meet the targeting criteria in R309-210-6(3)(a), the water system shall review the sources of information listed below in order to identify a sufficient number of sampling sites. In addition, the system shall seek to collect such information where possible in the course of its normal operations (e.g., checking service line materials when reading water meters or performing maintenance activities):

(A) all plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system;

(B) all inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and

(C) all existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(iii) The sampling sites selected for a community water system's sampling pool ("tier 1 sampling sites") shall consist of single family structures that:

(A) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(B) are served by a lead service line.

When multiple-family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures in its sampling pool.

(iv) Any community water system with insufficient tier 1 sampling sites shall complete its sampling pool with "tier 2 sampling sites", consisting of buildings, including multiple-family residences that:

(A) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(B) are served by a lead service line.

(v) Any community water system with insufficient tier 1 and tier 2 sampling sites shall complete its sampling pool with "tier 3 sampling sites", consisting of single family structures that contain copper pipes with lead solder installed before 1983. A community water system with insufficient tier 1, tier 2 and tier 3 sampling sites shall complete its sampling pool with representative sites throughout the distribution system. For the purpose of this paragraph, a representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

(vi) The sampling sites selected for a non-transient non-community water system ("tier 1 sampling sites") shall consist of buildings that:

(A) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(B) are served by a lead service line.

(vii) A non-transient non-community water system with insufficient tier 1 sites that meet the targeting criteria in R309-210-6(3)(a)(vi) shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983. If additional sites are needed to complete its sampling pool, the non-transient non-community water system shall use representative sites throughout the distribution system. For the purpose of this paragraph, a representative site is a site in which the plumbing materials used at that site would be commonly

found at other sites served by the water system.

(viii) Any water system whose distribution system contains lead service lines shall draw 50 percent of the samples it collects during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and 50 percent of the samples from sites served by a lead service line. A water system that cannot identify a sufficient number of sampling sites served by a lead service line shall collect first draw samples from all of the sites identified as being served by such lines.

(b) Sample collection methods

(i) All tap samples for lead and copper collected in accordance with this section, with the exception of lead service line samples collected under R309-210-6(4)(c)(iii) and samples collected under (b)(v) of this section, shall be first draw samples.

(ii) Each first-draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First draw samples from residential housing shall be collected from the cold water kitchen tap or bathroom sink tap. First-draw samples from a nonresidential building shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption. Non-first-draw samples collected in lieu of first-draw samples pursuant to paragraph (b)(v) of this section shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption. First draw samples may be collected by the system or the system may allow residents to collect first draw samples after instructing the residents of the sampling procedures specified in this paragraph. To avoid problems with residents handling nitric acid, acidification of first draw samples may be done up to fourteen days after the sample is collected. After acidification to resolubilize the metals, the sample must stand in the original container for the time specified in R309-200-4(3). If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(iii) Each service line sample shall be one liter in volume and have stood motionless in the lead service line for at least six hours. Lead service line samples shall be collected in one of the following three ways:

(A) at the tap after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line;

(B) tapping directly into the lead service line; or

(C) if the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

(iv) A water system shall collect each first draw tap sample from the same sampling site from which it collected a previous sample. If, for any reason, the water system cannot gain entry to a sampling site in order to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

(v) A non-transient non-community water system, or a community water system that meets the criteria for R309-210-6(7)(c)(vii)(A) and (B), that does not have enough taps that can supply first draw samples, as defined in R309-110, may apply to the Executive Secretary in writing to substitute non-first-draw samples. Such systems must collect as many first draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites. The Executive Secretary herein waives the requirement for prior Executive Secretary approval of non-first draw samples sites selected by the system.

(c) Number of samples

Water systems shall collect at least one sample during each monitoring period specified in R309-210-6(3)(d) from the number of sites listed in the first column (standard monitoring) in Table 210-3. A system conducting reduced monitoring under R309-210-6(3)(d)(iv) may collect one sample from the number of sites specified in the second column (reduced monitoring) in Table 210-3 during each monitoring period specified in R309-210-6(3)(d)(iv). Such reduced monitoring sites shall be representative of the sites required for standard monitoring. The Executive Secretary may specify sampling locations when a system is conducting reduced monitoring to ensure that fewer number of sampling sites are representative of the risk to public health as outlined in R309-210-6(3)(a).

TABLE 210-3
NUMBER OF LEAD AND COPPER SAMPLING SITES

System Size (# People Served)	# of sites (Standard Monitoring)	# of sites (Reduced Monitoring)
Greater than 100,000	100	50
10,001-100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
100 or less	5	5

(d) Timing of monitoring

(i) Initial tap sampling

The first six-month monitoring period for small, medium-size and large systems shall begin on the following dates in Table 210-4:

TABLE 210-4
INITIAL LEAD AND COPPER MONITORING PERIODS

System Size (# People Served)	First six-month Monitoring Period Begins On
Greater than 50,000	January 1, 1992
3,301 to 50,000	July 1, 1992
3,300 or less	July 1, 1993

(A) All large systems shall monitor during two consecutive six-month periods.

(B) All small and medium-size systems shall monitor during each six-month monitoring period until:

(I) the system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements under R309-210-6(2), in which case the system shall continue monitoring in accordance with R309-210-6(3)(d)(ii), or

(II) the system meets the lead and copper action levels during two consecutive six-month monitoring periods, in which case the system may reduce monitoring in accordance with R309-210-6(3)(d)(iv).

(ii) Monitoring after installation of corrosion control and source water treatment

(A) Any large system which installs optimal corrosion control treatment pursuant to R309-210-6(2)(d)(iv) shall monitor during two consecutive six-month monitoring periods by the date specified in R309-210-6(2)(d)(v).

(B) Any small or medium-size system which installs optimal corrosion control treatment pursuant to R309-210-6(2)(e)(v) shall monitor during two consecutive six-month monitoring periods by the date specified in R309-210-6(2)(e)(vi).

(C) Any system which installs source water treatment pursuant to R309-210-6(4)(b)(i)(C) shall monitor during two consecutive six-month monitoring periods by the date specified in R309-210-6(4)(b)(i)(D).

(iii) Monitoring after Executive Secretary specifies water quality parameter values for optimal corrosion control

After the Executive Secretary specifies the values for water quality control parameters under R309-210-6(4)(a)(vi), the system shall monitor during each subsequent six-month monitoring period, with the first monitoring period to begin on the date the Executive Secretary specifies the optimal values under R309-210-6(4)(a)(vi).

(iv) Reduced monitoring

(A) A small or medium-size water system that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with R309-210-6(3)(c), Table 210-3, and reduce the frequency of sampling to once per year.

(B) Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the Executive Secretary under R309-210-6(4)(a)(vi) during each of two consecutive six-month monitoring periods may reduce the frequency of monitoring to once per year and reduce the number of lead and copper samples in accordance with R309-210-6(3)(c), Table 210-3 if it receives written approval from the Executive Secretary. The Executive Secretary shall review monitoring, treatment, and other relevant information submitted by the water system in accordance with R309-210-6(8), and shall notify the system in writing when it determines the system is eligible to commence reduced monitoring pursuant to this paragraph. The Executive Secretary shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(C) A small or medium-size water system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the Executive Secretary under R309-210-6(4)(a)(vi) during three consecutive years of monitoring may reduce the frequency of monitoring from annually to once every three years if it receives written approval from the Executive Secretary. The Executive Secretary shall review monitoring, treatment, and other relevant information submitted by the water system in accordance with R309-210-6(8), and shall notify the system in writing when it determines the system is eligible to commence reduced monitoring to once every three years. The Executive Secretary shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(D) A water system that reduces the number and frequency of sampling shall collect these samples from representative sites included in the pool of targeted sampling sites identified in R309-210-6(3)(a). Systems sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or September unless the Executive Secretary has approved a different sampling period in accordance with paragraph (d)(iv)(D)(I) of this section.

(I) The Executive Secretary, at its discretion, may approve a different period for conducting the lead and copper sampling for systems collecting a reduced number of samples. Such a period shall be no longer than four consecutive months and must represent a time of normal operation where the highest levels of lead are most likely to occur. For a non-transient non-community water system that does not operate during the months of June through September, and for which the period of normal operation where the highest levels of lead are most likely to occur is not known, the Executive Secretary shall designate a period that represents a time of normal operation for the system.

(II) Systems monitoring annually, that have been collecting samples during the months of June through September and that receive Executive Secretary approval to alter their sample collection period under paragraph (d)(iv)(D)(I) of this section, must collect their next round of samples during a time period that ends no later than 21 months after the previous round of sampling. Systems monitoring triennially that have been collecting samples during the months of June through September, and receive Executive Secretary approval to alter the sampling collection period as per (d)(iv)(D)(I) of this section, must collect their next round of samples during a time period that ends no later than 45 months after the previous round of sampling. Subsequent rounds of sampling must be collected annually or triennially, as required by this section. Small systems with waivers, granted pursuant to paragraph (g) of this section, that have been collecting samples during the months of June through September and receive Executive Secretary approval to alter their sample collection period under paragraph (d)(iv)(D)(I) of this section must collect their next round of samples before the end of the 9 year period.

(E) Any water system that demonstrates for two consecutive 6 month monitoring periods that the tap water lead level computed under R309-200-5(2)(c) is less than or equal to 0.005 mg/L and the tap water copper level computed under R309-200-5(2)(c) is less than or equal to 0.65 mg/L may reduce the number of samples in accordance paragraph (c) of this section and reduce the frequency of sampling to once every three calendar years.

(F)(I) A small or medium-size water system subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling in accordance R309-210-6(3)(d)(iii) and collect the number of samples specified for standard monitoring under R309-210-6(3)(c), Table 210-3. Such system shall also conduct water quality parameter monitoring in accordance with R309-210-6(5)(b), (c) or (d) (as appropriate) during the monitoring period in which it exceeded the action level. Any such system may resume annual monitoring for lead and copper at the tap at the reduced number of sites specified in paragraph (c) of this section after it has completed two subsequent consecutive six month rounds of monitoring that meet the criteria of paragraph (d)(iv)(A) of this section or may resume triennial monitoring for lead and copper at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (d)(vi)(C) or (d)(iv)(D) of this section.

(II) Any water system subject to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the Executive Secretary under R309-210-6(4)(a)(vi) for more than 9 days in any six month period specified in R309-210-6(5)(d) shall conduct tap water sampling for lead and copper at the frequency specified in paragraph (d)(iii) of this section, collect the number of samples specified for standard monitoring under paragraph (c) of this section, and shall resume monitoring for water quality parameters within the distribution system in accordance with sec R309-210-6(5)(d). Such a system may resume reduced monitoring for lead and copper at the tap and for water quality parameters within the distribution system under the following conditions:

(aa) The system may resume annual monitoring for lead and copper at the tap at the reduced number of sites specified in paragraph (c) of this section after it has completed two subsequent six month rounds of monitoring that meet the criteria of paragraph (d)(iv)(B) of this section and the system has received written approval from the Executive Secretary that it is appropriate to resume reduced monitoring on an annual frequency.

(bb) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it

meets the criteria of either paragraph (d)(iv)(C) or (d)(iv)(E) of this section and the system has received written approval from the Executive Secretary that it is appropriate to resume triennial monitoring.

(cc) The system may reduce the number of water quality parameter tap water samples required in accordance with R309-210-6(5)(e)(i) and the frequency with which it collects such samples in accordance with R309-210-6(5)(e)(ii). Such a system may not resume triennial monitoring for water quality parameters at the tap until it demonstrates, in accordance with the requirements of R309-210-6(5)(e)(ii), that it has requalified for triennial monitoring.

(G) Any water system subject to a reduced monitoring frequency under paragraph (d)(iv) of this section that either adds a new source of water or changes any water treatment shall inform the Executive Secretary in writing in accordance with R309-210-6(8)(a)(iii). The Executive Secretary may require the system to resume sampling in accordance with paragraph (d)(iii) of this section and collect the number of samples specified for standard monitoring under paragraph (c) of this section or take other appropriate steps such as increased water quality parameter monitoring or re-evaluation of its corrosion control treatment given the potentially different water quality considerations.

(e) Additional monitoring by systems

The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the Executive Secretary in making any determinations (i.e., calculating the 90th percentile lead or copper level).

(f) Invalidation of lead or copper tap water samples. A sample invalidated under this paragraph does not count toward determining lead or copper 90th percentile levels under Sec. 141.80 (c) (3) or toward meeting the minimum monitoring requirements of paragraph (c) of this section.

(i) The Executive Secretary may invalidate a lead or copper tap water sample at least if one of the following conditions is met.

(A) The laboratory establishes that improper sample analysis caused erroneous results.

(B) The Executive Secretary determines that the sample was taken from a site that did not meet the site selection criteria of this section.

(C) The sample container was damaged in transit.

(D) There is substantial reason to believe that the sample was subject to tampering.

(ii) The system must report the results of all samples to the Executive Secretary and all supporting documentation for samples the system believes should be invalidated.

(iii) To invalidate a sample under paragraph (f)(i) of this section, the decision and the rationale for the decision must be documented in writing. The Executive Secretary may not invalidate a sample solely on the grounds that a follow-up sample result is higher or lower than that of the original sample.

(iv) The water system must collect replacement samples for any samples invalidated under this section if, after the invalidation of one or more samples, the system has too few samples to meet the minimum requirements of paragraph (c) of this section. Any such replacement samples must be taken as soon as possible, but no later than 20 days after the date the Executive Secretary invalidates the sample or by the end of the applicable monitoring period, whichever occurs later. Replacement samples taken after the end of the applicable monitoring period shall not also be used to meet the monitoring requirements of a subsequent monitoring period. The replacement samples shall be taken at the same locations as the invalidated samples or, if that is not possible, at locations other than those already used for sampling during the monitoring period.

(g) Monitoring waivers for small systems. Any small system that meets the criteria of this paragraph may apply to the Executive Secretary to reduce the frequency of monitoring for lead and copper under this section to once every nine years (i.e., a full waiver) if it meets all of the materials criteria specified in paragraph (g)(i) of this section and all of the monitoring criteria specified in paragraph (g) (ii) of this section. Any small system that meets the criteria in paragraphs (g) (i) and (ii) of this section only for lead, or only for copper, may apply to the Executive Secretary for a waiver to reduce the frequency of tap water monitoring to once ever nine years for that contaminant only (i.e., a partial waiver).

(i) Materials criteria. The system must demonstrate that its distribution system and service lines and all drinking water supply plumbing, including plumbing conveying drinking water within all residences and buildings connected to the system, are free of lead-containing materials and/or copper-containing materials, as those terms are defined in this paragraph, as follows:

(A) Lead. To qualify for a full waiver, or a waiver of the tap water monitoring requirements for lead (i.e., a lead waiver), the water system must provide certification and supporting documentation to the Executive Secretary that the system is free of all lead-containing materials, as follows:

(I) It contains no plastic pipes which contain lead plasticizers, or plastic service lines which contain lead plasticizers; and

(II) It is free of lead service lines, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless such fittings and fixtures meet the specifications of any standard established pursuant to 42 U.S.C. 300g-6(e) (SDWA section 1417 (e)).

(B) Copper. To qualify for a full waiver, or waiver of the tap water monitoring requirements for copper (i.e., a copper waiver), the water system must provide certification and supporting documentation to the Executive Secretary that the system contains no copper pipes or copper service lines.

(ii) Monitoring criteria for waiver issuance. The system must have completed at least one 6-month round of standard tap water monitoring for lead and copper at sites approved by the Executive Secretary and from the number of sites required by paragraph (c) of this section and demonstrate that the 90th percentile levels for any and all rounds of monitoring conducted since the system became free of all lead-containing and/or copper-containing materials, as appropriate, meet the following criteria.

(A) Lead levels. To qualify for a full waiver, or a lead waiver, the system must demonstrate that the 90th percentile lead level does not exceed 0.005 mg/L.

(B) Copper levels. To qualify for a full waiver, or a copper waiver, the system must demonstrate that the 90th percentile lead level does not exceed 0.65 mg/L.

(iii) Executive Secretary approval of waiver application. The Executive Secretary shall notify the system of its waiver determination, in writing, setting forth the basis of its decision and any condition of the waiver. As a condition of the waiver, the Executive Secretary may require the system to perform specific activities (e.g., limited monitoring, periodic outreach to customers to remind them to avoid installation of materials that might void the waiver) to avoid the risk of lead or copper concentration of concern in tap water. The small system must continue monitoring for lead and copper at the tap as required by paragraphs (d) (i) through (d) (iv) of this section, as appropriate, until it receives written notification from the Executive Secretary the waiver has been approved.

(iv) Monitoring frequency for systems with waivers.

(A) A system with a full waiver must conduct tap water monitoring for lead and copper in accordance with paragraph (d)(iv)(D) of this section at the reduced number of sampling

sites identified in paragraph (c) of this section at least once every nine years and provide the materials certification specified in paragraph (g)(i) of this section for both lead and copper to the Executive Secretary along with the monitoring results.

(B) A system with a partial waiver must conduct tap water monitoring for the waived contaminant in accordance with paragraph (d)(iv)(D) of this section at the reduced number of sampling sites specified in paragraph (c) of this section at least once every nine years and provide the materials certification specified in paragraph (g)(i) of this section pertaining to the waived contaminant along with the monitoring results. Such a system also must continue to monitor for the non-waived contaminant in accordance with requirements of paragraph (d)(i) through (d)(iv) of this section, as appropriate.

(C) If a system with a full or partial waiver adds a new source of water or changes any water treatment, the system must notify the Executive Secretary in writing in accordance with R309-210-6(8)(a)(iii). The Executive Secretary has the authority to require the system to add or modify waiver conditions (e.g., require recertification that the system is free of lead-containing and/or copper-containing materials, require additional round(s) of monitoring), if it deems such modifications are necessary to address treatment or source water changes at the system.

(D) If a system with a full or partial waiver because aware that it is no longer free of lead-containing or copper-containing materials, as appropriate, (e.g., as a result of new construction or repairs), the system shall notify the Executive Secretary in writing no later than 60 days after becoming aware of such a change.

(v) Continued eligibility. If the system continues to satisfy the requirements of paragraph (g) (iv) of this section, the waiver will be renewed automatically, unless any of the conditions listed in paragraph (g)(v)(A) through (g)(v)(C) of this section occurs. A system whose waiver has been revoked may re-apply for a waiver at such time as it again meets the appropriate materials and monitoring criteria of paragraphs (g)(i) and (g)(ii) of this section.

(A) A system with a full waiver or lead waiver no longer satisfies the materials criteria of paragraph (g)(i)(A) of this section or has a 90th percentile lead level greater than 0.005 mg/L.

(B) A system with a full waiver or a copper waiver no longer satisfies the materials criteria of paragraph (g)(i)(B) of this section or has a 90th percentile copper level greater than 0.65 mg/L.

(C) The Executive Secretary notifies the system, in writing, that the waiver has been revoked, setting forth the basis of its decision.

(vi) Requirements following waiver revocation. A system whose full or partial waiver has been revoked by the Executive Secretary is subject to the corrosion control treatment and lead and copper tap water monitoring requirements, as follows:

(A) If the system exceeds the lead and/or copper action level, the system must implement corrosion control treatment in accordance with the deadlines specified in R309-210-6(2)(e), and any other applicable requirements of this subpart.

(B) If the system meets both the lead and the copper action level, the system must monitor for lead and copper at the tap no less frequently than once every three years using the reduced number of sample sites specified in paragraph (c) of this section.

(vii) Pre-existing waivers. Small system waivers approved by the Executive Secretary in writing prior to April 11, 2000 shall remain in effect under the following conditions:

(A) If the system has demonstrated that it is both free of lead-containing and copper- containing materials, as required by paragraph (g)(i) of this section and that its 90th percentile lead levels and 90th percentile copper levels meet the criteria of paragraph (g)(ii) of this section, the waiver remains in effect so long as the system continues to meet the waiver eligibility criteria of paragraph (g)(v) of this section. The first round of tap water monitoring conducted pursuant to paragraph (g)(iv) of this section shall be completed no later than nine years after the last time the system has monitored for lead and copper at the tap.

(B) If the system has met the materials criteria of paragraph (g)(i) of this section but has not met the monitoring criteria of paragraph (g)(ii) of this section, the system shall conduct a round of monitoring for lead and copper at the tap demonstrating that it meets the criteria of paragraph (g)(ii) of this section no later than September 30, 2000. Thereafter, the waiver shall remain in effect as long as the system meets the continued eligibility criteria of paragraph (g)(v) of this section. The first round of tap water monitoring conducted pursuant to paragraph (g)(iv) of this section shall be completed no later than nine years after the round of monitoring conducted pursuant to paragraph (g)(ii) of this section.

(4) Corrosion Control for Control of Lead and Copper

(a) Description of corrosion control treatment requirements.

Each system shall complete the corrosion control treatment requirements described below which are applicable to such system under R309-210-6(2).

(i) System recommendation regarding corrosion control treatment

Based upon the results of lead and copper tap monitoring and water quality parameter monitoring, small and medium-size water systems exceeding the lead or copper action level shall recommend installation of one or more of the corrosion control treatments listed in R309-210-6(4)(a)(iii)(A) which the system believes constitutes optimal corrosion control for that system. The Executive Secretary may require the system to conduct additional water quality parameter monitoring in accordance with R309-210-6(5)(b) to assist the Executive Secretary in reviewing the system's recommendation.

(ii) Studies of corrosion control treatment required for small and medium-size systems.

The Executive Secretary may require any small or medium-size system that exceeds the lead or copper action level to perform corrosion control studies under R309-210-6(4)(a)(iii) to identify optimal corrosion control treatment for the system.

(iii) Performance of corrosion control studies

(A) Any public water system performing corrosion control studies shall evaluate the effectiveness of each of the following treatments, and, if appropriate, combinations of the following treatments to identify the optimal corrosion control treatment for that system:

(I) alkalinity and pH adjustment;

(II) calcium hardness adjustment; and

(III) the addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(B) The water system shall evaluate each of the corrosion control treatments using either pipe rig/loop tests, metal coupon tests, partial-system tests, or analyses based on documented analogous treatments with other systems of similar size, water chemistry and distribution system configuration.

(C) The water system shall measure the following water quality parameters in any tests conducted under this paragraph before and after evaluating the corrosion control treatments listed above:

(I) lead;

(II) copper;

(III) pH;

(IV) alkalinity;

(V) calcium;

(VI) conductivity;

(VII) orthophosphate (when an inhibitor containing a

phosphate compound is used);

(VIII) silicate (when an inhibitor containing a silicate compound is used);

(IX) water temperature.

(D) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document such constraints with at least one of the following:

(I) data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; and/or

(II) data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(E) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes.

(F) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the Executive Secretary in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in R309-210-6(4)(a)(iii)(A) through R309-210-6(4)(a)(iii)(E).

(iv) Designation of optimal corrosion control treatment

(A) Based upon consideration of available information including, where applicable, studies performed under R309-210-6(4)(a)(iii) and a system's recommended treatment alternative, the Executive Secretary shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment(s) from among those listed in R309-210-6(4)(a)(iii)(A). When designating optimal treatment the Executive Secretary shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(B) The Executive Secretary shall notify the system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the Executive Secretary requests additional information to aid its review, the water system shall provide the information.

(v) Installation of optimal corrosion control

Each system shall properly install and operate throughout its distribution system the optimal corrosion control treatment designated by the Executive Secretary under R309-210-6(4)(a)(iv).

(vi) Review of treatment and specification of optimal water quality control parameters

The Executive Secretary shall evaluate the results of all lead and copper tap samples and water quality parameter samples submitted by the water system and determine whether the system has properly installed and operated the optimal corrosion control treatment designated by the Executive Secretary in R309-210-6(4)(a)(iv). Upon reviewing the results of tap water and water quality parameter monitoring by the system, both before and after the system installs optimal corrosion control treatment, the Executive Secretary shall designate:

(A) A minimum value or a range of values for pH measured at each entry point to the distribution system;

(B) A minimum pH value, measured in all tap samples. Such value shall be equal to or greater than 7.0, unless the Executive Secretary determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control;

(C) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the Executive Secretary determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system;

(D) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples;

(E) If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

The values for the applicable water quality control parameters listed above shall be those that the Executive Secretary determines to reflect optimal corrosion control treatment for the system. The Executive Secretary may designate values for additional water quality control parameters determined by the Executive Secretary to reflect optimal corrosion control for the system. The Executive Secretary shall notify the system in writing of these determinations and explain the basis for the decisions.

(vii) Continued operation and monitoring. All systems optimizing corrosion control shall continue to operate and maintain optimal corrosion control treatment, including maintaining water quality parameters at or above minimum values or within ranges designated by the Executive Secretary under paragraph (vi) of this section, in accordance with this paragraph for all samples collected under R309-210-6(5)(d) through (f). Compliance with the requirements of this paragraph shall be determined every six months, as specified under R309-210-6(5)(d). A water system is out of compliance with the requirements of this paragraph for a six-month period of it has excursions for any Executive Secretary specified parameter on more than nine days during the period. An excursion occurs whenever the daily value for one or more of the water quality parameters measured at a sampling location is below the minimum value or outside the range designated by the Executive Secretary. Daily values are calculated as follows. The Executive Secretary has discretion to delete results of obvious sampling errors from this calculation.

(A) On days when more than one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the average of all results collected during the day regardless of whether they are collected through continuous monitoring, grab sampling, or combination of both.

(B) On days when only one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the result of that measurement.

(C) On days when no measurement is collected for the water quality parameter at the sampling location, the daily value shall be the daily value calculated on the most recent day on which the water quality parameter was measured at the sample site.

(viii) Modification of treatment decisions

Upon its own initiative or in response to a request by a water system or other interested party, the Executive Secretary may modify its determination of the optimal corrosion control treatment under R309-210-6(4)(a)(iv) or optimal water quality control parameters under R309-210-6(4)(a)(vi). A request for modification by a system or other interested party shall: be in writing, explain why the modification is appropriate, and provide supporting documentation. The Executive Secretary may modify its determination where it concludes that such change is necessary to ensure that the system continues to optimize corrosion control treatment. A revised determination shall: be made in writing, set forth the new treatment requirements, explain the basis for the Executive Secretary's decision, and provide an implementation schedule for

completing the treatment modifications.

(b) Source water treatment requirements.

Systems shall complete the applicable source water monitoring and treatment requirements (described in the referenced portions of R309-210-6(4)(b)(ii), and in R309-210-6(3), and R309-210-6(6)) by the following deadlines.

(i) Deadlines for Completing Source Water Treatment Steps

(A) Step 1: A system exceeding the lead or copper action level shall complete lead and copper source water monitoring (R309-210-6(6)(b)) and make a treatment recommendation to the Executive Secretary (R309-210-6(4)(b)(ii)(A)) within 6 months after exceeding the lead or copper action level.

(B) Step 2: The Executive Secretary shall make a determination regarding source water treatment (R309-210-6(4)(b)(ii)(B)) within 6 months after submission of monitoring results under step 1.

(C) Step 3: If the Executive Secretary requires installation of source water treatment, the system shall install the treatment (R309-210-6(4)(b)(ii)(C)) within 24 months after completion of step 2.

(D) Step 4: The system shall complete follow-up tap water monitoring (R309-210-6(3)(d)(ii)) and source water monitoring (R309-210-6(6)(c)) within 36 months after completion of step 2.

(E) Step 5: The Executive Secretary shall review the system's installation and operation of source water treatment and specify maximum permissible source water levels (R309-210-6(4)(b)(ii)(D)) within 6 months after completion of step 4.

(F) Step 6: The system shall operate in compliance with the Executive Secretary specified maximum permissible lead and copper source water levels (R309-210-6(4)(b)(ii)(D)) and continue source water monitoring (R309-210-6(6)(d)).

(ii) Description of Source Water Treatment Requirements

(A) System treatment recommendation

Any system which exceeds the lead or copper action level shall recommend in writing to the Executive Secretary the installation and operation of one of the source water treatments listed in R309-210-6(4)(b)(ii)(B). A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(B) Determination regarding source water treatment

The Executive Secretary shall complete an evaluation of the results of all source water samples submitted by the water system to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users' taps. If the Executive Secretary determines that treatment is needed, the Executive Secretary shall either require installation and operation of the source water treatment recommended by the system (if any) or require the installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening or coagulation/filtration. If the Executive Secretary requests additional information to aid in its review, the water system shall provide the information by the date specified by the Executive Secretary in its request. The Executive Secretary shall notify the system in writing of its determination and set forth the basis for its decision.

(C) Installation of source water treatment

Each system shall properly install and operate the source water treatment designated by the Executive Secretary under R309-210-6(4)(b)(ii)(B).

(D) Review of source water treatment and specification of maximum permissible source water levels

The Executive Secretary shall review the source water samples taken by the water system both before and after the system installs source water treatment, and determine whether the system has properly installed and operated the source water treatment designated by the Executive Secretary. Based upon its review, the Executive Secretary shall designate the maximum permissible lead and copper concentrations for finished water entering the distribution system. Such levels shall reflect the contaminant removal capability of the treatment properly operated and maintained. The Executive Secretary shall notify the system in writing and explain the basis for its decision.

(E) Continued operation and maintenance

Each water system shall maintain lead and copper levels below the maximum permissible concentrations designated by the Executive Secretary at each sampling point monitored in accordance with R309-210-6(6). The system is out of compliance with this paragraph if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the Executive Secretary.

(F) Modification of treatment decisions

Upon its own initiative or in response to a request by a water system or other interested party, the Executive Secretary may modify its determination of the source water treatment under R309-210-6(4)(b)(ii)(B), or maximum permissible lead and copper concentrations for finished water entering the distribution system under R309-210-6(4)(b)(ii)(D). A request for modification by a system or other interested party shall: be in writing, explain why the modification is appropriate, and provide supporting documentation. The Executive Secretary may modify the determination where it concludes that such change is necessary to ensure that the system continues to minimize lead and copper concentrations in source water. A revised determination shall: be made in writing, set forth the new treatment requirements, explain the basis for the Executive Secretary's decision, and provide an implementation schedule for completing the treatment modifications.

(c) Lead service line replacement requirements.

(i) Systems that fail to meet the lead action level in tap samples taken pursuant to R309-210-6(3)(d)(ii), after installing corrosion control and/or source water treatment (whichever sampling occurs later), shall replace lead service lines in accordance with the requirements of this section. If a system is in violation of R309-210-6(2) or R309-210-6(4)(b) for failure to install source water or corrosion control treatment, the Executive Secretary may require the system to commence lead service line replacement under this section after the date by which the system was required to conduct monitoring under R309-104-4.2.3.d.2. has passed.

(ii) A system shall replace annually at least 7 percent of the initial number of lead service lines in its distribution system. The initial number of lead service lines is the number of lead lines in place at the time the replacement program begins. The system shall identify the initial number of lead service lines in its distribution system, including an identification of the portion(s) owned by the system, based upon a materials evaluation, including the evaluation required under R309-210-6(3)(a) and relevant legal authorities (e.g., contracts, local ordinances) regarding the portion owned by the system. The first year of lead service line replacement shall begin on the date the action level was exceeded in tap sampling referenced in R309-210-6(4)(c)(i).

(iii) A system is not required to replace an individual lead service line if the lead concentration in all service line samples from that line, taken pursuant to R309-210-6(3)(b)(iii), is less than or equal to 0.015 mg/L.

(iv) A water system shall replace that portion of the lead service line that it owns. In cases where the system does not own the entire lead service line, the system shall notify the owner of the line, or the owner's authorized agent, that the system will replace the portion of the service line that it owns and shall offer to replace the owner's portion of the line. A system is not required to bear the cost of replacing the privately-owned portion of the line, nor is it required to replace the

privately-owned portion where the owner chooses not to pay the cost of replacing the privately owned portion of the line, or where replacing the privately-owned portion would be precluded by State, local or common law. A water system that does not replace the entire length of the service line also shall complete the following tasks.

(A) At least 45 days prior to commencing with the partial replacement of a lead service line, the water system shall provide notice to the resident(s) of all buildings served by the line explaining that they may experience a temporary increase of lead levels in their drinking water, along with guidance on measures consumers can take to minimize their exposure to lead. The Executive Secretary may allow the water system to provide notice under the previous sentence less than 45 days prior to commencing partial lead service line replacement where such replacement is in conjunction with emergency repairs. In addition, the water system shall inform the resident(s) served by the line that the system will, at the system's expense, collect a sample from each partially-replaced lead service line that is representative of the water in the service line for analysis of lead content, as prescribed under R309-210-6(3)(b)(iii), within 72 hours after the completion of the partial replacement of the service line. The system shall collect the sample and report the results of the analysis to the owner and the resident(s) served by the line within three business days of receiving the results. Mailed notices post-marked within three business days of receiving the results shall be considered on time.

(B) The water system shall provide the information required by paragraph (c)(iv)(A) of this section to the residents of individual dwellings by mail or by other methods approved by the Executive Secretary. In instances where multi-family dwellings are served by the line, the water system shall have the option to post the information at a conspicuous location.

(v) The Executive Secretary shall require a system to replace lead service lines on a shorter schedule than that required by this section, taking into account the number of lead service lines in the system, where such a shorter replacement schedule is feasible. The Executive Secretary shall make this determination in writing and notify the system of its finding within 6 months after the system is triggered into lead service line replacement based on monitoring referenced in R309-210-6(4)(c)(i).

(vi) Any system may cease replacing lead service lines whenever first draw samples collected pursuant to R309-210-6(3)(b)(ii) meet the lead action level during each of two consecutive monitoring periods and the system submits the results to the Executive Secretary. If first draw tap samples collected in any such water system thereafter exceeds the lead action level, the system shall recommence replacing lead service lines, pursuant to R309-210-6(4)(c)(ii).

(vii) To demonstrate compliance with R309-210-6(4)(c)(i) through R309-210-6(4)(c)(iv), a system shall report to the Executive Secretary the information specified in R309-210-6(8)(e).

(5) Monitoring requirements for water quality parameters.

All large water systems and all small and medium-size systems that exceed the lead or copper action level shall monitor water quality parameters in addition to lead and copper in accordance with this section.

(a) General Requirements

(i) Sample collection methods

(A) Tap samples shall be representative of water quality throughout the distribution system taking into account the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Tap sampling under this section is not required to be conducted at taps targeted for lead and copper sampling under R309-210-6(3)(a).

(B) Samples collected at the entry point(s) to the distribution system shall be from locations representative of each source after treatment. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(ii) Number of samples

(A) Systems shall collect two tap samples for applicable water quality parameters during each monitoring period specified under R309-210-6(5)(b) through R309-210-6(5)(e) from the following number of sites in Table 210-5.

TABLE 210-5
NUMBER OF WATER QUALITY PARAMETER SAMPLE SITES

System Size (# People Served)	# of Sites For Water Quality Parameters
Greater than 100,000	25
10,001-100,000	10
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
100 or less	1

(B) Except as provided in paragraph (c)(iii) of this section, Systems shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in R309-210-6(5)(b). Systems shall collect one sample for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in R309-210-6(5)(c) through R309-210-6(5)(e).

(b) Initial Sampling

All large water systems shall measure the applicable water quality parameters as specified below at taps and at each entry point to the distribution system during each six-month monitoring period specified in R309-210-6(3)(d)(i). All small and medium-size systems shall measure the applicable water quality parameters at the locations specified below during each six-month monitoring period specified in R309-210-6(3)(d)(i) during which the system exceeds the lead or copper action level.

(i) At taps:

(A) pH;

(B) alkalinity;

(C) orthophosphate, when an inhibitor containing a phosphate compound is used;

(D) silica, when an inhibitor containing a silicate compound is used;

(E) calcium;

(F) conductivity; and

(G) water temperature.

(ii) At each entry point to the distribution system: all of the applicable parameters listed in R309-210-6(5)(b)(i).

(c) Monitoring after installation of corrosion control

Any large system which installs optimal corrosion control treatment pursuant to R309-210-6(2)(d)(iv) shall measure the water quality parameters at the locations and frequencies specified below during each six-month monitoring period specified in R309-210-6(3)(d)(ii)(A). Any small or medium-size system which installs optimal corrosion control treatment shall conduct such monitoring during each six-month monitoring period specified in R309-210-6(3)(d)(ii)(B) in which the system exceeds the lead or copper action level.

(i) At taps, two samples for:

(A) pH;

(B) alkalinity;

(C) orthophosphate, when an inhibitor containing a phosphate compound is used;

(D) silica, when an inhibitor containing a silicate compound is used;

(E) calcium, when calcium carbonate stabilization is used

as part of corrosion control.

(ii) Except as provided in Paragraph (c)(iii) of this section, at each entry point to the distribution system, at least on sample no less frequently than every two weeks (bi-weekly) for:

(A) pH;

(B) when alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and

(C) when a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable).

(iii) Any ground water system can limit entry point sampling described in paragraph (c)(ii) of this section to those entry points that are representative of water quality and treatment conditions throughout the system. If water from untreated ground water sources mixes with water from treated ground water sources, the system must monitor for water quality parameters both at representative entry points receiving treatment and representative entry points receiving no treatment. Prior to the start of any monitoring under this paragraph, the system shall provide to the Executive Secretary written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(d) Monitoring after Executive Secretary specifies water quality parameter values for optimal corrosion control.

After the Executive Secretary specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under R309-210-6(4)(a)(vi), all large systems shall measure the applicable water quality parameters in accordance with paragraph (c) of this section and determine compliance with the requirements of R309-210-6(4)(a)(vii) every six months with the first six month period to begin on the date the Executive Secretary specifies the optimal values under R309-210-6(4)(a)(vi). Any small or medium size system shall conduct such monitoring during each six month period specified in this paragrph in which the system exceeds the lead or copper action level. For any such small and medium size system that is subject to a reduced monitoring frequency pursuant to R309-210-6(3)(d)(iv) at the time of the action level exceedance, the end of the applicable six month monitoring period under R309-210-6(3)(d)(iv). Compliance with Executive Secretary designated optimal water quality parameter values shall be determined as specified under R309-210-6(4)(a)(vii).

(e) Reduced monitoring

(i) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under R309-210-6(5)(d) shall continue monitoring at the entry point(s) to the distribution system as specified in R309-210-6(5)(c)(ii). Such system may collect two tap samples for applicable water quality parameters from the following reduced number of sites in Table 210-6 during each six-month monitoring period.

TABLE 210-6
REDUCED NUMBER OF WATER QUALITY PARAMETER SAMPLE SITES

System Size (# People Served)	Reduced # of Sites for Water Quality Parameters
Greater than 100,000	10
10,001 to 100,000	7
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
100 or less	1

(ii)(A) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Executive Secretary under R309-210-6(4)(a)(vi) during three consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in R309-210-6(5)(e)(i), Table 210-6, from every six months to annually. Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Executive Secretary under R309-210-6(4)(a)(vi) during three consecutive years of annual monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in R309-210-6(5)(e)(i), Table 210-6, from annually to every three years.

(B) A water system may reduce the frequency with which it collects tap samples for applicable water quality parameters specified in paragraph (e)(i) of this section to every three years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to the PQL for lead specified in R309-200-4(3), that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L for copper in R309-200-5(2)(c), and that it also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Executive Secretary under R309-210-6(4)(a)(vi).

(iii) A water system that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

(iv) Any water system subject to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the Executive Secretary in R309-210-6(4)(a)(vi) for more than 9 days in any six month period specified in R309-210-6(4)(a)(vii) shall resume distribution system tap water sampling in accordance with the number and frequency requirements in paragraph (d) of this section. Such a system may resume annual monitoring for water quality parameters at the tap at the reduced number of sites specified in paragraph (e)(i) of this section after it has completed two subsequent consecutive six month rounds of monitoring that meet the criteria of that paragraph or may resume triennial monitoring for water quality parameters at the tap at the reduced number os sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (e)(ii)(A) or (e)(ii)(B) of this section.

(f) Additional monitoring by systems

The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the Executive Secretary in making any determinations (i.e., determining concentrations of water quality parameters) under this section or R309-210-6(4)(a).

(g) The Executive Secretary has the authority to allow the use of previously collected monitoring data for purposes of monitoring, if the data were collected in accordance with this section and analyzed in accordance with R309-104-8.

(6) Monitoring requirements for lead and copper in source water.

(a) Sample location, collection methods, and number of samples

(i) A water system that fails to meet the lead or copper action level on the basis of tap samples collected in accordance with R309-210-6(3) shall collect lead and copper source water samples in accordance with the following requirements regarding sample location, number of samples, and collection methods:

(A) Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). The system shall take one sample at the same

sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(B) Surface water systems shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment (hereafter called a sampling point). The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.

(C) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(D) The Executive Secretary may reduce the total number of samples which must be analyzed by allowing the use of compositing. Compositing of samples must be done by certified laboratory personnel. Composite samples from a maximum of five samples are allowed, provided that if the lead concentration in the composite sample is greater than or equal to 0.001 mg/L or the copper concentration is greater than or equal to 0.160 mg/L, then either:

(I) A follow up sample shall be taken and analyzed within 14 days at each sampling point included in the composite; or

(II) If duplicates of or sufficient quantities from the original samples from each sampling point used in the composite are available, the system may use these instead of resampling.

(ii) Where the results of sampling indicate an exceedance of maximum permissible source water levels established under R309-210-6(4)(b)(ii)(D), the Executive Secretary may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a confirmation sample is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged in determining compliance with the specified maximum permissible levels. Any sample value below the detection limit shall be considered to be zero. Any value above the detection limit but below the PQL shall either be considered as the measured value or be considered one-half the PQL.

(b) Monitoring frequency after system exceeds tap water action level.

Any system which exceeds the lead or copper action level at the tap shall collect one source water sample from each entry point to the distribution system within six months after the exceedance.

(c) Monitoring frequency after installation of source water treatment.

Any system which installs source water treatment pursuant to R309-210-6(4)(b)(i)(C) shall collect an additional source water sample from each entry point to the distribution system during two consecutive six-month monitoring periods by the deadline specified in R309-210-6(4)(b)(i)(D).

(d) Monitoring frequency after Executive Secretary specifies maximum permissible source water levels or determines that source water treatment is not needed

(i) A system shall monitor at the frequency specified below in cases where the Executive Secretary specifies maximum permissible source water levels under R309-210-6(4)(b)(ii)(D) or determines that the system is not required to install source water treatment under R309-210-6(4)(b)(ii)(B).

(A) A water system using only groundwater shall collect samples once during the three-year compliance period in effect when the applicable determination under R309-210-6(6)(d)(i) is made. Such systems shall collect samples once during each subsequent compliance period.

(B) A water system using surface water (or a combination of surface and groundwater) shall collect samples once during each year, the first annual monitoring period to begin on the date on which the applicable determination is made under R309-210-6(6)(d)(i).

(ii) A system is not required to conduct source water sampling for lead and/or copper if the system meets the action level for the specific contaminant in tap water samples during the entire source water sampling period applicable to the system under R309-210-6(6)(d)(i)(A) or (B).

(e) Reduced monitoring frequency

(i) A water system using only ground water may reduce the monitoring frequency for lead and copper in source water to once during each nine year compliance cycle, as defined in R309-110, if the system meets one of the following criteria:

(A) The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the Executive Secretary in R309-210-6(4)(b)(ii)(D) during at least three consecutive compliance periods under paragraph (d)(i) of this section; or

(B) The Executive Secretary has determined that source water treatment is not needed and the system demonstrates that, during at least three consecutive compliance periods in which sampling was conducted under paragraph (d)(i) of this section, the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L.

(ii) A water system using surface water (or a combination of surface water and ground water) may reduce the monitoring frequency in paragraph (d)(i) of this section to once during each nine year compliance cycle, as defined in R309-110, if the system meets one of the following criteria:

(A) The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the Executive Secretary in R309-210-6(4)(b)(ii)(D) for at least three consecutive years; or

(B) The Executive Secretary has determined that source water treatment is not needed and the system demonstrates that, during at least three consecutive years, the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L.

(iii) A water system that uses a new source of water is not eligible for reduced monitoring for lead and/or copper until concentrations in samples collected from the new source during three consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified by the Executive Secretary in R309-210-6(4)(b)(i)(E).

(iv) The Executive Secretary has the authority to allow the use of previously collected monitoring data for purposes of monitoring, if the data were collected in accordance with this section and analyzed in accordance with R309-104-8.

(7) Public education and supplemental monitoring requirements.

A water system that exceeds the lead action level based on tap water samples collected in accordance with R309-210-6(3) shall deliver the public education materials contained in R309-210-6(7)(a) and (b) in accordance with the requirements in R309-210-6(7)(c).

(a) Content of written materials.

(i) Community water systems. A community water system shall include the following text in all of the printed materials it distributes through its lead public education program. Systems may delete information pertaining to lead service lines, upon approval by the Executive Secretary, if no lead service lines exist anywhere in the water system service area. Public education language at paragraphs (a)(1)(iv)(B)(5) and

(a)(1)(iv)(D)(2) of this section may be modified regarding building permit record availability and consumer access to these records, if approved by the Executive Secretary. Systems may also continue to utilize pre-printed materials that meet the public education language requirements in R309-210-6(7). Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by lay people.

(A) INTRODUCTION

The United States Environmental Protection Agency (EPA) and (insert name of water supplier) are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under Federal law we are required to have a program in place to minimize lead in your drinking water by (insert date when corrosion control will be completed for your system). This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace each lead service line that we control if the line contributes lead concentrations of more than 15 ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at (insert water system's phone number). This brochure explains the simple steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

(B) HEALTH EFFECTS OF LEAD

Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination -- like dirt and dust -- that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(C) LEAD IN DRINKING WATER

(I) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

(II) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome plated brass faucets, and in some cases, pipes made of lead that connect your house to the water main (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

(III) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon after returning from work or school, can contain fairly high levels of lead.

(D) STEPS YOU CAN TAKE IN THE HOME TO REDUCE EXPOSURE TO LEAD IN DRINKING WATER

(I) Despite our best efforts mentioned earlier to control water corrosivity and remove lead from the water supply, lead levels in some homes or buildings can be high. To find out whether you need to take action in your own home, have your drinking water tested to determine if it contains excessive concentrations of lead. Testing the water is essential because you cannot see, taste, or smell lead in drinking water. Some local laboratories that can provide this service are listed at the end of this booklet. For more information on having your water tested, please call (insert phone number of water system).

(II) If a water test indicates that the drinking water drawn from a tap in your home contains lead above 15 ppb, then you should take the following precautions:

(aa) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in your home's plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15-30 seconds. If your house has a lead service line to the water main, you may have to flush the water for a longer time, perhaps one minute, before drinking. Although toilet flushing or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one or two gallons of water and costs less than (insert a cost estimate based on flushing two times a day for 30 days) per month. To conserve water, fill a couple of bottles for drinking water after flushing the tap, and whenever possible use the first flush water to wash the dishes or water the plants. If you live in a high-rise building, letting the water flow before using it may not work to lessen your risk from lead. The plumbing systems have more, and sometimes larger pipes than smaller buildings. Ask your landlord for help in locating the source of the lead and for advice on reducing the lead level.

(bb) Try not to cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it on the stove.

(cc) Remove loose lead solder and debris from the plumbing materials installed in newly constructed homes, or homes in which the plumbing has recently been replaced, by removing the faucet strainers from all taps and running the water from 3 to 5 minutes. Thereafter, periodically remove the strainers and flush out any debris that has accumulated over time.

(dd) If your copper pipes are joined with lead solder that has been installed illegally since it was banned in 1986, notify the plumber who did the work and request that he or she replace the lead solder with lead-free solder. Lead solder looks dull gray, and when scratched with a key looks shiny. In addition, notify your local plumbing inspector and the Utah Department of Commerce about the violation.

(ee) Determine whether or not the service line that connects your home or apartment to the water main is made of lead. The best way to determine if your service line is made of lead is by either hiring a licensed plumber to inspect the line or by contacting the plumbing contractor who installed the line. You can identify the plumbing contractor by checking the city's record of building permits which should be maintained in the files of the (insert name of department that issues building permits). A licensed plumber can at the same time check to see if your homes's plumbing contains lead solder, lead pipes, or pipe fittings that contain lead. The public water system that delivers water to your home should also maintain records of the materials located in the distribution system. If the service line that connects your dwelling to the water main contributes more than 15 ppb to drinking water, after our comprehensive treatment program is in place, we are required to replace the portion of the line we own. If the line is only partially owned

by the (insert name of the city, county, or water system that owns the line), we are required to provide the owner of the privately-owned portion of the line with information on how to replace the privately-owned portion of the service line, and offer to replace that portion of the line at owner's expense. If we replace only the portion of the line that we own, we also are required to notify you in advance and provide you with information on the steps you can take to minimize exposure to any temporary increase in lead levels that may result from the partial replacement, to take a follow-up sample at our expense from the line within 72 hours after the partial replacement, and to mail or otherwise provide you with the results of that sample within three business days of receiving the results. Acceptable replacement alternatives include copper, steel, iron, and plastic pipes.

(ff) Have an electrician check your wiring. If grounding wires from the electrical system are attached to your pipes, corrosion may be greater. Check with a licensed electrician or your local electrical code to determine if your wiring can be grounded elsewhere. DO NOT attempt to change the wiring yourself because improper grounding can cause electrical shock and fire hazards.

(III) The steps described above will reduce the lead concentrations in your drinking water. However, if a water test indicates that the drinking water coming from your tap contains lead concentrations in excess of 15 ppb after flushing, or after we have completed our actions to minimize lead levels, then you may want to take the following additional measures:

(aa) Purchase or lease a home treatment device. Home treatment devices are limited in that each unit treats only the water that flows from the faucet to which it is connected, and all of the devices require periodic maintenance and replacement. Devices such as reverse osmosis systems or distillers can effectively remove lead from your drinking water. Some activated carbon filters may reduce lead levels at the tap, however all lead reduction claims should be investigated. Be sure to check the actual performance of a specific home treatment device before and after installing the unit.

(bb) Purchase bottled water for drinking and cooking.

(IV) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(aa) (insert the name of city or county department of public utilities) at (insert phone number) can provide you with information about your community's water supply, and a list of local laboratories that have been certified by EPA for testing water quality;

(bb) (insert the name of city or county department that issues building permits) at (insert phone number) can provide you with information about building permit records that should contain the names of plumbing contractors that plumbed your home; and

(cc) The Utah Division of Drinking Water at 536-4200 or the (insert the name of the city or county health department) at (insert phone number) can provide you with information about the health effects of lead and how you can have your child's blood tested.

(V) The following is a list of some Utah Division of Drinking Water approved laboratories in your area that you can call to have your water tested for lead. (Insert names and phone numbers of at least two laboratories).

(ii) Non-transient non-community water systems. A non-transient non-community water system shall either include the text specified in R309-210-6 (7)(a)(i) of this section or shall include the following text in all of the printed materials it distributes through its lead public education program. Water systems may delete information pertaining to lead service lines, upon approval by the Executive Secretary, if no lead service lines exist anywhere in the water system service area. Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by lay people.

(A) INTRODUCTION

The United States Environmental Protection Agency (EPA) and (insert name of water supplier) are concerned about lead in your drinking water. Some drinking water samples taken from this facility have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under Federal law we are required to have a program in place to minimize lead in your drinking water by (insert date when corrosion control will be completed for your system). This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace each lead service line that we control if the line contributes lead concentrations of more than 15 ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at (insert water system's phone number). This brochure explains the simple steps you can take to protect yourself by reducing your exposure to lead in drinking water.

(B) HEALTH EFFECTS OF LEAD

Lead is found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination -- like dirt and dust -- that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(C) LEAD IN DRINKING WATER

(I) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

(II) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome plated brass faucets, and in some cases, pipes made of lead that connect houses and buildings to the water mains (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

(III) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon if the water has not been used all day, can contain fairly high levels of lead.

(D) STEPS YOU CAN TAKE IN THE HOME TO REDUCE EXPOSURE TO LEAD IN DRINKING WATER

(I) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15-30 seconds. Although toilet flushing

or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your health. It usually uses less than one gallon of water.

(II) Do not cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it.

(III) The steps described above will reduce the lead concentrations in your drinking water. However, if you are still concerned, you may wish to use bottled water for drinking and cooking.

(IV) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(aa) (insert the name or title of facility official if appropriate) at (insert phone number) can provide you with information about your facility's water supply, and

(bb) The Utah Division of Drinking Water at 536-4200 or the (insert the name of the city or county health department) at (insert phone number) can provide you with information about the health effects of lead.

(b) Content of broadcast materials. A water system shall include the following information in all public service announcements submitted under its lead public education program to television and radio stations for broadcasting:

(i) Why should everyone want to know the facts about lead and drinking water? Because unhealthy amounts of lead can enter drinking water through the plumbing in your home. That's why I urge you to do what I did. I had my water tested for (insert free or $ per sample). You can contact the (insert the name of the city or water system) for information on testing and on simple ways to reduce your exposure to lead in drinking water.

(ii) To have your water tested for lead, or to get more information about this public health concern, please call (insert the phone number of the city or water system).

(c) Delivery of a public education program

(i) In communities where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate language(s).

(ii) A community water system that exceeds the lead action level on the basis of tap water samples collected in accordance with R309-210-6(3) and that is not already repeating public education tasks pursuant to paragraph (c)(iii), (c)(vii), or (c)(viii), of this section, shall, within 60 days:

(A) insert notices in each customer's water utility bill containing the information in R309-210-6(7)(a), along with the following alert on the water bill itself in large print: "SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION." A community water system having a billing cycle that does not include a billing within 60 days of exceeding the action level, or that cannot insert information in the water utility bill without making major changes to its billing system, may use a separate mailing to deliver the information in paragraph (a)(i) of this section as long as the information is delivered to each customer within 60 days of exceeding the action level. Such water systems shall also include the "alert" language specified in this paragraph.

(B) submit the information in R309-210-6(7)(a)(i) to the editorial departments of the major daily and weekly newspapers circulated throughout the community.

(C) deliver pamphlets and/or brochures that contain the public education materials in R309-210-6(7)(a)(i)(B) and (a)(i)(D) to facilities and organizations, including the following:

(I) public schools and/or local school boards;

(II) city or county health department;

(III) Women, Infants, and Children and/or Head Start Program(s) whenever available;

(IV) public and private hospitals and/or clinics;

(V) pediatricians;

(VI) family planning clinics; and

(VII) local welfare agencies.

(D) submit the public service announcement in R309-104-4.2.7.b. to at least five of the radio and television stations with the largest audiences that broadcast to the community served by the water system.

(iii) A community water system shall repeat the tasks contained in Subsections R309-210-6(7)(c)(ii)(A), (B) and (C) every 12 months, and the tasks contained in Subsection R309-210-6(7)(c)(ii)(D) every 6 months for as long as the system exceeds the lead action level.

(iv) Within 60 days after it exceeds the lead action level (unless it already is repeating public education tasks pursuant to paragraph (c)(v) of this section), a non-transient non-community water system shall deliver the public education materials contained in R309-210-6(7)(a)(i) or R309-210-6(7)(a)(ii) as follows:

(A) post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(B) distribute informational pamphlets and/or brochures on lead in drinking water to each person served by the non-transient non-community water system. The Executive Secretary may allow the system to utilize electronic transmission in lieu of or combined with printed materials as long as it achieves at least the same coverage.

(v) A non-transient non-community water system shall repeat the tasks contained in R309-210-6(7)(c)(iv) at least once during each calendar year in which the system exceeds the lead action level.

(vi) A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period conducted pursuant to R309-210-6(3). Such a system shall recommence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(vii) A community water system may apply to the Executive Secretary, in writing, (unless the Executive Secretary has waived the requirement for prior Executive Secretary approval) to use the text specified in paragraph (a)(ii) of this section in lieu of the text in paragraph (a)(i) of this section and to perform the fasks listed in paragraphs (c)(iv) and (c)(v) of this section in lieu of the tasks in paragraphs (c)(ii) and (c)(iii) of this section if:

(A) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices; and

(B) The system provides water as part of the cost of services provided and does not separately charge for water consumption.

(viii)(A) A community water system serving 3,300 or fewer people may omit the task contained in paragraph (c)(ii)(D) of this section. As long as it distributes notices containing the information contained in paragraph (a)(i) of this section to every household served by the system, such systems may further limit their public education programs as follows:

(aa) Systems serving 500 or fewer people may forego the task contained in paragraph (c)(ii)(B) of this section. Such a

system may limit the distribution of the public education materials required under paragraph (c)(ii)(C) of this section to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children, unless it is notified by the Executive Secretary in writing that it must make a broader distribution.

(bb) If approved by the Executive Secretary in writing, a system serving 501 to 3,300 people may omit the task in paragraph (c)(ii)(B) of this section or limit the distribution of the public education materials required under paragraph (c)(ii)(C) of this section to facilities and organizations served by the system that are most likely to be visited regularly by pregnant wornen and children.

(B) A community water system serving 3,300 or fewer people that delivers public education in accordance with paragraph (c)(viii)(A) of this section shall repeat the required public education tasks at least once during each calendar year in which the system exceeds the lead action level.

(d) Supplemental monitoring and notification of results.

A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with R309-210-6(3) shall offer to sample the tap water of any customer who requests it. The system is not required to pay for collecting or analyzing the sample, nor is the system required to collect and analyze the sample itself.

(8) Reporting requirements.

All water systems shall report all of the following information to the Executive Secretary in accordance with this section.

(a) Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring

(i) Except as provided in paragraph (a)(i)(H) of this section, a water system shall report the information specified below for all tap water samples specified in R309-210-6(3) and for all water quality parameter samples specified in R309-210-6(5) within the first 10 days following the end of each applicable monitoring period specified in R309-210-6 (3) and (5) (i.e., every six months, annually, every 3 years, or every 9 years).

(A) the results of all tap samples for lead and copper including the location of each site and the criteria under R309-210-6(3)(a)(iii), (iv), (v), (vi), and (vii) under which the site was selected for the system's sampling pool;

(B) Documentation for each tap water lead or copper sample for which the water system request invalidation pursuant to R309-210-6(3)(f)(ii);

(D) the 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period, (calculated in accordance with R309-200-5(2)(c))unless the Executive Secretary calculates the system's 90th percentile lead and copper levels under paragraph (h) of this section;

(E) with the exception of initial tap sampling conducted pursuant to R309-210-6(3)(d)(i), the system shall designate any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed;

(F) the results of all tap samples for pH, and where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under R309-210-6(5)(b) through (e);

(G) the results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters under R309-210-6(5)(b) through (e).

(H) A water system shall report the results of all water quality parameter samples collected under R309-210-6(5)(c) through (f) during each six month monitoring period specified in R309-210-6(5)(d) within the first 10 days following the end of the monitoring period unless the Executive Secretary has specified a more frequent reporting requirement.

(ii) For a non-transient non-community water system, or a community water system meeting the criteria of R309-210-6(8)(c)(vii)(A) or (B), that does not have enough taps that can provide first draw samples, the system must identify, in writing, each site that did not meet the six hour minimum standing time and the length of standing time for that particular substitute sample collected pursuant to R309-210-6(3)(b)(v) and include this information with the lead and copper tap sample results required to be submitted pursuant to paragraph (a)(i)(A) of this section. The Executive Secretary has waived prior Executive Secretary approval of non-first-draw samples sites selected by the system pursuant to R309-210-6(3)(b)(v).

(iii) No later than 60 days after the addition of a new source or any change in water treatment, unless the Executive Secretary required earlier notification, a water system deemed to have optimized corrosion control under R309-210-6(3)(b)(iii), a water system subject to reduced monitoring pursuant to R309-210-6(3)(d)(iv), or a water system subject to a monitoring waiver pursuant to R309-210-6(3)(g), shall send written documentation to the Executive Secretary describing the change, In those instances where prior Executive Secretary approval of the treatment change or new source is not required, water systems are encouraged to provide the notification to the Executive Secretary beforehand to minimize the risk the treatment change or new source will adversely affect optimal corrosion control.

(iv) Any small system applying for a monitoring waiver under R309-210-6(3)(g), or subject to a waiver granted pursuant to R309-210-6(3)(g)(iii), shall provide the following information to the Executive Secretary in writing by the specified deadline:

(A) By the start of the first applicable monitoring period in R309-210-6(3), any small system applying for a monitoring waiver shall provide the documentation required to demonstrate that it meets the waiver criteria of R309-210-6(3)(g)(i) and (ii).

(B) No later than nine years after the monitoring previously conducted pursuant to R309-210-6(3)(g)(ii) or (g)(iv)(A), each small system desiring to maintain its monitoring waiver shall provide the information required by R309-210-6(3)(g)(iv)(A) and (B).

(C) No later than 60 days after it becomes aware that it is no longer free of lead-containing or copper containing material, as appropriate, each small system with a monitoring waiver shall provide written notification to the Executive Secretary, setting forth the circumstances resulting in the lead containing or copper containing materials being introduced into the system and what corrective action, if any, the system plans to remove these materials

(D) By October 10, 2000, any small system with a waiver granted prior to April 11, 2000 and that has not previously met the requirements of R309-210-6(3)(g)(ii) shall provide the information required by that paragraph.

(v) Each ground water system that limits water quality parameter monitoring to a subset of entry points under R309-210-6(5)(c)(iii) shall provide, by the commencement of such monitoring, written correspondence to the Executive Secretary that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(b) Source water monitoring reporting requirements

(i) A water system shall report the sampling results for all source water samples collected in accordance with R309-210-6(6) within the first 10 days following the end of each source water monitoring period (i.e., annually, per compliance period, per compliance cycle) specified in R309-210-6(6).

(ii) With the exception of the first round of source water sampling conducted pursuant to R309-210-6(6)(b), the system shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the

sampling point has changed.

(c) Corrosion control treatment reporting requirements

By the applicable dates under R309-210-6(2), systems shall report the following information:

(i) for systems demonstrating that they have already optimized corrosion control, information required in R309-210-6(2)(b)(ii) or R309-210-6(2)(b)(iii).

(ii) for systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment under R309-210-6(4)(a)(i).

(iii) for systems required to evaluate the effectiveness of corrosion control treatments under R309-210-6(4)(a)(iii), the information required by that paragraph.

(iv) for systems required to install optimal corrosion control designated by the Executive Secretary under R309-210-6(4)(a)(iv), a letter certifying that the system has completed installing that treatment.

(d) Source water treatment reporting requirements

By the applicable dates in R309-210-6(4)(b), systems shall provide the following information to the Executive Secretary :

(i) if required under R309-210-6(4)(b)(ii)(A), their recommendation regarding source water treatment;

(ii) for systems required to install source water treatment under R309-210-6(4)(b)(ii)(B), a letter certifying that the system has completed installing the treatment designated by the Executive Secretary within 24 months after the Executive Secretary designated the treatment.

(e) Lead service line replacement reporting requirements

Systems shall report the following information to the Executive Secretary to demonstrate compliance with the requirements of R309-210-6(4)(c):

(i) Within 12 months after a system exceeds the lead action level in sampling referred to in R309-210-6(4)(c)(i), the system shall demonstrate in writing to the Executive Secretary that it has conducted a materials evaluation, including the evaluation in R309-210-6(3)(a), to identify the initial number of lead service lines in its distribution system, and shall provide the Executive Secretary with the system's schedule for replacing annually at least 7 percent of the initial number of lead service lines in its distribution system.

(ii) Within 12 months after a system exceeds the lead action level in sampling referred to in R309-210-6(4)(c)(i), and every 12 months thereafter, the system shall demonstrate to the Executive Secretary in writing that the system has either:

(A) replaced in the previous 12 months at least 7 percent of the initial lead service lines (or a greater number of lines specified by the Executive Secretary under R309-210-6(4)(c)(v)) in its distribution system, or

(B) conducted sampling which demonstrates that the lead concentration in all service line samples from an individual line(s), taken pursuant to R309-210-6(3)(b)(iii), is less than or equal to 0.015 mg/L. In such cases, the total number of lines replaced or which meet the criteria in R309-210-6(4)(c)(iii) shall equal at least 7 percent of the initial number of lead lines identified under R309-210-6(8)(a) (or the percentage specified by the Executive Secretary under R309-210-6(4)(c)(v)).

(iii) The annual letter submitted to the Executive Secretary under R309-210-6(8)(e)(ii) shall contain the following information:

(A) the number of lead service lines scheduled to be replaced during the previous year of the system's replacement schedule;

(B) the number and location of each lead service line replaced during the previous year of the system's replacement schedule;

(C) if measured, the water lead concentration and location of each lead service line sampled, the sampling method, and the date of sampling.

(iv) Systems shall also report any additional information as specified by the Executive Secretary, and in a time and manner prescribed by the Executive Secretary, to verify that all partial lead service line replacement activities have taken place.

(f) Public education program reporting requirements

(i) Any water system that is subject to the public education requirements in R309-210-6(7) shall , within ten days after the end of each period in which the system is required to perform public education tasks in accordance with R309-210-6(7)(c), send written documentation to the Executive Secretary that contains:

(A) A demonstration that the system has delivered the public education materials that meet the content requirements in R309-210-6(7)(a) and (b) and the delivery requirements in R309-210-6(7)(c); and

(B) A list of all the newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public education materials during the period in which the system was required to perform public education tasks.

(ii) Unless required by the Executive Secretary, a system that previously has submitted the information required by paragraph (f)(i)(B) of this section, as long as there have been no changes in the distribution list and the system certifies that the public education materials were distributed to the same list submitted previously.

(g) Reporting of additional monitoring data

Any system which collects sampling data in addition to that required by this subpart shall report the results to the Executive Secretary within the first ten day following the end of the applicable monitoring period under R309-210-6(3), R309-210-6(5) and R309-210-6(6) during which the samples are collected.

(h) Reporting of 90th percentile lead and copper concentrations where the Executive Secretary calculates a system's 90th percentile concentrations. A water system is not required to report the 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples during each monitoring period, as required by paragraph (a)(i)(D) of this section if:

(i) The Executive Secretary has previously notified the water system that it will calculate the water system's 90th percentile lead and copper concentrations, based on the lead and copper tap results submitted pursuant to paragraph (h)(ii)(A) of this section, and has specified a date before the end of the applicable monitoring period by which the system must provide the results of lead and copper tap water samples;

(ii) The system has provided the following information to the Executive Secretary by the date specified in paragraph (h)(i) of this section:

(A) The results of all tap samples for lead and copper including the location of each site and the criteria under R309-210-6(3)(a)(iii), (iv), (v), (vi), and/or (vii) under which the site was selected for the system's sampling pool, pursuant to paragraph (a)(i)(A) of this section; and

(B) An identification of sampling sites utilized during the current monitoring period that were not sampled during previous monitoring periods, and an explanation why sampling sites have changed; and

(iii) The Executive Secretary has provided the results of the 90th percentile lead and copper calculations, in writing, to the water system before the end of the monitoring period.

R309-210-7. Asbestos Distribution System Monitoring.

(1) The frequency of monitoring conducted to determine compliance with the maximum contaminant level for asbestos specified in R309-200-5(1) shall be conducted as follows:

(a) Each community and non-transient non-community water system is required to monitor for asbestos during the first three-year compliance period of each nine-year compliance cycle beginning in the compliance period starting January 1, 1993.

(b) If the system believes it is not vulnerable due to corrosion of asbestos-cement pipe, it may apply to the Executive Secretary for a waiver of the monitoring requirement in paragraph (a) of this section. If the Executive Secretary grants the waiver, the system is not required to monitor for asbestos.

(c) The Executive Secretary may grant a waiver based on a consideration of the use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.

(d) A waiver remains in effect until the completion of the three-year compliance period. Systems not receiving a waiver must monitor in accordance with the provisions of paragraph (a) of this section.

(2) A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(3) A system vulnerable to asbestos contamination due both to its source water supply (as specified in R309-205-5(2)) and corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(4) A system which exceeds the maximum contaminant levels as determined in R309-205-5(1)(g) shall monitor quarterly beginning in the next quarter after the violation occurred.

(5). The Executive Secretary may decrease the quarterly monitoring requirement to the frequency specified in paragraph (a) of this section provided the Executive Secretary has determined that the system is reliably and consistently below the maximum contaminant level. In no case can the Executive Secretary make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface (or combined surface/ground) water system takes a minimum of four quarterly samples.

(6) If monitoring data collected after January 1, 1990 are generally consistent with the requirements of R309-210-7, then the Executive Secretary may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

R309-210-8. Disinfection Byproducts - Stage 1 Requirements.

(1) General requirements. The requirements in this sub-section establish criteria under which community and non-transient non-community water systems that add a chemical disinfectant to the water in any part of the drinking water treatment process, shall modify their practices to meet MCLs and MRDLs in R309-200-5(3)(c) and meet treatment technique requirements in R309-215-12 and 13. The requirements of this sub-section also establish criteria under which transient non-community water systems that use chlorine dioxide shall modify their practices to meet MRDLs for chlorine dioxide in R309-200-5(3)(c).

(a) Compliance dates.

(i) Community and Non-transient non-community water systems. Surface water systems serving 10,000 or more persons must comply with this section beginning January 1, 2002. Surface water systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this section beginning January 1, 2004.

(ii) Transient non-community water systems. Surface water systems serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant must comply with any requirements for chlorine dioxide in this section beginning January 1, 2002. Surface water systems serving fewer than 10,000 persons and using chlorine dioxide as a disinfectant or oxidant and systems using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with any requirements for chlorine dioxide in this section beginning January 1, 2004.

(b) Systems must take all samples during normal operating conditions.

(c) Systems may consider multiple wells drawing water from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with approval from the Executive Secretary.

(d) Failure to monitor in accordance with the monitoring plan required under paragraph (5) of this section is a monitoring violation.

(e) Failure to monitor will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MCLs or MRDLs.

(f) Systems may use only data collected under the provisions of this section or the federal Information Collection Rule,(40 CFR, Part 141, Subpart M) to qualify for reduced monitoring.

(2) Monitoring requirements for disinfection byproducts.

(a) TTHMs and HAA5s

(i) Routine monitoring. Systems must monitor at the frequency indicated in the following:

(A) If a system elects to sample more frequently than the minimum required, at least 25 percent of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

(B) Surface water systems serving at least 10,000 persons shall take four water samples per quarter per treatment plant. At least 25 percent of all samples collected each quarter shall be at locations representing maximum residence time. The remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods.

(C) Surface water systems serving from 500 to 9,999 persons shall take one water sample per quarter per treatment plant at a locations representing maximum residence time.

(D) Surface water systems serving fewer than 500 persons shall take one sample per year per treatment plant during month of warmest water temperature at a location representing maximum residence time. If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets reduced monitoring criteria in paragraph (2)(a)(v) of this section.

(E) Systems using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons shall take one water sample per quarter per treatment plant at a locations representing maximum residence time.

(F) Systems using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons shall take one sample per year per treatment plant during month of warmest water temperature at a location representing maximum residence time. If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets criteria in paragraph (2)(a)(v) of this section for reduced monitoring.

(ii) Systems may reduce monitoring, except as otherwise provided, if the system has monitored for at least one year and is in accordance with the following paragraphs. Any Surface water system serving fewer than 500 persons may not reduce its monitoring to less than one sample per treatment plant per year.

(A) A surface water system serving at least 10,000 persons which has a source water annual average TOC level, before any treatment, of less than or equal to 4.0 mg/L and has a TTHM annual average of less than or equal to 0.040 mg/L and has a HAA5 annual average of less than or equal to 0.030 mg/L may reduce monitoring to one sample per treatment plant per quarter at a distribution system location reflecting maximum residence time.

(B) A surface water system serving from 500 to 9,999 persons which has a source water annual average TOC level, before any treatment, of less than or equal to 4.0 mg/L and has a TTHM annual average of less than or equal to 0.040 mg/L and has a HAA5 annual average of less than or equal to 0.030 mg/L may reduce monitoring to one sample per treatment plant per year at a distribution system location reflecting maximum residence time during the month of warmest water temperature.

(C) A system using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons that has a TTHM annual average of less than or equal to 0.040 mg/L and has a HAA5 annual average of less than or equal to 0.030 mg/L may reduce monitoring to one sample per treatment plant per year at a distribution system location reflecting maximum residence time during the month of warmest water temperature.

(D) A system using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons that has a TTHM annual average of less than or equal to 0.040 mg/L and has a HAA5 annual average of less than or equal to 0.030 mg/L for two consecutive years or has a TTHM annual average of less than or equal to 0.020 mg/L and has a HAA5 annual average of less than or equal to 0.015mg/L for one year may reduce monitoring to one sample per treatment plant per three year monitoring cycle at a distribution system location reflecting maximum residence time during the month of warmest water temperature, with the three-year cycle beginning on January 1 following the quarter in which the system qualifies for reduced monitoring.

(iii) Monitoring requirements for source water TOC in order to qualify for reduced monitoring for TTHM and HAA5 under paragraph (2)(a)(ii) of this section, surface water systems not monitoring under the provisions of paragraph (d) of this section must take monthly TOC samples every 30 days at a location prior to any treatment, beginning April 1, 2008 or earlier, if specified by the Executive Secretary. In addition to meeting other criteria for reduced monitoring in paragraph (2)(a)(ii) of this section, the source water TOC running annual average must be equal to or less than 4.0 mg/L (based on the most recent four quarters of monitoring) on a continuing basis at each treatment plant to reduce or remain on reduced monitoring for TTHM and HAA5. Once qualified for reduced monitoring for TTHM and HAA5 under paragraph (2)(a)(ii) of this section, a system may reduce source water TOC monitoring to quarterly TOC samples taken every 90 days at a location prior to any treatment.

(iv) Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems which must monitor quarterly) or the result of the sample (for systems which must monitor no more frequently than annually) is no more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. Systems that do not meet these levels must resume monitoring at the frequency identified in paragraph (2)(a)(i) of this section in the quarter immediately following the monitoring period in which the system exceeds 0.060 mg/L or 0.045 mg/L for TTHM or HAA5, respectively. For systems using only ground water not under the direct influence of surface water and serving fewer than 10,000 persons, if either the TTHM annual average is greater than 0.080 mg/L or the HAA5 annual average is greater than 0.060 mg/L, the system must go to the increased monitoring identified in paragraph (2)(a)(i) of this section in the quarter immediately following the monitoring period in which the system exceeds 0.080 mg/L or 0.060 mg/L for TTHMs or HAA5 respectively.

(v) Systems on increased monitoring may return to routine monitoring if, after at least one year of monitoring their TTHM annual average is less than or equal to 0.060 mg/L and their HAA5 annual average is less than or equal to 0.045 mg/L.

(vi) The Executive Secretary may return a system to routine monitoring when appropriate to protect public health.

(b) Chlorite. Community and non-transient non-community water systems using chlorine dioxide, for disinfection or oxidation, must conduct monitoring for chlorite.

(i) Routine monitoring.

(A) Daily monitoring. Systems must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the system must take additional samples in the distribution system the following day at the locations required by paragraph (2)(b)(ii) of this section, in addition to the sample required at the entrance to the distribution system.

(B) Monthly monitoring. Systems must take a three-sample set each month in the distribution system. The system must take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling must be conducted in the same manner (as three-sample sets, at the specified locations). The system may use the results of additional monitoring conducted under paragraph (2)(b)(ii) of this section to meet the requirement for monitoring in this paragraph.

(ii) Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system is required to take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(iii) Reduced monitoring.

(A) Chlorite monitoring at the entrance to the distribution system required by paragraph (2)(b)(i)(A) of this section may not be reduced.

(B) Chlorite monitoring in the distribution system required by paragraph (2)(b)(i)(B) of this section may be reduced to one three-sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system under paragraph (2)(b)(i)(B) of this section has exceeded the chlorite MCL and the system has not been required to conduct monitoring under paragraph (2)(b)(ii) of this section. The system may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken monthly in the distribution system under paragraph (2)(b)(i)(B) of this section exceeds the chlorite MCL or the system is required to conduct monitoring under paragraph (2)(b)(ii) of this section, at which time the system must revert to routine monitoring.

(c) Bromate.

(i) Routine monitoring. Community and nontransient noncommunity systems using ozone, for disinfection or oxidation, must take one sample per month for each treatment plant in the system using ozone. Systems must take samples monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(ii) Reduced monitoring.

(A) Until March 31, 2009, systems required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for one year. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L based upon representative monthly measurements. If the running annual average source water bromide concentration is greater than or equal to 0.05 mg/L, the system must resume routine monitoring required by paragraph (2)(c)(i) of this section in the following month.

(B) Beginning April 1, 2009, systems may no longer use the provisions of paragraph (2)(c)(ii)(A) of this section to qualify for reduced monitoring. A system required to analyze for bromate may reduce monitoring from monthly to quarterly, if the system's running annual average bromate concentration is equal to or less than 0.0025 mg/L based on monthly bromate measurements under paragraph (2)(c)(i) of this section for the most recent four quarters, with samples analyzed using Method 317.0 Revision 2.0, 326.0 or 321.8. If a system has qualified for reduced bromate monitoring under paragraph (2)(c)(ii)(A) of this section, that system may remain on reduced monitoring as long as the running annual average of quarterly bromate samples is less than or equal to 0.0025 mg/L based on samples analyzed using Method 317.0 Revision 2.0, 326.0 or 321.8. If the running annual average bromate concentration is greater than 0.0025 mg/L, the system must resume routine monitoring required by (2)(c)(i) of this section.

(3) Monitoring requirements for disinfectant residuals.

(a) Chlorine and chloramines.

(i) Routine monitoring. Community and nontransient noncommunity water systems that use chlorine or chloramines must measure the residual disinfectant level in distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified in R309-210-5. The Executive Secretary may allow a public water system which uses both disinfected and undisinfected sources to take disinfectant residual samples at points other than the total coliform sampling points if the Executive Secretary determines that such sampling points are more representative of treated (disinfected) water quality within the distribution system. Water systems shall take a minimum of three residual disinfectant level samples each week.

(ii) In addition, ground water systems shall take the following readings at each facility a minimum of three times a week: the total volume of water treated; the type and amount of disinfectant used in treating the water (clearly indicating the weight if gas feeders are used, or the percent solution and volume fed if liquid feeders are used); and the setting of the rotometer valve or injector pump. Surface water systems may use the results of residual disinfectant concentration sampling conducted under R309-215-10(3) for systems which filter, in lieu of taking separate samples.

(iii) Reduced monitoring. Monitoring may not be reduced.

(b) Chlorine Dioxide.

(i) Routine monitoring. Community, nontransient noncommunity, and transient noncommunity water systems that use chlorine dioxide for disinfection or oxidation must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system must take samples in the distribution system the following day at the locations required by paragraph (3)(b)(ii) of this section, in addition to the sample required at the entrance to the distribution system.

(ii) Additional monitoring. On each day following a routine sample monitoring result that exceeds the MRDL, the system is required to take three chlorine dioxide distribution system samples. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system (i.e., no booster chlorination), the system must take three samples as close to the first customer as possible, at intervals of at least six hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system (i.e., booster chlorination), the system must take one sample at each of the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(iii) Reduced monitoring. Chlorine dioxide monitoring may not be reduced.

(4) Bromide. Systems required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly measurements for one year. The system must continue bromide monitoring to remain on reduced bromate monitoring.

(5) Monitoring plans. Each system required to monitor under this section must develop and implement a monitoring plan. The system must maintain the plan and make it available for inspection by the Executive Secretary and the general public no later than 30 days following the applicable compliance dates in R309-210-8(1)(a). All Surface water systems serving more than 3300 people must submit a copy of the monitoring plan to the Executive Secretary no later than the date of the first report required under R309-105-16(2). The Executive Secretary may also require the plan to be submitted by any other system. After review, the Executive Secretary may require changes in any plan elements. The plan must include at least the following elements.

(a) Specific locations and schedules for collecting samples for any parameters included in this subpart.

(b) How the system will calculate compliance with MCLs, MRDLs, and treatment techniques.

(c) If approved for monitoring as a consecutive system, or if providing water to a consecutive system, the Executive Secretary may modify the monitoring requirements treating the systems as a single distribution system, however, the sampling plan shall reflect the entire distribution system of all interconnected systems.

(6) Compliance requirements.

(a) General requirements.

(i) Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system fails to monitor for TTHM, HAA5, or bromate, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average. Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

(ii) All samples taken and analyzed under the provisions of this section shall be included in determining compliance, even if that number is greater than the minimum required.

(iii) If, during the first year of monitoring under R309-210-8, any individual quarter's average will cause the running annual average of that system to exceed the MCL, the system is out of compliance at the end of that quarter.

(b) Disinfection byproducts.

(i) TTHMs and HAA5.

(A) For systems monitoring quarterly, compliance with MCLs in R309-200-5(3)(c) shall be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the system as prescribed by R309-210-8(2)(a).

(B) For systems monitoring less frequently than quarterly, systems demonstrate MCL compliance if the average of samples taken that year under the provisions of R309-210-8(2)(a) does not exceed the MCLs in R309-200-5(3)(c). If the average of these samples exceeds the MCL, the system shall increase monitoring to once per quarter per treatment plant and such a system is not in violation of the MCL until it has completed one year of quarterly monitoring, unless the result of fewer than four quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. Systems required to increase monitoring frequency to quarterly monitoring shall calculate compliance by including the sample which triggered the increased monitoring plus the following three quarters of monitoring.

(C) If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and shall notify the public pursuant to R309-220, in addition to reporting to the Executive Secretary pursuant to R309-105-16.

(D) If a PWS fails to complete four consecutive quarters of monitoring, compliance with the MCL for the last four-quarter compliance period shall be based on an average of the available data.

(ii) Chlorite. Compliance shall be based on an arithmetic average of each three sample set taken in the distribution system as prescribed by R309-210-8(2)(b)(i)(B) and (2)(b)(ii). If the arithmetic average of any three sample sets exceeds the MCL, the system is in violation of the MCL and shall notify the public pursuant to R309-220, in addition to reporting to the Executive Secretary pursuant to R309-105-16.

(iii) Bromate. Compliance shall be based on a running annual arithmetic average, computed quarterly, of monthly samples (or, for months in which the system takes more than one sample, the average of all samples taken during the month) collected by the system as prescribed by R309-210-8(2)(c). If the average of samples covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and shall notify the public pursuant to R309-220, in addition to reporting to the Executive Secretary pursuant to R309-105-16. If a PWS fails to complete 12 consecutive months' monitoring, compliance with the MCL for the last four-quarter compliance period shall be based on an average of the available data.

(c) Disinfectant residuals.

(i) Chlorine and chloramines.

(A) Compliance shall be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system under R309-210-8(3)(a). If the average covering any consecutive four-quarter period exceeds the MRDL, the system is in violation of the MRDL and shall notify the public pursuant to R309-220, in addition to reporting to the Executive Secretary pursuant to R309-105-16.

(B) In cases where systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance shall be determined by including together all monitoring results of both chlorine and chloramines in calculating compliance. Reports submitted pursuant to R309-105-16 shall clearly indicate which residual disinfectant was analyzed for each sample.

(ii) Chlorine dioxide.

(A) Acute violations. Compliance shall be based on consecutive daily samples collected by the system under R309-210-8(3)(b). If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (or more) of the three samples taken in the distribution system exceed the MRDL, the system is in violation of the MRDL and shall take immediate corrective action to lower the level of chlorine dioxide below the MRDL and shall notify the public pursuant to the procedures for acute health risks in R309-220-5. Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system will also be considered an MRDL violation and the system shall notify the public of the violation in accordance with the provisions for acute violations under R309-220-5 in addition to reporting the Executive Secretary pursuant to R309-105-16.

(B) Nonacute violations. Compliance shall be based on consecutive daily samples collected by the system under R309-210-8(3)(b). If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the system is in violation of the MRDL and shall take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and will notify the public pursuant to the procedures for nonacute health risks in R309-220-6 in addition to reporting to the Executive Secretary pursuant to R309-105-16. Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation and the system shall notify the public of the violation in accordance with the provisions for nonacute violations under R309-220-6 in addition to reporting to the Executive Secretary pursuant to R309-105-16.

R309-210-9. Disinfection Byproducts - Initial Distribution System Evaluations.

(1) General requirements.

(a) The requirements of this sub-section establish monitoring and other requirements for identifying R309-210-10 compliance monitoring locations for determining compliance with maximum contaminant levels for total trihalomethanes (TTHM) and haloacetic acids (five)(HAA5). The water system must use an Initial Distribution System Evaluation (IDSE) to determine locations with representative high TTHM and HAA5 concentrations throughout the distribution system. IDSEs are used in conjunction with, but separate from, R309-210-8 compliance monitoring, to identify and select R309-210-10 compliance monitoring locations.

(b) Applicability. Community water systems that uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light; or if the system is a non-transient non-community water systems that serves at least 10,000 people and uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light are subject to these requirements.

(c) Schedule. The water system must comply with the requirements of this subpart on the schedule in paragraph (c)(i).

(i) For water systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system.

(A) For water systems that serve a population greater than or equal to 100,000:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary by October 1, 2006.

(II) The water system must complete the standard monitoring or system specific study by September 30, 2008.

(III) The water system must submit the IDSE report to the Executive Secretary by January 1, 2009.

(B) For water systems that serve a population from 50,000 to 99,999:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary by April 1, 2007.

(II) The water system must complete the standard monitoring or system specific study by March 31, 2009.

(III) The water system must submit the IDSE report to the Executive Secretary by July 1, 2009.

(C) For water systems that serve a population from 10,000 to 49,999:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary by October 1, 2007.

(II) The water system must complete the standard monitoring or system specific study by September 30, 2009.

(III) The water system must submit the IDSE report to the Executive Secretary by January 1, 2010.

(D) For community water systems that serve a population less than 10,000:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary by April 1, 2008.

(II) The water system must complete the standard monitoring or system specific study by March 31, 2010.

(III) The water system must submit the IDSE report to the Executive Secretary by July 1, 2010.

(ii) For other water systems that are part of a combined distribution system:

(A) For wholesale systems or consecutive systems:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary at the same time as the system with the earliest compliance date in the combined distribution system.

(II) The water system must complete the standard monitoring or system specific study at the same time as the system with the earliest compliance date in the combined distribution system.

(III) The water system must submit the IDSE report to the Executive Secretary by at the same time as the system with the earliest compliance date in the combined distribution system.

(iii) If, within 12 months after the date the water is required to submit the information in (i)(A)(I), (B)(I), (C)(I), (D)(I) and (ii)(A)(I) above, the Executive Secretary does not approve the water system plan or notify the water system that it has not yet completed its review, the water system may consider the plan that was submitted as approved. The water system must implement that plan and must complete standard monitoring or a system specific study no later than the date identified in (i)(A)(II), (B)(II), (C)(II), (D)(II) and (ii)(A)(II) above.

(iv) The water system must submit the 40/30 certification under R309-210-9(4) by the date identified in (i)(A)(II), (B)(II), (C)(II), (D)(II) and (ii)(A)(II) above.

(v) If, within three months after the date identified in (i)(A)(III), (B)(III), (C)(III), (D)(III) and (ii)(A)(III) above (nine months after the date identified in this column if the water system must comply on the schedule in paragraph (c)(i)(C) of this section), the Executive Secretary does not approve the IDSE report or notify the water system that it has not yet completed its review, the water system may consider the report submitted as approved and must implement the recommended R309-210-10 monitoring as required.

(vi) For the purpose of the schedule in paragraph (c)(i) through (c)(v) of this section, the Executive Secretary may determine that the combined distribution system does not include certain consecutive systems based on factors such as receiving water from a wholesale system only on an emergency basis or receiving only a small percentage and small volume of water from a wholesale system. The Executive Secretary may also determine that the combined distribution system does not include certain wholesale systems based on factors such as delivering water to a consecutive system only on an emergency basis or delivering only a small percentage and small volume of water to a consecutive system.

(d) The water system must conduct standard monitoring that meets the requirements in R309-210-9(2), or a system specific study that meets the requirements in R309-210-9(3), or certify to the Executive Secretary that the water system meet 40/30 certification criteria under R309-210-9(4), or qualify for a very small system waiver under R309-210-9(5).

(i) The water system must have taken the full complement of routine TTHM and HAA5 compliance samples required of a system with the population and source water under R309-210-8 (or the water system must have taken the full complement of reduced TTHM and HAA5 compliance samples required of a system with the population and source water under R309-210-8 if the water system meets reduced monitoring criteria under R309-210-8) during the period specified in R309-210-9(4)(a) to meet the 40/ 30 certification criteria in R309-210-9(4) the water system must have taken TTHM and HAA5 samples under R309-200-4(3) and R309-210-8 to be eligible for the very small system waiver in R309-210-9(5).

(ii) If the water system has not taken the required samples, the water system must conduct standard monitoring that meets the requirements in R309-210-9(2), or a system specific study that meets the requirements in R309-210-9(3).

(e) The water system must use only the analytical methods specified in R309-200-4(3), or otherwise approved by EPA for monitoring under this subpart, to demonstrate compliance with the requirements of this subpart.

(f) IDSE results will not be used for the purpose of determining compliance with MCLs in R309-200-5(3)(c).

(2) Standard monitoring.

(a) Standard monitoring plan. The standard monitoring plan must comply with paragraphs (a)(i) through (a)(iv) of this section. The water system must prepare and submit the standard monitoring plan to the Executive Secretary according to the schedule in R309-210-9(1)(c).

(i) The standard monitoring plan must include a schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating locations and dates of all projected standard monitoring, and all projected R309-210-8 compliance monitoring.

(ii) The standard monitoring plan must include justification of standard monitoring location selection and a summary of data the water system relied on to justify standard monitoring location selection.

(iii) The standard monitoring plan must specify the population served and system type (surface water or ground water).

(iv) The water system must retain a complete copy of the standard monitoring plan submitted under this paragraph (a), including any Executive Secretary modification of the standard monitoring plan, for as long as the water system is required to retain the IDSE report under R309-105-17(8).

(b) Standard monitoring.

(i) The water system must monitor as indicated in paragraph (b)(i). The water system must collect dual sample sets at each monitoring location. One sample in the dual sample set must be analyzed for TTHM. The other sample in the dual sample set must be analyzed for HAA5. The water system must conduct one monitoring period during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature. The water system must review available compliance, study, or operational data to determine the peak

historical month for TTHM or HAA5 levels or warmest water temperature.

(A) Surface water systems serving less than 500 population which are consecutive systems.

(I) One monitoring period per year, dual sample sets must be taken during the peak historical month. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(B) Surface water systems serving less than 500 population which are non-consecutive systems.

(I) One monitoring period per year, dual sample sets must be taken during the peak historical month. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(C) Surface water systems serving between 500 to 3,300 population which are consecutive systems.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(D) Surface water systems serving between 500 to 3,300 population which are non-consecutive systems.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(E) Surface water systems serving between 3,301 to 9,999 population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Four dual samples sets must be collected per monitoring period.

(II) Two dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(IV) One dual sample set must be taken at an average residence time of the disinfected water in the distribution system.

(F) Surface water systems serving between 10,000 to 49,999 population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. Eight dual samples sets must be collected per monitoring period.

(II) Three dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Two dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Two dual sample sets must be taken at an average residence time of the disinfected water in the distribution system.

(V) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(G) Surface water systems serving between 50,000 to 249,999 population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. 16 dual samples sets must be collected per monitoring period.

(II) Five dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Four dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Four dual sample sets must be taken at an average residence time of the disinfected water in the distribution system.

(V) Three dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(H) Surface water systems serving between 250,000 to 999,999 population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. 24 dual samples sets must be collected per monitoring period.

(II) Eight dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Six dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Six dual sample sets must be taken at an average residence time of the disinfected water in the distribution system.

(V) Four dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(I) Surface water systems serving between 1,000,000 to 4,999,999 population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. 32 dual samples sets must be collected per monitoring period.

(II) Ten dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Eight dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Eight dual sample sets must be taken at an average residence time of the disinfected water in the distribution system.

(V) Six dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(J) Surface water systems serving 5,000,000 or more population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. 40 dual samples sets must be collected per monitoring period.

(II) Twelve dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Ten dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Eight dual sample sets must be taken at an average residence time of the disinfected water in the distribution system.

(V) Eight dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(K) Ground water systems serving less than 500 population which are consecutive systems.

(I) One monitoring period per year, dual sample sets must be taken during the peak historical month. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(L) Ground water systems serving less than 500 population which are non-consecutive systems.

(I) One monitoring period per year, dual sample sets must be taken during the peak historical month. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(M) Ground water systems serving between 500 to 9,999 population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(N) Ground water systems serving between 10,000 to 99,999 population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Six dual samples sets must be collected per monitoring period.

(II) Two dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Two dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) One dual sample set must be taken at an average residence time of the disinfected water in the distribution system.

(V) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(O) Ground water systems serving between 100,000 to 499,999 population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Eight dual samples sets must be collected per monitoring period.

(II) Three dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Three dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) One dual sample set must be taken at an average residence time of the disinfected water in the distribution system.

(V) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(P) Ground water systems serving 500,000 or greater population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Twelve dual samples sets must be collected per monitoring period.

(II) Four dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Four dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Two dual sample sets must be taken at an average residence time of the disinfected water in the distribution system.

(V) Two dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(Q) A dual sample set (i.e., a TTHM and an HAA5 sample) must be taken at each monitoring location during each monitoring period.

(R) The peak historical month is the month with the highest TTHM or HAA5 levels or the warmest water temperature.

(ii) The water system must take samples at locations other than the existing R309-210-8 monitoring locations. Monitoring locations must be distributed throughout the distribution system.

(iii) If the number of entry points to the distribution system is fewer than the specified number of entry point monitoring locations, excess entry point samples must be replaced equally at high TTHM and HAA5 locations. If there is an odd extra location number, the water system must take a sample at a high TTHM location. If the number of entry points to the distribution system is more than the specified number of entry point monitoring locations, the water system must take samples at entry points to the distribution system having the highest annual water flows.

(iv) The system monitoring under this paragraph (b) may not be reduced under the provisions of R309-105-5(2).

(c) IDSE report. The IDSE report must include the elements required in paragraphs (c)(i) through (c)(iv) of this section. The water system must submit the IDSE report to the Executive Secretary according to the schedule in R309-210-9(1)(c).

(i) The IDSE report must include all TTHM and HAA5 analytical results from R309-210-8 compliance monitoring and all standard monitoring conducted during the period of the IDSE as individual analytical results and LRAAs presented in a tabular or spreadsheet format acceptable to the Executive Secretary. If changed from the standard monitoring plan submitted under paragraph (a) of this section, the report must also include a schematic of the distribution system, the population served, and system type (surface water or ground water).

(ii) The IDSE report must include an explanation of any deviations from the approved standard monitoring plan.

(iii) The water system must recommend and justify R309-210-10 compliance monitoring locations and timing based on the protocol in R309-210-9(6).

(iv) The water system must retain a complete copy of the IDSE report submitted under this section for 10 years after the date that the water system submitted the report. If the Executive Secretary modifies the R309-210-10 monitoring requirements that the water system recommended in the IDSE report or if the Executive Secretary approves alternative monitoring locations, the water system must keep a copy of the Executive Secretary's notification on file for 10 years after the date of the Executive Secretary's notification. The water system must make the IDSE report and any Executive Secretary notification available for review by the Executive Secretary or the public.

(3) System specific studies.

(a) System specific study plan. The water system specific study plan must be based on either existing monitoring results as required under paragraph (a)(i) of this section or modeling as required under paragraph (a)(ii) of this section. The water system must prepare and submit the system specific study plan to the Executive Secretary according to the schedule in R309-210-9(1)(c).

(i) Existing monitoring results. The water system may comply by submitting monitoring results collected before the water system is required to begin monitoring under R309-210-9(1)(c). The monitoring results and analysis must meet the criteria in paragraphs (a)(i)(A) and (a)(i)(B) of this section.

(A) Minimum requirements.

(I) TTHM and HAA5 results must be based on samples collected and analyzed in accordance with R309-200-4(3). Samples must be collected no earlier than five years prior to the study plan submission date.

(II) The monitoring locations and frequency must meet the conditions identified in this paragraph (a)(i)(A)(II). Each location must be sampled once during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature for every 12 months of data submitted for that location. Monitoring results must include all R309-210-8 compliance monitoring results plus additional monitoring results as necessary to meet minimum sample requirements.

(III) Surface water systems serving a population less than 500 shall have data from:

(aa) three monitoring locations; and

(bb) three samples for each TTHM and HAA5.

(IV) Surface water systems serving a population between 500 to 3,300 shall have data from:

(aa) three monitoring locations; and

(bb) nine samples each for TTHM and HAA5.

(V) Surface water systems serving a population between

3,301 to 9,999 shall have data from:
(aa) six monitoring locations; and
(bb) 36 samples each for TTHM and HAA5.
(VI) Surface water systems serving a population between 10,000 to 49,999 shall have data from:
(aa) 12 monitoring locations; and
(bb) 72 samples each for TTHM and HAA5.
(VII) Surface water systems serving a population between 50,000 to 249,999 shall have data from:
(aa) 24 monitoring locations; and
(bb) 144 samples each for TTHM and HAA5.
(VIII) Surface water systems serving a population between 250,000 to 999,999 shall have data from:
(aa) 36 monitoring locations; and
(bb) 216 samples each for TTHM and HAA5.
(IX) Surface water systems serving a population between 1,000,000 to 4,999,999 shall have data from:
(aa) 48 monitoring locations; and
(bb) 288 samples each for TTHM and HAA5.
(X) Surface water systems serving a population 5,000,000 or greater shall have data from:
(aa) 60 monitoring locations; and
(bb) 360 samples each for TTHM and HAA5.
(XI) Ground water systems serving a population less than 500 shall have data from:
(aa) three monitoring locations; and
(bb) three samples for each TTHM and HAA5.
(XII) Ground water systems serving a population between 500 to 9,999 shall have data from:
(aa) three monitoring locations; and
(bb) nine samples each for TTHM and HAA5.
(XIII) Ground water systems serving a population between 10,000 to 99,999 shall have data from:
(aa) 12 monitoring locations; and
(bb) 48 samples each for TTHM and HAA5.
(XIV) Ground water systems serving a population between 100,000 to 499,999 shall have data from:
(aa) 18 monitoring locations; and
(bb) 72 samples each for TTHM and HAA5.
(XV) Ground water systems serving a population of 500,000 or greater shall have data from:
(aa) 24 monitoring locations; and
(bb) 96 samples each for TTHM and HAA5.
(B) Reporting monitoring results. The water system must report the information in this paragraph (a)(i)(B).
(I) The water system must report previously collected monitoring results and certify that the reported monitoring results include all compliance and non-compliance results generated during the time period beginning with the first reported result and ending with the most recent R309-210-8 results.
(II) The water system must certify that the samples were representative of the entire distribution system and that treatment, and distribution system have not changed significantly since the samples were collected.
(III) The study monitoring plan must include a schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating the locations and dates of all completed or planned system specific study monitoring.
(IV) The water system specific study plan must specify the population served and system type (surface water or ground water).
(V) The water system must retain a complete copy of the system specific study plan submitted under this paragraph (a)(i), including any Executive Secretary modification of the system specific study plan, for as long as the water system is required to retain the IDSE report under paragraph (b)(v) of this section.
(VI) If the water system submits previously collected data that fully meet the number of samples required under paragraph (a)(i)(A)(II) of this section and the Executive Secretary rejects some of the data, the water system must either conduct additional monitoring to replace rejected data on a schedule the Executive Secretary approves or conduct standard monitoring under R309-210-9(2).
(ii) Modeling. The water system may comply through analysis of an extended period simulation hydraulic model. The extended period simulation hydraulic model and analysis must meet the criteria in this paragraph (a)(ii).
(A) Minimum requirements. (I) The model must simulate 24 hour variation in demand and show a consistently repeating 24 hour pattern of residence time.
(II) The model must represent the criteria listed in paragraphs (a)(ii)(A)(II)(aa) through (ii) of this section.
(aa) 75% of pipe volume;
(bb) 50% of pipe length;
(cc) All pressure zones;
(dd) All 12-inch diameter and larger pipes;
(ee) All 8-inch and larger pipes that connect pressure zones, influence zones from different sources, storage facilities, major demand areas, pumps, and control valves, or are known or expected to be significant conveyors of water;
(ff) All 6-inch and larger pipes that connect remote areas of a distribution system to the main portion of the system;
(gg) All storage facilities with standard operations represented in the model; and
(hh) All active pump stations with controls represented in the model; and
(ii) All active control valves.
(III) The model must be calibrated, or have calibration plans, for the current configuration of the distribution system during the period of high TTHM formation potential. All storage facilities must be evaluated as part of the calibration process. All required calibration must be completed no later than 12 months after plan submission.
(B) Reporting modeling. The system specific study plan must include the information in this paragraph (a)(ii)(B).
(I) Tabular or spreadsheet data demonstrating that the model meets requirements in paragraph (a)(ii)(A)(II) of this section.
(II) A description of all calibration activities undertaken, and if calibration is complete, a graph of predicted tank levels versus measured tank levels for the storage facility with the highest residence time in each pressure zone, and a time series graph of the residence time at the longest residence time storage facility in the distribution system showing the predictions for the entire simulation period (i.e., from time zero until the time it takes to for the model to reach a consistently repeating pattern of residence time).
(III) Model output showing preliminary 24 hour average residence time predictions throughout the distribution system.
(IV) Timing and number of samples representative of the distribution system planned for at least one monitoring period of TTHM and HAA5 dual sample monitoring at a number of locations no less than would be required for the system under standard monitoring in R309-210-9(2) during the historical month of high TTHM. These samples must be taken at locations other than existing R309-210-8 compliance monitoring locations.
(V) Description of how all requirements will be completed no later than 12 months after the water system submits the system specific study plan.
(VI) Schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating the locations and dates of all completed system specific study monitoring (if calibration is complete) and all R309-210-8 compliance monitoring.
(VII) Population served and system type (surface water or

ground water).

(VIII) The water system must retain a complete copy of the system specific study plan submitted under this paragraph (a)(ii), including any Executive Secretary modification of the system specific study plan, for as long as the water system is required to retain the IDSE report under paragraph (b)(vii) of this section.

(C) If the water system submits a model that does not fully meet the requirements under paragraph (a)(ii) of this section, the water system must correct the deficiencies and respond to Executive Secretary inquiries concerning the model. If the water system fails to correct deficiencies or respond to inquiries to the Executive Secretary's satisfaction, the water system must conduct standard monitoring under R309-210-9(2).

(b) IDSE report. The IDSE report must include the elements required in paragraphs (b)(i) through (b)(vi) of this section. The water system must submit the IDSE report according to the schedule in R309-210-9(1)(c).

(i) The IDSE report must include all TTHM and HAA5 analytical results from R309-210-8 compliance monitoring and all system specific study monitoring conducted during the period of the system specific study presented in a tabular or spreadsheet format acceptable to the Executive Secretary. If changed from the system specific study plan submitted under paragraph (a) of this section, the IDSE report must also include a schematic of the distribution system, the population served, and system type (surface water or ground water).

(ii) If the water system used the modeling provision under paragraph (a)(ii) of this section, the water system must include final information for the elements described in paragraph (a)(ii)(B) of this section, and a 24-hour time series graph of residence time for each R309-210-10 compliance monitoring location selected.

(iii) The water system must recommend and justify R309-210-10 compliance monitoring locations and timing based on the protocol in R309-210-9(6).

(iv) The IDSE report must include an explanation of any deviations from the approved system specific study plan.

(v) The IDSE report must include the basis (analytical and modeling results) and justification the water system used to select the recommended R309-210-10 monitoring locations.

(vi) The water system may submit the IDSE report in lieu of the system specific study plan on the schedule identified in R309-210-9(1) (c) for submission of the system specific study plan if the water system believes that it has the necessary information by the time that the system specific study plan is due. If the water system elects this approach, the IDSE report must also include all information required under paragraph (a) of this section.

(vii) The water system must retain a complete copy of the IDSE report submitted under this section for 10 years after the date the water system submitted the IDSE report. If the Executive Secretary modifies the R309-210-10 monitoring requirements the water system recommended in the IDSE report or if the Executive Secretary approves alternative monitoring locations, the water system must keep a copy of the Executive Secretary's notification on file for 10 years after the date of the Executive Secretary's notification. The water system must make the IDSE report and any Executive Secretary notification available for review by the Executive Secretary or the public.

(4) 40/30 certification.

(a) Eligibility. The water system is eligible for 40/ 30 certification if it had no TTHM or HAA5 monitoring violations under R309-210-8 of this part and no individual sample exceeded 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 during an eight consecutive calendar quarter period beginning no earlier than the date specified in this paragraph (a).

(i) If the 40/30 certification is due October 1, 2006 then the eligibility for 40/30 certification is based on eight consecutive calendar quarters of R309-210-8 compliance monitoring results beginning no earlier than January 2004.

(ii) If the 40/30 certification is due April 1, 2007 then the eligibility for 40/30 certification is based on eight consecutive calendar quarters of R309-210-8 compliance monitoring results beginning no earlier than January 2004.

(iii) If the 40/30 certification is due October 1, 2007 then the eligibility for 40/30 certification is based on eight consecutive calendar quarters of R309-210-8 compliance monitoring results beginning no earlier than January 2005.

(iv) If the 40/30 certification is due April 1, 2008 then the eligibility for 40/30 certification is based on eight consecutive calendar quarters of R309-210-8 compliance monitoring results beginning no earlier than January 2005.

(v) Unless the water system is on reduced monitoring under R309-210-8 of this part and were not required to monitor during the specified period. If the water system did not monitor during the specified period, the water system must base its eligibility on compliance samples taken during the 12 months preceding the specified period.

(b) 40/30 certification.

(i) The water system must certify to the Executive Secretary that every individual compliance sample taken under R309-210-8 of this part during the periods specified in paragraph (a) of this section were less than or equal to 0.040 mg/L for TTHM and less than or equal to 0.030 mg/L for HAA5, and that the water system did not have any TTHM or HAA5 monitoring violations during the period specified in paragraph (a) of this section.

(ii) The Executive Secretary may require the water system to submit compliance monitoring results, distribution system schematics, and/or recommended R309-210-10 compliance monitoring locations in addition to the certification. If the water system fails to submit the requested information, the Executive Secretary may require standard monitoring under R309-210-9(2) or a system specific study under R309-210-9(3).

(iii) The Executive Secretary may still require standard monitoring under R309-210-9(2) or a system specific study under R309-210-9(3) even if the water system meets the criteria in paragraph (a) of this section.

(iv) A water system must retain a complete copy of its certification submitted under this section for 10 years after the date that the water system submitted the certification. The water system must make the certification, all data upon which the certification is based, and any Executive Secretary notification available for review by the Executive Secretary or the public.

(5) Very small system waivers.

(a) If the water system serves fewer than 500 people and it has taken TTHM and HAA5 samples under R309-210-8, the water system is not required to comply with this subpart unless the Executive Secretary notifies the water system that it must conduct standard monitoring under R309-210-9(2) or a system specific study under R309-210-9(3).

(b) If the water system has not taken TTHM and HAA5 samples under R309-210-8 or if the Executive Secretary notifies the water system that the water system must comply with this subpart, the water system must conduct standard monitoring under R309-210-9(2) or a system specific study under R309-210-9(3).

(6) Stage 2 (R309-210-10) compliance monitoring location recommendations.

(a) The IDSE report must include the recommendations and justification for where and during what month(s) TTHM and HAA5 monitoring for R309-210-10 of this part should be conducted. The water system must base the recommendations on the criteria in paragraphs (b) through (e) of this section.

(b) The water system must select the number of monitoring locations specified in this paragraph (b). The water system will use these recommended locations as R309-210-10

routine compliance monitoring locations, unless Executive Secretary requires different or additional locations. The water system should distribute locations throughout the distribution system to the extent possible.

(i) Surface water systems serving less than 500.

(A) One monitoring period per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the high TTHM location in the distribution system.

(C) One dual sample set must be taken at the high HAA5 location in the distribution system.

(ii) Surface water systems serving between 500 to 3,300.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the high TTHM location in the distribution system.

(C) One dual sample set must be taken at the high HAA5 location in the distribution system.

(iii) Surface water systems serving between 3,301 to 9,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the high TTHM locations in the distribution system.

(C) One dual sample set must be taken at the high HAA5 location in the distribution system.

(iv) Surface water systems serving between 10,000 to 49,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Four dual samples sets must be collected per monitoring period.

(B) Two dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) One dual sample set must be taken at the high HAA5 locations in the distribution system.

(D) One dual sample set must be taken at an existing R309-210-8 compliance location.

(v) Surface water systems serving between 50,000 to 249,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Eight dual samples sets must be collected per monitoring period.

(B) Three dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) Three dual sample sets must be taken at the high HAA5 locations in the distribution system.

(D) Two dual samples sets must be taken at an existing R309-210-8 compliance location.

(vi) Surface water systems serving between 250,000 to 999,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. 12 dual samples sets must be collected per monitoring period.

(B) Five dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) Four dual sample sets must be taken at the high HAA5 locations in the distribution system.

(D) Three dual sample sets must be taken at an existing R309-210-8 compliance location.

(vii) Surface water systems serving between 1,000,000 to 4,999,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. 16 dual samples sets must be collected per monitoring period.

(B) Six dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) Six dual sample sets must be taken at the high HAA5 locations in the distribution system.

(D) Four dual sample sets must be taken at an existing R309-210-8 compliance location.

(viii) Surface water systems serving 5,000,000 or more population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. 20 dual samples sets must be collected per monitoring period.

(B) Eight dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) Seven dual sample sets must be taken at the high HAA5 locations in the distribution system.

(D) Five dual sample sets must be taken at an existing R309-210-8 compliance location.

(ix) Ground water systems serving less than 500.

(A) One monitoring period per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the high TTHM location in the distribution system.

(C) One dual sample set must be taken at the high HAA5 location in the distribution system.

(x) Ground water systems serving between 500 to 9,999 population.

(A) One monitoring period per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the high TTHM location in the distribution system.

(C) One dual sample set must be taken at the high HAA5 location in the distribution system.

(xi) Ground water systems serving between 10,000 to 99,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Four dual samples sets must be collected per monitoring period.

(B) Two dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) One dual sample set must be taken at the high HAA5 locations in the distribution system.

(D) One dual sample set must be taken at an existing R309-210-8 compliance location.

(xii) Ground water systems serving between 100,000 to 499,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Six dual samples sets must be collected per monitoring period.

(B) Three dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) Two dual sample sets must be taken at the high HAA5 locations in the distribution system.

(D) One dual sample set must be taken at an existing R309-210-8 compliance location.

(xiii) Ground water systems serving 500,000 or greater population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Eight dual samples sets must be collected per monitoring period.

(B) Three dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) Three dual sample sets must be taken at the high HAA5 locations in the distribution system.

(D) Two dual sample sets must be taken at an existing R309-210-8 compliance location.

(xiv) All systems must monitor during month of highest DBP concentrations.

(xv) Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for subpart H systems serving 500-3,300. Systems on annual monitoring and subpart H systems serving 500-3,300 are required to take individual TTHM and HAA5 samples (instead

of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. Only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location, and month, if monitored annually).

(c) The water system must recommend R309-210-10 compliance monitoring locations based on standard monitoring results, system specific study results, and R309-210-8 compliance monitoring results. The water system must follow the protocol in paragraphs (c)(i) through (c)(viii) of this section. If required to monitor at more than eight locations, the water system must repeat the protocol as necessary. If the water system do not have existing R309-210-8 compliance monitoring results or if the water system do not have enough existing R309-210-8 compliance monitoring results, the water system must repeat the protocol, skipping the provisions of paragraphs (c)(iii) and (c)(vii) of this section as necessary, until the water system have identified the required total number of monitoring locations.

(i) Location with the highest TTHM LRAA not previously selected as a R309-210-10 monitoring location.

(ii) Location with the highest HAA5 LRAA not previously selected as a R309-210-10 monitoring location.

(iii) Existing R309-210-8 average residence time compliance monitoring location (maximum residence time compliance monitoring location for ground water systems) with the highest HAA5 LRAA not previously selected as a R309-210-10 monitoring location.

(iv) Location with the highest TTHM LRAA not previously selected as a R309-210-10 monitoring location.

(v) Location with the highest TTHM LRAA not previously selected as a R309-210-10 monitoring location.

(vi) Location with the highest HAA5 LRAA not previously selected as a R309-210-10 monitoring location.

(vii) Existing R309-210-8 average residence time compliance monitoring location (maximum residence time compliance monitoring location for ground water systems) with the highest TTHM LRAA not previously selected as a R309-210-10 monitoring location.

(viii) Location with the highest HAA5 LRAA not previously selected as a R309-210-10 monitoring location.

(d) The water system may recommend locations other than those specified in paragraph (c) of this section if the water system include a rationale for selecting other locations. If the Executive Secretary approves the alternate locations, the water system must monitor at these locations to determine compliance under R309-210-10 of this part.

(e) The recommended schedule must include R309-210-10 monitoring during the peak historical month for TTHM and HAA5 concentration, unless the Executive Secretary approves another month. Once the water system have identified the peak historical month, and if the water system is required to conduct routine monitoring at least quarterly, the water system must schedule R309-210-10 compliance monitoring at a regular frequency of every 90 days or fewer.

R309-210-10. Disinfection Byproducts - Stage 2 Requirements.

(1) General requirements.

(a) General. The regulations in this sub-section establish monitoring and other requirements for achieving compliance with maximum contaminant levels based on locational running annual averages (LRAA) for total trihalomethanes (TTHM) and haloacetic acids (five)(HAA5), and for achieving compliance with maximum residual disinfectant residuals for chlorine and chloramine for certain consecutive systems.

(b) Applicability. The water system is subject to these requirements if the system is a community water system or a non-transient non-community water system that uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light.

(c) Schedule. The water system must comply with the requirements in this subpart on the schedule in the following sub-paragraphs (c)(i) through (vi) based on the system type.

(i) For water systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system.

(A) For water systems that serve a population greater than or equal to 100,000 the water system must comply with R309-210-10 monitoring by April 1, 2012.

(B) For water systems that serve a population from 50,000 to 99,999 the water system must comply with R309-210-10 monitoring by October 1, 2012.

(C) For water systems that serve a population from 10,000 to 49,999 the water system must comply with R309-210-10 monitoring by October 1, 2013.

(D) For water systems that serve a population less than 10,000 the water system must comply with R309-210-10 monitoring by October 1, 2013 if no Cryptosporidium monitoring is required under R309-215-15(2)(a)(iv) or October 1, 2014 if Cryptosporidium monitoring is required under R309-215-15(a)(iv) or (a)(vi).

(ii) For other water systems that are part of a combined distribution system:

(A) For wholesale systems or consecutive systems the water system must comply with R309-210-10 monitoring at the same time as the system with the earliest compliance date in the combined distribution system.

(iii) The Executive Secretary may grant up to an additional 24 months for compliance with MCLs and operational evaluation levels if the water system requires capital improvements to comply with an MCL.

(iv) The monitoring frequency is specified in R309-210-10(2)(a)(ii).

(A) If the water system is required to conduct quarterly monitoring, the water system must begin monitoring in the first full calendar quarter that includes the compliance date in paragraph (c).

(B) If the water system is required to conduct monitoring at a frequency that is less than quarterly, the water system must begin monitoring in the calendar month recommended in the IDSE report prepared under R309-210-9(2) or R309-210-9(3) or the calendar month identified in the R309-210-10 monitoring plan developed under R309-210-10(3) no later than 12 months after the compliance date in R309-210-10(1)(c).

(v) If the water system is required to conduct quarterly monitoring, the water system must make compliance calculations at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter (or earlier if the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters). If the water system is required to conduct monitoring at a frequency that is less than quarterly, the water system must make compliance calculations beginning with the first compliance sample taken after the compliance date.

(vi) For the purpose of the schedule in this paragraph (c), the Executive Secretary may determine that the combined distribution system does not include certain consecutive systems based on factors such as receiving water from a wholesale system only on an emergency basis or receiving only a small percentage and small volume of water from a wholesale system. The Executive Secretary may also determine that the combined distribution system does not include certain wholesale systems based on factors such as delivering water to a consecutive system only on an emergency basis or delivering only a small percentage and small volume of water to a consecutive system.

(d) Monitoring and compliance.

(i) Systems required to monitor quarterly. To comply with R309-210-10 MCLs in R309-200-5(3)(c)(3)(vi), the water system must calculate LRAAs for TTHM and HAA5 using monitoring results collected under this sub-section and determine that each LRAA does not exceed the MCL. If the water system fails to complete four consecutive quarters of monitoring, the water system must calculate compliance with the MCL based on the average of the available data from the most recent four quarters. If the water system takes more than one sample per quarter at a monitoring location, the water system must average all samples taken in the quarter at that location to determine a quarterly average to be used in the LRAA calculation.

(ii) Systems required to monitor yearly or less frequently. To determine compliance with R309-210-10 MCLs in R309-200-5(3)(c)(3)(vi), the water system must determine that each sample taken is less than the MCL. If any sample exceeds the MCL, the water system must comply with the requirements of R309-210-10(6). If no sample exceeds the MCL, the sample result for each monitoring location is considered the LRAA for that monitoring location.

(e) Violation. The water system is in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if the water system fail to monitor.

(2) Routine monitoring.

(a) Monitoring.

(i) If the water system submitted an IDSE report, the water system must begin monitoring at the locations and months the water system have recommended in the IDSE report submitted under R309-210-9(6) following the schedule in R309-210-10(1)(c), unless the Executive Secretary requires other locations or additional locations after its review. If the water system submitted a 40/30 certification under R309-210-9(4) or the water system qualified for a very small system waiver under R309-210-9(5) or the water system is a non-transient non-community water system serving less than 10,000, the water system must monitor at the location(s) and dates identified in the monitoring plan in R309-210-8(5), updated as required by R309-210-10(3).

(ii) The water system must monitor at no fewer than the number of locations identified in this paragraph (a)(ii).

(A) Surface water systems serving less than 500 shall have one monitoring period per year and shall collect two dual samples sets per monitoring period.

(B) Surface water systems serving between 500 to 3,300 shall have four monitoring periods per year and shall collect two dual samples sets per monitoring period.

(C) Surface water systems serving between 3,301 to 9,999 population shall have four monitoring periods per year and shall collect two dual samples sets per monitoring period.

(D) Surface water systems serving between 10,000 to 49,999 population shall have four monitoring periods per year and shall collect four dual samples sets per monitoring period.

(E) Surface water systems serving between 50,000 to 249,999 population shall have four monitoring periods per year and shall collect eight dual samples sets per monitoring period.

(F) Surface water systems serving between 250,000 to 999,999 population shall have four monitoring periods per year and shall collect 12 dual samples per monitoring period.

(G) Surface water systems serving between 1,000,000 to 4,999,999 population shall have four monitoring periods per year and shall collect 16 dual samples sets per monitoring period.

(H) Surface water systems serving 5,000,000 or more population shall have four monitoring periods per year and shall collect 20 dual samples sets per monitoring period.

(I) Ground water systems serving less than 500 shall have one monitoring period per year and shall collect two dual samples sets per monitoring period.

(J) Ground water systems serving between 500 to 9,999 population shall have one monitoring period per year and shall collect two dual samples sets per monitoring period.

(K) Ground water systems serving between 10,000 to 99,999 population shall have four monitoring periods per year and shall collect four dual samples sets per monitoring period.

(L) Ground water systems serving between 100,000 to 499,999 population shall have four monitoring periods per year and shall collect six dual samples sets per monitoring period.

(M) Ground water systems serving 500,000 or greater population shall have four monitoring periods per year and shall collect eight dual samples sets per monitoring period.

(N) All systems must monitor during month of highest DBP concentrations.

(O) Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for surface water systems serving 500-3,300. Systems on annual monitoring and surface water systems serving 500-3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. Only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location (and month, if monitored annually).

(iii) If the water system is an undisinfected system that begins using a disinfectant other than UV light after the dates in R309-210-9 for complying with the Initial Distribution System Evaluation requirements, the water system must consult with the Executive Secretary to identify compliance monitoring locations for this sub-section. The water system must then develop a monitoring plan under R309-210-10(3) that includes those monitoring locations.

(b) Analytical methods. The water system must use an approved method listed in R309-200-4(3) for TTHM and HAA5 analyses in this sub-section. Analyses must be conducted by laboratories that have received certification by EPA or the Executive Secretary as specified in R309-200-4(3).

(3) Stage 2 monitoring plan.

(a)(i) The water system must develop and implement a monitoring plan to be kept on file for Executive Secretary and public review. The monitoring plan must contain the elements in paragraphs (a)(i)(A) through (a)(i)(D) of this section and be complete no later than the date the water system conduct the initial monitoring under this sub-section.

(A) Monitoring locations;

(B) Monitoring dates;

(C) Compliance calculation procedures; and

(D) Monitoring plans for any other systems in the combined distribution system if the Executive Secretary has reduced monitoring requirements under the Executive Secretary authority in R309-105-5(2).

(ii) If the water system were not required to submit an IDSE report under either R309-210-9(2) or R309-210-9(3), and the water system do not have sufficient R309-210-8 monitoring locations to identify the required number of R309-210-10 compliance monitoring locations indicated in R309-210-9(6)(b), the water system must identify additional locations by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified. The water system must also provide the rationale for identifying the locations as having high levels of TTHM or HAA5. If the water system have more R309-210-8 monitoring locations than required for R309-210-10 compliance monitoring in R309-210-9(6)(b), the water system must identify which locations the water system will use for R309-210-10 compliance monitoring by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of R309-210-10

compliance monitoring locations have been identified.

(b) If the water system is a surface water system serving greater than 3,300 people, the water system must submit a copy of the monitoring plan to the Executive Secretary prior to the date the water system conduct the initial monitoring under this sub-section, unless the IDSE report submitted under R309-210-9 contains all the information required by this section.

(c) The water system may revise the monitoring plan to reflect changes in treatment, distribution system operations and layout (including new service areas), or other factors that may affect TTHM or HAA5 formation, or for Executive Secretary-approved reasons, after consultation with the Executive Secretary regarding the need for changes and the appropriateness of changes. If the water system changes monitoring locations, the water system must replace existing compliance monitoring locations with the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels. The Executive Secretary may also require modifications in the monitoring plan. If the water system is a surface water system serving greater than 3,300 people, the water system must submit a copy of the modified monitoring plan to the Executive Secretary prior to the date the water system is required to comply with the revised monitoring plan.

(4) Reduced monitoring.

(a) The water system may reduce monitoring to the level specified in this paragraph (a) any time the LRAA is equal to or less than 0.040 mg/L for TTHM and equal to or less than 0.030 mg/L for HAA5 at all monitoring locations. The water system may only use data collected under the provisions of this sub-section or R309-210-8 to qualify for reduced monitoring. In addition, the source water annual average TOC level, before any treatment, must be less than or equal to 4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either R309-210-8(2)(a)(iii) or R309-215-12.

(i) Surface water systems serving a population less than 500. Monitoring reduction

(A) Monitoring may not be reduced.

(ii) Surface water systems serving between 500 to 3,300 population.

(A) One monitoring periods per year. 1 TTHM and 1 HAA5 sample must be collected per monitoring period.

(B) One sample at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One sample at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(D) Only one dual sample set per year is required if the highest TTHM and HAA5 measurements occurred at the same location and quarter.

(iii) Surface water systems serving between 3,301 to 9,999 population.

(A) One monitoring period per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One dual sample set at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(iv) Surface water systems serving between 10,000 to 49,999 population.

(A) Four monitoring periods per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the location of the highest TTHM LRAAs.

(C) One dual sample set must be taken at the location of the highest HAA5 LRAAs.

(v) Surface water systems serving between 50,000 to 249,999 population.

(A) Four monitoring periods per year. Four dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the two highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the two highest HAA5 LRAAs.

(vi) Surface water systems serving between 250,000 to 999,999 population.

(A) Four monitoring periods per year. Six dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the three highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the three highest HAA5 LRAAs.

(vii) Surface water systems serving between 1,000,000 to 4,999,999 population.

(A) Four monitoring periods per year. Eight dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the four highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the four highest HAA5 LRAAs.

(viii) Surface water systems serving 5,000,000 or more population.

(A) Four monitoring periods per year. 10 dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the five highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the five highest HAA5 LRAAs.

(ix) Ground water systems serving less than 500.

(A) One monitoring period every three years. 1 TTHM and 1 HAA5 sample must be collected per monitoring period.

(B) One sample at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One sample at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(D) Only one dual sample set per year is required if the highest TTHM and HAA5 measurements occurred at the same location and quarter.

(x) Ground water systems serving between 500 to 9,999 population.

(A) One monitoring period per year. 1 TTHM and 1 HAA5 sample must be collected per monitoring period.

(B) One sample at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One sample at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(D) Only one dual sample set per year is required if the highest TTHM and HAA5 measurements occurred at the same location and quarter.

(xi) Ground water systems serving between 10,000 to 99,999 population.

(A) One monitoring period per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One dual sample set at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(xii) Ground water systems serving between 100,000 to

499,999 population.

(A) Four monitoring periods per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the location of the highest TTHM LRAAs.

(C) One dual sample set must be taken at the location of the highest HAA5 LRAAs.

(xiii) Ground water systems serving 500,000 or greater population.

(A) Four monitoring periods per year. Four dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the two highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the two highest HAA5 LRAAs.

(xiv) Systems on quarterly monitoring must take dual sample sets every 90 days.

(b) The water system may remain on reduced monitoring as long as the TTHM LRAA less than or equal to 0.040 mg/L and the HAA5 LRAA less than or equal to 0.030 mg/L at each monitoring location (for systems with quarterly reduced monitoring) or each TTHM sample less than or equal to 0.060 mg/L and each HAA5 sample less than or equal to 0.045 mg/L (for systems with annual or less frequent monitoring). In addition, the source water annual average TOC level, before any treatment, must be less than or equal to 4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either R309-210-8(2)(a)(iii) or R309-215-12.

(c) If the LRAA based on quarterly monitoring at any monitoring location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 or if the annual (or less frequent) sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5, or if the source water annual average TOC level, before any treatment, is greater than 4.0 mg/L at any treatment plant treating surface water or ground water under the direct influence of surface water, the water system must resume routine monitoring under R309-210-10(2) or begin increased monitoring if R309-210-10(6) applies.

(d) The Executive Secretary may return the system to routine monitoring at the Executive Secretary's discretion.

(5) Additional requirements for consecutive systems.

If the water system is a consecutive system that does not add a disinfectant but delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light, the water system must comply with analytical and monitoring requirements for chlorine and chloramines in R309-200-4(3) and the compliance requirements in R309-210-8(6)(c)(i) beginning April 1, 2009, unless required earlier by the Executive Secretary, and report monitoring results under R309-105-16(2)(c).

(6) Conditions requiring increased monitoring.

(a) If the water system is required to monitor at a particular location annually or less frequently than annually under R309-210-10(2) or R309-210-10(4), the water system must increase monitoring to dual sample sets once per quarter (taken every 90 days) at all locations if a TTHM sample is greater than 0.080 mg/L or a HAA5 sample is greater than 0.06 mg/L at any location.

(b) The water system is in violation of the MCL when the LRAA exceeds the R309-210-10 MCLs in R309-200-5(3)(c)(vi), calculated based on four consecutive quarters of monitoring (or the LRAA calculated based on fewer than four quarters of data if the MCL would be exceeded regardless of the monitoring results of subsequent quarters). The water system is in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if the water system fail to monitor.

(c) The water system may return to routine monitoring once the water system have conducted increased monitoring for at least four consecutive quarters and the LRAA for every monitoring location is less than or equal to 0.060 mg/L for TTHM and less than or equal to 0.045 mg/L for HAA5.

(7) Operational evaluation levels.

(a) The water system have exceeded the operational evaluation level at any monitoring location where the sum of the two previous quarters' TTHM results plus twice the current quarter's TTHM result, divided by 4 to determine an average, exceeds 0.080 mg/L, or where the sum of the two previous quarters' HAA5 results plus twice the current quarter's HAA5 result, divided by 4 to determine an average, exceeds 0.060 mg/L.

(b)(i) If the water system exceeds the operational evaluation level, the water system must conduct an operational evaluation and submit a written report of the evaluation to the Executive Secretary no later than 90 days after being notified of the analytical result that causes the water system to exceed the operational evaluation level. The written report must be made available to the public upon request.

(ii) The operational evaluation must include an examination of system treatment and distribution operational practices, including storage tank operations, excess storage capacity, distribution system flushing, changes in sources or source water quality, and treatment changes or problems that may contribute to TTHM and HAA5 formation and what steps could be considered to minimize future exceedences.

(A) The water system may request and the Executive Secretary may allow the water system to limit the scope of the evaluation if the water system is able to identify the cause of the operational evaluation level exceedance.

(B) The request to limit the scope of the evaluation does not extend the schedule in paragraph (b)(i) of this section for submitting the written report. The Executive Secretary must approve this limited scope of evaluation in writing and the water system must keep that approval with the completed report.

(8) Requirements for remaining on reduced TTHM and HAA5 monitoring based on R309-210-8 results.

The water system may remain on reduced monitoring after the dates identified in R309-210-10(1)(c) for compliance with this sub-section only if the water system qualifies for a 40/30 certification under R309-210-9(4) or have received a very small system waiver under R309-210-9(5), plus the water system meets the reduced monitoring criteria in R309-210-10(4)(a), and the water system does not change or add monitoring locations from those used for compliance monitoring under R309-210-8. If the monitoring locations under this sub-section differ from the monitoring locations under R309-210-8, the water system may not remain on reduced monitoring after the dates identified in R309-210-10(1)(c) for compliance with this sub-section.

(9) Requirements for remaining on increased TTHM and HAA5 monitoring based on R309-210-8 results.

If the water system was on increased monitoring under R309-210-8(2)(a), the water system must remain on increased monitoring until the water system qualifies for a return to routine monitoring under R309-210-10(6)(c). The water system must conduct increased monitoring under R309-210-10(6) at the monitoring locations in the monitoring plan developed under R309-210-10(3) beginning at the date identified in R309-210-10(1)(c) for compliance with this sub-section and remain on increased monitoring until the water system qualifies for a return to routine monitoring under R309-210-10(6)(c).

(10) Reporting and recordkeeping requirements.

(a) Reporting.

(i) The water system must report the following information for each monitoring location to the Executive Secretary within 10 days of the end of any quarter in which monitoring is required:

(A) Number of samples taken during the last quarter.

(B) Date and results of each sample taken during the last quarter.

(C) Arithmetic average of quarterly results for the last four quarters for each monitoring location (LRAA), beginning at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter. If the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters, the water system must report this information to the Executive Secretary as part of the first report due following the compliance date or anytime thereafter that this determination is made. If the water system is required to conduct monitoring at a frequency that is less than quarterly, the water system must make compliance calculations beginning with the first compliance sample taken after the compliance date, unless the water system is required to conduct increased monitoring under R309-210-10(6).

(D) Whether, based on R309-200-5(3)(c)(vi) and this subsection, the MCL was violated at any monitoring location.

(E) Any operational evaluation levels that were exceeded during the quarter and, if so, the location and date, and the calculated TTHM and HAA5 levels.

(ii) If the system is a surface water system seeking to qualify for or remain on reduced TTHM/HAA5 monitoring, the water system must report the following source water TOC information for each treatment plant that treats surface water or ground water under the direct influence of surface water to the Executive Secretary within 10 days of the end of any quarter in which monitoring is required:

(A) The number of source water TOC samples taken each month during last quarter.

(B) The date and result of each sample taken during last quarter.

(C) The quarterly average of monthly samples taken during last quarter or the result of the quarterly sample.

(D) The running annual average (RAA) of quarterly averages from the past four quarters.

(E) Whether the RAA exceeded 4.0 mg/L.

(iii) The Executive Secretary may choose to perform calculations and determine whether the MCL was exceeded or the system is eligible for reduced monitoring in lieu of having the system report that information.

(b) Recordkeeping. The water system must retain any R309-210-10 monitoring plans and the R309-210-10 monitoring results as required by R309-105-17.

KEY: drinking water, distribution system monitoring, compliance determinations
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R309. Environmental Quality, Drinking Water.
R309-215. Monitoring and Water Quality: Treatment Plant Monitoring Requirements.
R309-215-1. Purpose.

The purpose of this rule is to outline the monitoring and reporting requirements for public water systems which treat water prior to providing it for human consumption.

R309-215-2 Authority.
R309-215-3 Definitions.
R309-215-4 General.
R309-215-5 Monitoring Requirements for Groundwater Disinfection.
R309-215-6 Monitoring Requirements for Miscellaneous Treatment Plants.
R309-215-7 Surface Water Treatment Plant Evaluations.
R309-215-8 Surface Water Treatment Plant Monitoring and Reporting.
R309-215-9 Turbidity Monitoring and Reporting.
R309-215-10 Residual Disinfectant Monitoring.
R309-215-11 Waterborne Disease Outbreak.
R309-215-12 Monitoring Requirements for Disinfection Byproducts Precursors (DBPP).
R309-215-13 Treatment Techniques for control of Disinfection Byproducts Precursors (DBPP).
R309-215-14 Disinfection Profiling and Benchmarking.
R309-215-15 Enhanced Treatment for Cryptosporidium (Federal Subpart W).

R309-215-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-215-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-215-4. General.

(1) All public water systems are required to monitor their water to determine if they comply with the requirements for water quality stated in R309-200. In exceptional circumstances the Executive Secretary may modify the monitoring requirements given herein as is deemed appropriate.

(2) The Executive Secretary may determine compliance or initiate compliance actions based upon analytical results and other information compiled by authorized representatives.

(3) If the water fails to meet minimum standards, then certain public notification procedures shall be carried out, as outlined in R309-220. Water suppliers shall also keep analytical records in their possession, for a required length of time, as outlined in R309-105-17.

(4) All samples shall be taken at representative sites as specified herein for each contaminant or group of contaminants.

(5) For the purpose of determining compliance, samples may only be considered if they have been analyzed by the State of Utah primacy laboratory or a laboratory certified by the Utah State Health Laboratory.

(6) Measurements for pH, temperature, turbidity and disinfectant residual may, under the direction of the direct responsible operator, be performed by any water supplier or their representative.

(7) All samples shall be marked either: routine, repeat, check or investigative before submission of such samples to a certified laboratory. Routine, repeat, and check samples shall be considered compliance purpose samples.

(8) All sample results can be sent to the Division of Drinking Water either electronically or in hard copy form.

(9) Unless otherwise required by the Board, the effective dates on which required monitoring shall be initiated are identical to the dates published in 40 CFR 141 on July 1, 2001 by the Office of the Federal Register

(10) Exemptions from monitoring requirements shall only be granted in accordance with R309-105-5.

R309-215-5. Monitoring Requirements for Groundwater Disinfection.

(1) General: Continuous disinfection is recommended for all drinking water sources. Continuous disinfection shall be required of all groundwater sources which do not consistently meet standards of bacteriologic quality. Once required by the Executive Secretary continuous disinfection shall not be interrupted nor terminated unless so authorized, in writing, by the Executive Secretary.

(2) Disinfection Reporting: For each disinfection treatment facility, plant management shall report information to the Division as specified in R309-105-16(2)(c).

(3) A water system shall report a malfunction of any facility or equipment such that a detectable residual cannot be maintained throughout the distribution system. The system shall notify the Division as soon as possible, but no later than by the end of the next business day. The system also shall notify the Division by the end of the next business day whether or not the residual was restored to at least 0.2 mg/L within four hours.

R309-215-6. Monitoring Requirements for Miscellaneous Treatment Plants.

(1) Treatment of the drinking water may be required for other than inactivation of microbial contaminants or removal/inactivation of pathogens and viruses. Miscellaneous treatment methods are outlined in R309-535.

(2) The Executive Secretary may require additional monitoring as necessary to evaluate the treatment process and to ensure the quality of the water. The specific analytes, frequency of monitoring, the reporting frequency and the sampling location for which monitoring may be required shall be determined by the following:

(a) the contaminant of concern for which the treatment process has been installed;

(b) the process control samples required to operate treatment process being used; and

(c) alternative surrogate sampling when it is either quicker or less expensive and still provides the necessary information;

(3) For point-of-use or point-of-entry technology the location of sampling may be at each treatment unit spread out over time.

(4) If monitoring is required, the Executive Secretary shall provide the report forms and the water system shall report the data as required by R309-105-16(3). Alternate forms may be used as long as prior approval from the Executive Secretary is obtained.

R309-215-7. Surface Water Treatment Evaluations.

(1) General: Surface water sources or groundwater sources under direct influence of surface water shall be disinfected during the course of required surface water treatment. Disinfection shall not be considered a substitute for inadequate collection facilities. All public water systems which use a treatment technique to treat water obtained in whole or in part from surface water sources or ground water sources under the direct influence of surface water shall monitor the plant's operation and report the results to the Division as indicated in R309-215-7 through R309-215-14. Individual plants will be evaluated in accordance with the criteria outlined in paragraph (2) below. Based on information submitted and/or plant inspections, the plant will receive credit for treatment techniques other than disinfection that remove pathogens,

specifically Giardia lamblia and viruses. This credit (log removal) will reduce the required disinfectant "CT" value which the plant shall maintain to assure compliance with R309-200-5(7)(a)(i).

(2) Criteria for Individual Treatment Plant Evaluation: New and existing water treatment plants shall meet specified monitoring and performance criteria in order to ensure that filtration and disinfection are satisfactorily practiced. The monitoring requirements and performance criteria for turbidity and disinfection listed above provide the minimum for the Division to evaluate the plant's efficiency in removing and/or inactivating 99.9 percent (3-log) of Giardia lamblia cysts and 99.99 percent (4-log) of viruses as required by R309-505-6(2)(a) and (b).

(3) The Division, upon evaluation of individual raw water sources, surface water or ground water under the direct influence of surface water, may require greater than the 3-log, 4-log removal/inactivation of Giardia and viruses respectfully. If a raw water source exhibits an estimated concentration of 1 to 10 Giardia cysts per 100 liters, 4 and 5-log removal/inactivation may be required. If the raw water exhibits a concentration of 10 to 100 cysts per 100 liters, 5 and 6-log removal/inactivation may be required.

If a plant decides to recycle any spent filter backwash water, thickener supernatant, or liquids from dewatering processes the Division shall be notified in writing by December 8, 2003 or prior to recycling such waters. Such notification shall include, at a minimum:

(a) A plant schematic showing the origin of all flows which are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, and any liquids from dewatering processes), the hydraulic conveyance used to transport them, and the location where they are reintroduced back into the treatment plant.

(b) Typical recycle flow in gallons per minute (gpm), the highest observed plant flow experienced in the previous year (gpm), design flow for the treatment plant (gpm), and Division approved operating capacity for the plant where the Division has made such determinations.

(c) Treatment technique (TT) requirement. Any system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes shall return these flows through the processes of a system's existing conventional or direct filtration system as defined in R309-525 or R309-530 or at an alternate location approved by the Division by or after June 8, 2004. If capital improvements are required to modify the recycle location to meet this requirement, all capital improvements must be completed no later than June 8, 2006.

(4) The Division, upon individual plant evaluation, may assign the treatment techniques (coagulation, flocculation, sedimentation and filtration) credit toward removal of Giardia cysts and viruses. The greater the number of barriers in the treatment process, the greater the reduction of pathogens, therefore lessor credit will be given to processes such as direct filtration which eliminate one or more conventional barriers. Plants may monitor turbidity at multiple points in the treatment process as evidence of the performance of an individual treatment technique.

(5) The nominal credit that will be assigned certain conventional processes are outlined in Table 215-1:

TABLE 215-1
CONVENTIONAL PROCESS CREDIT

Process	Log Reduction Credit Giardia	Viruses
Conventional Complete Treatment	2.5	2.0
Direct Filtration	2.0	1.0
Slow Sand Filtration	2.0	2.0
Diatomaceous Earth Filters	2.0	1.0

(6) Upon evaluation of information provided by individual plants or obtained during inspections by Division staff, the Division may increase or decrease the nominal credit assigned individual plants based on that evaluation.

(a) Items which would augment the treatment process and thereby warrant increased credit are:

(i) facilities or means to moderate extreme fluctuations in raw water characteristics;

(ii) sufficient on-site laboratory facilities regularly used to alert operators to changes in raw water quality;

(iii) use of pilot stream facilities which duplicate treatment conditions but allow operators to know results of adjustments much sooner than if only monitoring plant effluent;

(iv) use of additional monitoring methods such as particle size and distribution analysis to achieve greater efficiency in particulate removal;

(v) regular program for preventive maintenance, records of such, and general good housekeeping; or

(vi) adequate staff of well trained and certified plant operators.

(b) Items which would be considered a detriment to the treatment process and thereby warrant decreased credit are:

(i) inadequate staff of trained and certified operators;

(ii) lack of regular maintenance and poor housekeeping; or

(iii) insufficient on-site laboratory facilities.

R309-215-8. Surface Water Treatment Plant Monitoring and Reporting.

Treatment plant management shall report the following to the Division within ten days after the end of each month that the system serves water to the public, except as otherwise noted:

(1) For each day;

(a) if the plant treats water from multiple sources, the sources being utilized (including recycled backwash water) and the ratio for each if blending occurs.

(b) the total volume of water treated by the plant,

(c) the turbidity of the raw water entering the plant,

(d) the pH of the effluent water, measured at or near the monitoring point for disinfectant residual,

(e) the temperature of the effluent water, measured at or near the monitoring point for disinfectant residual,

(f) the type and amount of chemicals used in the treatment process (clearly indicating the weight and active percent of chemical if dry feeders are used, or the percent solution and volume fed if liquid feeders are used),

(g) the high and low temperature and weather conditions (local forecast information may be used, but any precipitation in the watershed should be further described as light, moderate, heavy, or extremely heavy), and

(h) the results of any "jar tests" conducted that day

(2) For each filter, each day;

(a) the rate of water applied to each (gpm/sq.ft.),

(b) the head loss across each (feet of water or psi),

(c) length of backwash (if conducted; in minutes), and

(d) hours of operation since last backwashed.

(3) Annually; certify in writing as required by R309-105-14(1) that when a product containing acrylamide and/or epichlorohydrin is used, the combination of the amount of residual monomer in the polymer and the dosage rate does not exceed the levels specified as follows:

(a) Acrylamide: 0.05%, when dosed at 1 part per million, and

(b) Epichlorohydrin: 0.01%, when dosed at 20 parts per million.

Certification may rely on manufacturers data.

(4) Additional record-keeping for plants that recycle.

The system must collect and retain on file recycle flow information for review and evaluation by the Division beginning

June 8, 2004 or upon approval for recycling. As a minimum the following shall be maintained:

(a) Copy of the recycle notification and information submitted to the Division under R309-215-7(3).

(b) List of all recycle flows and the frequency with which they are returned.

(c) Average and maximum backwash flow rates through the filters and the average and maximum duration of the filter backwash process in minutes.

(d) Typical filter run length and a written summary of how filter run length is determined.

(e) The type of treatment provided for the recycle flow.

(f) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used, average dose, frequency of use and frequency at which solids are removed, if applicable.

R309-215-9. Turbidity Monitoring and Reporting.

Public water systems utilizing surface water and ground water under the direct influence of surface water shall monitor for turbidity in accordance with this section. Small surface water systems serving a population less than 10,000 shall monitor in accordance with subsections (1), (2), (3), (5) and (6). Large surface water systems serving 10,000 or more population shall monitor in accordance with subsections (1), (2), (3), (4) and (6).

(1) Routine Monitoring Requirements for Treatment Facilities utilizing surface water sources or ground water sources under the direct influence of surface water.

(a) All public water systems which use a treatment technique to treat water obtained in whole or in part from surface water sources or ground water sources under the direct influence of surface water shall monitor for turbidity at the treatment plant's clearwell outlet. This monitoring shall be independent of the individual filter monitoring required by R309-525-15(4)(b)(vi) and R309-525-15(4)(c)(vii). Where the plant facility does not have an internal clearwell, the turbidity shall be monitored at the inlet to a finished water reservoir external to the plant provided such reservoir receives only water from the treatment plant and, furthermore, is located before any point of consumer connection to the water system. If such external reservoir does not exist, turbidity shall then be monitored at a location immediately downstream of the treatment plant filters.

(b) All treatment plants, with the exception of those utilizing slow sand filtration and other conditions indicated in section (c) below, shall be equipped with continuous turbidity monitoring and recording equipment for which the direct responsible charge operator will validate the continuous measurements for accuracy in accordance with paragraph (d) below. These plants shall continuously record the finished water turbidity of the combined filter effluent as well as each individual filter. All systems shall be equipped to continuously monitor the turbidity at each filter unless the treatment plant is only equipped with two filters and the turbidity is measured at the combined filter effluent (CFE). If there is a failure in continuous monitoring equipment the system shall conduct grab sampling every 4 hours in lieu of continuous monitoring, but for no more than five working days following the failure of equipment. Systems serving less than 10,000 population shall have no more than 14 days to conduct grab samples in lieu of continuous monitoring in order to correct any failing equipment. All surface water systems shall monitor the turbidity results of individual filters at a frequency no greater than every 15 minutes.

(c) Turbidity measurements, as outlined below, shall be reported to the Division within ten days after the end of each month that the system serves water to the public. Systems are required to mark and interpret turbidity values from the recorded charts at the end of each four-hour interval of operation (or some shorter regular time interval) to determine compliance with the turbidity performance criterion. For systems using slow sand filtration the Executive Secretary may reduce the sampling frequency to as little as once per day if the Executive Secretary determines that less frequent monitoring is sufficient to indicate effective filtration performance. For systems serving 500 or fewer persons, the Executive Secretary may reduce the turbidity sampling frequency to as little as once per day, regardless of the type of filtration treatment used, if the Executive Secretary determines that less frequent monitoring is sufficient to indicate effective filtration performance.

The following shall be reported and the required percentage achieved for compliance:

(i) The total number of interpreted filtered water turbidity measurements taken during the month;

(ii) The number and percentage of interpreted filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in R309-200-5(5)(a)(ii) (or increased limit approved by the Executive Secretary). The percentage of measurements which are less than or equal to the turbidity limit shall be 95 percent or greater for compliance; and

(iii) The date and value of any turbidity measurements taken during the month which exceed 5 NTU. The system shall inform the Division as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with R309-220-6(2)(c) if any turbidity measurements exceed 5 NTU.

(d) The analytical method which shall be followed in making the required determinations shall be Nephelometric Method - Nephelometric Turbidity Unit as set forth in the latest edition of Standard Methods for Examination of Water and Wastewater, 1985, American Public Health Association et al., (Method 214A, pp. 134-136 in the 16th edition). Continuous turbidity monitoring equipment shall be checked for accuracy and recalibrated using methods outlined in the above standard at a minimum frequency of monthly. The direct responsible charge operator will note on the turbidity report form when these recalibrations are conducted. For systems that practice lime softening, the representative combined filter effluent turbidity sample may be acidified prior to analysis with prior approval by the Executive Secretary as to the protocol.

(2) Procedures if a Filtered Water Turbidity Limit is Exceeded

(a) Resampling -

If an analysis indicates that the turbidity limit has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as practicable and preferably within one hour.

(b) If the result of resampling confirms that the turbidity limit has been exceeded, the system shall collect and have analyzed at least one bacteriologic sample near the first service connection from the source as specified in R309-210-5(1)(f). The system shall collect this bacteriologic sample within 24 hours of the turbidity exceedance. Sample results from this monitoring shall be included in determining bacteriologic compliance for that month.

(c) Initial Notification of the Executive Secretary -

If the repeat sample confirms that the turbidity limit has been exceeded, the supplier shall report this fact to the Executive Secretary as soon as practical, but no later than 24 hours after the exceedance is known in accordance with the public notification requirements under R309-220-6(2)(c). This reporting is in addition to reporting the incident on any monthly reports.

(3) For the purpose of individual plant evaluation and establishment of pathogen removal credit for the purpose of lowering the required "CT" value assigned a plant, plant management may do additional turbidity monitoring at other

points to satisfy criteria in R309-215-7(2).

(4) Additional reporting and recordkeeping requirements for large surface water systems (serving greater than 10,000 population) reporting and recordkeeping requirements.

In addition to the reporting and recordkeeping requirements sub-sections (1), (2) and (3) above, a large surface water system that provides conventional filtration treatment or direct filtration shall report monthly to the Division the information specified in paragraphs (a) and (b) of this section. In addition to the reporting and recordkeeping requirements above, a public water system subject to the requirements of this subpart that provides filtration approved under R309-530-8 or R309-530-9 shall report monthly to the Division the information specified in paragraphs (a) of this section. The reporting in paragraph (a) of this section is in lieu of the reporting specified above.

(a) Turbidity measurements, as required in R309-200-5(5)(a), shall be reported within 10 days after the end of each month the system serves water to the public. Information that shall be reported includes:

(i) The total number of filtered water turbidity measurements taken during the month.

(ii) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to 0.3 NTU or those levels established under R309-200-5(5)(a)(ii).

(iii) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the Executive Secretary under R309-530-8 or R309-530-9.

(b) Systems shall maintain the results of individual filter monitoring taken under R309-215-9(1)(b) for at least three years. Systems shall record the results of individual filter monitoring every 15 minutes. Systems shall report that they have conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Systems shall report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (b)(i) through (iv) of this section. Systems that use lime softening may apply to the Executive Secretary for alternative exceedance levels for the levels specified in paragraphs (b)(i) through (iv) of this section if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(i) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the system shall report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system shall either produce a filter profile for the filter within 7 days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(ii) For any individual filter that has a measured turbidity level of greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first four hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the system shall report the filter number, the turbidity, and the date(s) on which the exceedance occurred. In addition, the system shall either produce a filter profile for the filter within 7 days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(iii) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of three consecutive months, the system shall report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system shall conduct a self-assessment of the filter within 14 days of the exceedance and report that the self-assessment was conducted. The self assessment shall consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

(iv) For any individual filter that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of two consecutive months, the system shall report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system shall arrange for and conduct a comprehensive performance evaluation by the Division or a third party approved by the Executive Secretary no later than 30 days following the exceedance and have the evaluation completed and submitted to the Division no later than 90 days following the exceedance.

(5) Additional reporting and recordkeeping requirements for surface water systems serving less than 10,000 population.

In addition to the reporting and recordkeeping requirements sub-sections (1), (2) and (3) above, a surface water system that provides conventional filtration treatment or direct filtration shall report monthly to the Division the information specified in paragraphs (a) and (b) of this section. In addition to the reporting and recordkeeping requirements above, a public water system subject to the requirements of this subpart that provides filtration approved under R309-530-8 or R309-530-9 shall report monthly to the Division the information specified in paragraphs (a) of this section. The reporting in paragraph (a) of this section is in lieu of the reporting specified above.

(a) Turbidity measurements, as required in R309-200-5(5)(a), shall be reported within 10 days after the end of each month the system serves water to the public. Information that shall be reported includes:

(i) The total number of filtered water turbidity measurements taken during the month.

(ii) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to 0.3 NTU or those levels established under R309-200-5(5)(a)(ii).

(iii) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the Executive Secretary under R309-530-8 or R309-530-9.

(b) Systems shall maintain the results of individual filter monitoring taken under R309-215-9(1)(b) for at least three years. Systems shall record the results of individual filter monitoring every 15 minutes. Systems shall report that they have conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Systems shall report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (b)(i) through (iv) of this section. Systems that use lime softening may apply to the Executive Secretary for alternative exceedance levels for the levels specified in paragraphs (b)(i) through (iv) of this section if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(i) For any individual filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters) that has a measured turbidity level of greater than 1.0 NTU in two

consecutive measurements taken 15 minutes apart, the system shall report the filter number(s), the corresponding date(s), the turbidity values which exceeded 1.0 NTU, and the cause (if known) for the exceedance(s), to the Executive Secretary by the 10th of the following month.

(ii) If a system was required to report to the Executive Secretary for three months in a row and turbidity exceeded 1.0 NTU in two consecutive recordings taken 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters), the system shall conduct a self-assessment of the filter within 14 days of the day the filter exceeded 1.0 NTU in two consecutive measurements for the third straight month unless a CPE as specified in paragraph (iii) of this section was required. Systems with 2 filters that monitor CFE in lieu of individual filters must conduct a self assessment on both filters. The self-assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report. If a self-assessment is required, the date that it was triggered and the date that it was completed.

(iii) If a system was required to report to the Executive Secretary for two months in a row and turbidity exceeded 2.0 NTU in two consecutive measurements taken 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters), the system shall arrange to have a comprehensive performance evaluation (CPE) conducted by the Division or a third party approved by the Executive Secretary no later than 60 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month. If a CPE is required, the system must report a CPE required and the date it was triggered. If a CPE has been completed by the Division or a third party approved by the Executive Secretary within the 12 prior months or the system and Division are jointly participating in an ongoing Comprehensive Technical Assistance (CTA) project at the system, a new CPE is not required. If conducted, a CPE must be completed and submitted to the Division no later than 120 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.

(6) Additional reporting requirements.

(a) If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system shall inform the Division as soon as possible, but no later than the end of the next business day.

(b) If at any time the turbidity in representative samples of filtered water exceeds the maximum level set by the Executive Secretary under R309-530-8 or R309-530-9 for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system shall inform the Division as soon as possible, but no later than the end of the next business day.

R309-215-10. Residual Disinfectant.

Treatment plant management shall continuously monitor disinfectant residuals and report the following to the Division within ten days after the end of each month that the system serves water to the public, except as otherwise noted:

(1) For each day, the lowest measurement of residual disinfectant concentration in mg/L in water entering the distribution system, except that if there is a failure in the continuous monitoring equipment, grab sampling every 4 hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment. Systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies listed in Table 215.2 below:

TABLE 215-2
RESIDUAL GRAB SAMPLE FREQUENCY

System size by population	Samples/day
Less than 500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

Note: The day's samples cannot be taken at the same time. The sampling intervals are subject to Executive Secretary's review and approval.

(2) The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.2 mg/L and when the Division was notified of the occurrence. The system shall notify the Division as soon as possible, but no later than by the end of the next business day. The system also shall notify the Division by the end of the next business day whether or not the residual was restored to at least 0.2 mg/L within four hours.

(3) The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to R309-210-5:

(a) number of instances where the residual disinfectant concentration is measured;

(b) number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

(c) number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

(d) number of instances where no residual disinfectant concentration is detected and where HPC is greater than 500/ml;

(e) number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/ml;

(f) for the current and previous month the system serves water to the public, the value of "V" in the formula, $V = ((c+d+e)/(a+b)) \times 100$, where a = the value in sub-section (a) above, b = the value in sub-section (b) above, c = the value in sub-section (c) above, d = the value in sub-section (d) above, and e = the value in sub-section (e) above.

R309-215-11. Waterborne Disease Outbreak.

Each public water system, upon discovering that a waterborne disease outbreak as defined in R309-110 potentially attributable to their water system has occurred, shall report that occurrence to the Division as soon as possible, but no later than by the end of the next business day.

R309-215-12. Monitoring Requirements for Disinfection Byproducts Precursors (DBPP).

(1) Routine monitoring. Surface water systems which use conventional filtration treatment (as defined in R309-110) shall monitor each treatment plant for TOC no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. All systems required to monitor under this paragraph (1) shall also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time as the source water sample is taken, all systems shall monitor for alkalinity in the source water prior to any treatment. Systems shall take one paired sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(2) Reduced monitoring. Surface water systems with an average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may reduce monitoring for both TOC and alkalinity to one paired sample and one source water alkalinity sample per plant per quarter. The system shall revert to routine monitoring in the

month following the quarter when the annual average treated water TOC is greater than or equal to 2.0 mg/L.

(3) Compliance shall be determined as specified by R309-215-13(3). Systems may begin monitoring to determine whether Step 1 TOC removals can be met 12 months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any system that does not monitor during this period, and then determines in the first 12 months after the compliance date that it is not able to meet the Step 1 requirements in R309-215-13(2)(b) and shall therefore apply for alternate minimum TOC removal (Step 2) requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements as allowed pursuant to R309-215-13(2)(c) and is in violation. Systems may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date. For systems required to meet Step 1 TOC removals, if the value calculated under R309-215-13(3)(a)(iv) is less than 1.00, the system is in violation of the treatment technique requirements and shall notify the public pursuant to R309-220, in addition to reporting to the Executive Secretary pursuant to R309-105-16.

R309-215-13. Treatment Technique for Control of Disinfection Byproduct Precursors (DBPP).

(1) Applicability.

(a) Surface water systems using conventional filtration treatment (as defined in R309-110) shall operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels specified in paragraph (2) of this section unless the system meets at least one of the alternative compliance criteria listed in paragraph (1)(b) or (1)(c) of this section.

(b) Alternative compliance criteria for enhanced coagulation and enhanced softening systems. Surface Water Systems using conventional filtration treatment may use the alternative compliance criteria in paragraphs (1)(b)(i) through (vi) of this section to comply with this section in lieu of complying with paragraph (2) of this section. Systems shall still comply with monitoring requirements in R309-215-12.

(i) The system's source water TOC level, measured according to R309-200-4(3), is less than 2.0 mg/L, calculated quarterly as a running annual average.

(ii) The system's treated water TOC level, measured according to R309-200-4(3), is less than 2.0 mg/L, calculated quarterly as a running annual average

(iii) The system's source water TOC level, measured according to R309-200-4(3), is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity, measured according to R309-200-4(3), is greater than 60 mg/L (as $CaCO_3$), calculated quarterly as a running annual average; and either the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or prior to the effective date for compliance in R309-210-8(1)(a), the system has made a clear and irrevocable financial commitment not later than the effective date for compliance in R309-210-8(1)(a) to use of technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. Systems shall submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the Executive Secretary for approval not later than the effective date for compliance in R309-210-8(1)(a). These technologies shall be installed and operating not later than June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule will constitute a violation of National Primary Drinking Water Regulations.

(iv) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(v) The system's source water SUVA, prior to any treatment and measured monthly according to R309-200-4(3), is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(vi) The system's finished water SUVA, measured monthly according to R309-200-4(3), is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(c) Additional alternative compliance criteria for softening systems. Systems practicing enhanced softening that cannot achieve the TOC removals required by paragraph (2)(b) of this section may use the alternative compliance criteria in paragraphs (1)(c)(i) and (ii) of this section in lieu of complying with paragraph (2) of this section. Systems shall still comply with monitoring requirements in R309-210-8(4).

(i) Softening that results in lowering the treated water alkalinity to less than 60 mg/L (as $CaCO_3$), measured monthly according to R309-200-4(3) and calculated quarterly as a running annual average.

(ii) Softening that results in removing at least 10 mg/L of magnesium hardness (as $CaCO_3$), measured monthly according to R309-200-4(3) and calculated quarterly as an annual running average.

(2) Enhanced coagulation and enhanced softening performance requirements.

(a) Systems shall achieve the percent reduction of TOC specified in paragraph (2)(b) of this section between the source water and the combined filter effluent, unless the Executive Secretary approves a system's request for alternate minimum TOC removal (Step 2) requirements under paragraph (2)(c) of this section.

(b) Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in accordance with R309-200-4(3). Systems practicing softening are required to meet the Step 1 TOC reductions in the far-right column (Source water alkalinity >120 mg/L) for the specified source water TOC:

TABLE 215-3
Step 1 Required Removal of TOC by Enhanced Coagulation and Enhanced Softening for Surface Water Systems Using Conventional Treatment (notes 1,2)

Source-Water TOC, mg/L	Source-Water Alkalinity, mg/L as CaCO3		
	0-60 (percent)	>60-120 (percent)	>120 (Note 3) (percent)
>2.0-4.0	35.0%	25.0%	15.0%
>4.0-8.0	45.0%	35.0%	25.0%
>8.0	50.0%	40.0%	30.0%

Note 1: Systems meeting at least one of the conditions in paragraph (1)(b)(i)-(vi) of this section are not required to operate with enhanced coagulation.

Note 2: Softening systems meeting one of the alternative compliance criteria in paragraph (1)(c) of this section are not required to operate with enhanced softening.

Note 3: Systems practicing softening shall meet the TOC removal requirements in this column.

(c) Surface water systems using conventional treatment systems that cannot achieve the Step 1 TOC removals required by paragraph (2)(b) of this section due to water quality parameters or operational constraints shall apply to the Executive Secretary, within three months of failure to achieve the TOC removals required by paragraph (2)(b) of this section, for approval of alternative minimum TOC removal (Step 2) requirements submitted by the system. If the Executive Secretary approves the alternative minimum TOC removal (Step 2) requirements, the Executive Secretary may make those requirements retroactive for the purposes of determining compliance. Until the Executive Secretary approves the

alternate minimum TOC removal (Step 2) requirements, the system shall meet the Step 1 TOC removals contained in paragraph (2)(b) of this section.

(d) Alternate minimum TOC removal (Step 2) requirements. Applications made to the Executive Secretary by enhanced coagulation systems for approval of alternate minimum TOC removal (Step 2) requirements under paragraph (2)(c) of this section shall include, at a minimum, results of bench- or pilot-scale testing conducted under paragraph (2)(d)(i) of this section. The submitted bench- or pilot- scale testing shall be used to determine the alternate enhanced coagulation level.

(i) Alternate enhanced coagulation level is defined as: Coagulation at a coagulant dose and pH as determined by the method described in paragraphs (2)(d)(i) through (v) of this section such that an incremental addition of 10 mg/L of alum (or equivalent amount of ferric salt) results in a TOC removal of less than or equal to 0.3 mg/L. The percent removal of TOC at this point on the "TOC removal versus coagulant dose" curve is then defined as the minimum TOC removal required for the system. Once approved by the Executive Secretary, this minimum requirement supersedes the minimum TOC removal required by the table in paragraph (2)(b) of this section. This requirement will be effective until such time as the Executive Secretary approves a new value based on the results of a new bench- and pilot-scale test. Failure to achieve Executive Secretary set alternative minimum TOC removal levels is a violation of R309-215-13.

(ii) Bench- or pilot-scale testing of enhanced coagulation shall be conducted by using representative water samples and adding 10 mg/L increments of alum (or equivalent amounts of ferric salt) until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in the following table 215-4:

TABLE 215-4
ENHANCED COAGULATION STEP 2 TARGET pH

ALKALINITY (mg/L as $CaCO_3$)	TARGET pH
0-60	5.5
>60-120	6.3
>120-240	7.0
>240	7.5

(iii) For waters with alkalinities of less than 60 mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below 5.5 before significant TOC removal occurs, the system shall add necessary chemicals to maintain the pH between 5.3 and 5.7 in samples until the TOC removal of 0.3 mg/L per 10 mg/L alum added (or equivalant addition of iron coagulant) is reached.

(iv) The system may operate at any coagulant dose or pH necessary (consistent with other NPDWRs) to achieve the minimum TOC percent removal approved under paragraph (2)(c) of this section.

(v) If the TOC removal is consistently less than 0.3 mg/L of TOC per 10 mg/L of incremental alum dose at all dosages of alum (or equivalant addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The system may then apply to the Executive Secretary for a waiver of enhanced coagulation requirements.

(3) Compliance Calculations.

(a) Surface Water Systems other than those identified in paragraphs (1)(b) or (1)(c) of this section shall comply with requirements contained in paragraphs (2)(b) or (2)(c) of this section. Systems shall calculate compliance quarterly, beginning after the system has collected 12 months of data, by determining an annual average using the following method:

(i) Determine actual monthly TOC percent removal, equal to: (1 - (treated water TOC/source water TOC)) x 100.

(ii) Determine the required monthly TOC percent removal (from either the table in paragraph (2)(b) of this section or from paragraph (2)(c) of this section).

(iii) Divide the value in paragraph (3)(a)(i) of this section by the value in paragraph (3)(a)(ii) of this section.

(iv) Add together the results of paragraph (3)(a)(iii) of this section for the last 12 months and divide by 12.

(v) If the value calculated in paragraph (3)(a)(iv) of this section is less than 1.00, the system is not in compliance with the TOC percent removal requirements.

(b) Systems may use the provisions in paragraphs (3)(b)(i) through (v) of this section in lieu of the calculations in paragraph (3)(a)(i) through (v) of this section to determine compliance with TOC percent removal requirements.

(i) In any month that the system's treated or source water TOC level, measured according to R309-200-4(3), is less than 2.0 mg/L, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(ii) In any month that a system practicing softening removes at least 10 mg/L of magnesium hardness (as $CaCO_3$), the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(iii) In any month that the system's source water SUVA, prior to any treatment and measured according to R309-200-4(3), is less than or equal to 2.0 L/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(iv) In any month that the system's finished water SUVA, measured according to R309-200-4(3), is less than or equal to 2.0 L/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(v) In any month that a system practicing enhanced softening lowers alkalinity below 60 mg/L (as $CaCO_3$), the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (3)(a)(iii) of this section) when calculating compliance under the provisions of paragraph (3)(a) of this section.

(c) Surface Water Systems using conventional treatment may also comply with the requirements of this section by meeting the criteria in paragraph (1)(b) or (c) of this section.

(4) Treatment Technique Requirements for DBP Precursors. The Executive Secretary identifies the following as treatment techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems: For Surface Water Systems using conventional treatment, enhanced coagulation or enhanced softening.

R309-215-14. Disinfection Profiling and Benchmarking.

A disinfection profile is a graphical representation of your system's level of Giardia lamblia or virus inactivation measured during the course of a year. Community or non-transient non-community water systems which use surface water or ground water under the direct influence of surface must develop a disinfection profile unless the Executive Secretary determines that a system's profile is unnecessary. The Executive Secretary may approve the use of a more representative data set for disinfection profiling than the data set required under R309-215-14.

(1) Determination of systems required to profile. A public water system subject to the requirements of this subpart shall determine its TTHM annual average using the procedure in paragraph (1)(a) of this section and its HAA5 annual average

using the procedure in paragraph (1)(b) of this section. The annual average is the arithmetic average of the quarterly averages of four consecutive quarters of monitoring.

(a) The TTHM annual average shall be the annual average during the same period as is used for the HAA5 annual average.

(i) Those systems that collected data under the provisions of 40 CFR 141.142 subpart M (Information Collection Rule) shall use the results of the samples collected during the last four quarters of required monitoring.

(ii) Those systems that use grandfathered HAA5 occurrence data that meet the provisions of paragraph (1)(b)(ii) of this section shall use TTHM data collected at the same time under the provisions of R309-200-5(3)(c)(vii) and R309-210-9.

(iii) Those systems that use HAA5 occurrence data that meet the provisions of paragraph (1)(b)(iii)(A) of this section shall use TTHM data collected at the same time under the provisions of R309-200-5(3)(c)(vii) and R309-210-9.

(b) The HAA5 annual average shall be the annual average during the same period as is used for the TTHM annual average.

(i) Those systems that collected data under the provisions of 40 CFR 141.142 subpart M (Information Collection Rule) shall use the results of the samples collected during the last four quarters of required monitoring.

(ii) Those systems that have collected four quarters of HAA5 occurrence data that meets the routine monitoring sample number and location requirements for TTHM in R309-200-5(3)(c)(vii) and R309-210-9 and handling and analytical method requirements of R309-200-4(3) may use those data to determine whether the requirements of this section apply.

(iii) Those systems that have not collected four quarters of HAA5 occurrence data that meets the provisions of either paragraph (1)(b)(i) or (ii) of this section by March 16, 1999 shall either:

(A) Conduct monitoring for HAA5 that meets the routine monitoring sample number and location requirements for TTHM in R309-200-5(3)(c)(vii) and R309-210-9 and handling and analytical method requirements of R309-200-4(3) to determine the HAA5 annual average and whether the requirements of paragraph (2) of this section apply. This monitoring shall be completed so that the applicability determination can be made no later than March 31, 2000, or

(B) Comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with paragraph (2) of this section.

(c) The system may request that the Executive Secretary approve a more representative annual data set than the data set determined under paragraph (1)(a) or (b) of this section for the purpose of determining applicability of the requirements of this section.

(d) The Executive Secretary may require that a system use a more representative annual data set than the data set determined under paragraph (1)(a) or (b) of this section for the purpose of determining applicability of the requirements of this section.

(e) The system shall submit data to the Executive Secretary on the schedule in paragraphs (1)(e)(i) through (v) of this section.

(i) Those systems that collected TTHM and HAA5 data under the provisions of subpart M (Information Collection Rule), as required by paragraphs (1)(a)(i) and (1)(b)(i) of this section, shall submit the results of the samples collected during the last 12 months of required monitoring under 40 CFR section 141.142 (Information Collection Rule) not later than December 31, 1999.

(ii) Those systems that have collected four consecutive quarters of HAA5 occurrence data that meets the routine monitoring sample number and location for TTHM in R309-200-5(3)(c)(vii) and R309-210-9 and handling and analytical method requirements of R309-200-4(3), as allowed by paragraphs (1)(a)(ii) and (1)(b)(ii) of this section, shall submit those data to the Executive Secretary not later April 16, 1999. Until the Executive Secretary has approved the data, the system shall conduct monitoring for HAA5 using the monitoring requirements specified under paragraph (1)(b)(iii) of this section.

(iii) Those systems that conduct monitoring for HAA5 using the monitoring requirements specified by paragraphs (1)(a)(iii) and (1)(b)(iii)(A) of this section, shall submit TTHM and HAA5 data not later than April 1, 2000.

(iv) Those systems that elect to comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with this section, as allowed under paragraphs (1)(b)(iii)(B) of this section, shall notify the Executive Secretary in writing of their election not later than December 31, 1999.

(v) If the system elects to request that the Executive Secretary approve a more representative annual data set than the data set determined under paragraph (1)(b)(i) of this section, the system shall submit this request in writing not later than December 31, 1999.

(f) Any system having either a TTHM annual average greater than or equal to 0.064 mg/L or an HAA5 annual average greater than or equal to 0.048 mg/L during the period identified in paragraphs (1)(a) and (b) of this section shall comply with paragraph (2) of this section.

(g) The Executive Secretary may only determine that a system's profile is unnecessary if a system's TTHM and HAA5 levels are below 0.064 mg/L and 0.048 mg/L, respectively. To determine these levels, TTHM and HAA5 samples must be collected after January 1, 1998, during the month with the warmest water temperature, and at the point of maximum residence time in your distribution system. The Executive Secretary may approve a more representative TTHM and HAA5 data set to determine these levels.

(2) Disinfection profiling.

(a) Any system that is required by paragraph (1) of this section shall develop a disinfection profile of its disinfection practice for a period of up to three years. A disinfection profile consists of the following 3 steps:

(i) The system must collect data for several parameters from the plant over the course of 12 months. If your system serves between 500 and 9,999 persons you must begin to collect data no later than July 1, 2003. If your system serves fewer than 500 persons you must begin to collect data no later than January 1, 2004. If your system serves 10,000 persons or greater than the requirements of R309-215-14(2) are only required if it meets the criteria in paragraph R309-215-14(1)(f).

(ii) The system must use this data to calculate weekly log inactivation as discussed in paragraph (d) of this section.

(iii) The system must use these weekly log inactivations to develop a disinfection profile.

(b) The system shall monitor daily for a period of 12 consecutive calendar months to determine the total logs of inactivation for each day of operation, based on the CT99.9 values in Tables 1.1-1.6, 2.1, and 3.1 of Section 141.74(b)(3) in the code of Federal Regulations (also available from the Division), as appropriate, through the entire treatment plant. This system shall begin this monitoring not later than April 1, 2000. As a minimum, the system with a single point of disinfectant application prior to entrance to the distribution system shall conduct the monitoring in paragraphs (2)(b)(i) through (iv) of this section. A system with more than one point of disinfectant application shall conduct the monitoring in paragraphs (2)(b)(i) through (iv) of this section for each disinfection segment. The system shall monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in R309-200-4(3), as follows:

(i) The temperature of the disinfected water shall be

measured once per day at each residual disinfectant concentration sampling point during peak hourly flow.

(ii) If the system uses chlorine, the pH of the disinfected water shall be measured once per day at each chlorine residual disinfectant concentration sampling point during peak hourly flow.

(iii) The disinfectant contact time(s) ("T") shall be determined for each day during peak hourly flow.

(iv) The residual disinfectant concentration(s) ("C") of the water before or at the first customer and prior to each additional point of disinfection shall be measured each day during peak hourly flow.

(v) For systems serving less than 10,000 persons, the above parameters shall be monitored once per week on the same calendar day, over 12 consecutive months for the purposes of disinfection profiling.

(c) In lieu of the monitoring conducted under the provisions of paragraph (2)(b) of this section to develop the disinfection profile, the system may elect to meet the requirements of paragraph (2)(c)(i) of this section. In addition to the monitoring conducted under the provisions of paragraph (2)(b) of this section to develop the disinfection profile, the system may elect to meet the requirements of paragraph (2)(c)(ii) of this section.

(i) A PWS that has three years of existing operational data may submit those data, a profile generated using those data, and a request that the Executive Secretary approve use of those data in lieu of monitoring under the provisions of paragraph (2)(b) of this section not later than March 31, 2000. The Executive Secretary shall determine whether these operational data are substantially equivalent to data collected under the provisions of paragraph (2)(b) of this section. These data shall also be representative of Giardia lamblia inactivation through the entire treatment plant and not just of certain treatment segments. Until the Executive Secretary approves this request, the system is required to conduct monitoring under the provisions of paragraph (2)(b) of this section.

(ii) In addition to the disinfection profile generated under paragraph (2)(b) of this section, a PWS that has existing operational data may use those data to develop a disinfection profile for additional years. Such systems may use these additional yearly disinfection profiles to develop a benchmark under the provisions of paragraph (3) of this section. The Executive Secretary shall determine whether these operational data are substantially equivalent to data collected under the provisions of paragraph (2)(b) of this section. These data shall also be representative of inactivation through the entire treatment plant and not just of certain treatment segments.

(d) The system shall calculate the total inactivation ratio as follows:

(i) If the system uses only one point of disinfectant application, the system may determine the total inactivation ratio for the disinfection segment based on either of the methods in paragraph (2)(d)(i)(A) or (2)(d)(i)(B) of this section.

(A) Determine one inactivation ratio ($CTcalc/CT_{99.9}$) before or at the first customer during peak hourly flow.

(B) Determine successive $CTcalc/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the system shall calculate the total inactivation ratio by determining ($CTcalc/CT_{99.9}$) for each sequence and then adding the ($CTcalc/CT_{99.9}$) values together to determine sum of ($CTcalc/CT_{99.9}$).

(ii) If the system uses more than one point of disinfectant application before the first customer, the system shall determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The ($CTcalc/CT_{99.9}$) value of each segment and sum of ($CTcalc/CT_{99.9}$) shall be calculated using the method in paragraph (b)(4)(i) of this section.

(iii) The system shall determine the total logs of inactivation by multiplying the value calculated in paragraph (2)(d)(i) or (ii) of this section by 3.0.

(e) A system that uses either chloramines or ozone for primary disinfection shall also calculate the logs of inactivation for viruses using a method approved by the Executive Secretary.

(f) The system shall retain disinfection profile data in graphic form, as a spreadsheet, or in some other format acceptable to the Executive Secretary for review as part of sanitary surveys conducted by the Executive Secretary.

(3) Disinfection Benchmarking

(a) Any system required to develop a disinfection profile under the provisions of paragraphs (1) and (2) of this section and that decides to make a significant change to its disinfection practice shall consult with the Executive Secretary prior to making such change. Significant changes to disinfection practice are:

(i) Changes to the point of disinfection;

(ii) Changes to the disinfectant(s) used in the treatment plant;

(iii) Changes to the disinfection process; and

(iv) Any other modification identified by the Executive Secretary.

(b) Any system that is modifying its disinfection practice shall calculate its disinfection benchmark using the procedure specified in paragraphs (3)(b)(i) through (ii) of this section.

(i) For each year of profiling data collected and calculated under paragraph (2) of this section, the system shall determine the lowest average monthly Giardia lamblia inactivation in each year of profiling data. The system shall determine the average Giardia lamblia inactivation for each calendar month for each year of profiling data by dividing the sum of daily Giardia lamblia of inactivation by the number of values calculated for that month.

(ii) The disinfection benchmark is the lowest monthly average value (for systems with one year of profiling data) or average of lowest monthly average values (for systems with more than one year of profiling data) of the monthly logs of Giardia lamblia inactivation in each year of profiling data.

(c) A system that uses either chloramines, ozone or chlorine dioxide for primary disinfection must calculate the disinfection benchmark from the data the system collected for viruses to develop the disinfection profile in addition to the Giardia lamblia disinfection benchmark calculated under paragraph (b)(i) above. This viral benchmark must be calculated in the same manner used to calculate the Giardia lamblia disinfection benchmark in paragraph (b)(i).

(d) The system shall submit information in paragraphs (3)(d)(i) through (iv) of this section to the Executive Secretary as part of its consultation process.

(i) A description of the proposed change;

(ii) The disinfection profile for Giardia lamblia (and, if necessary, viruses) under paragraph (2) of this section and benchmark as required by paragraph (3)(b) of this section; and

(iii) An analysis of how the proposed change will affect the current levels of disinfection.

(iv) Any additional information requested by the Executive Secretary.

R309-215-15. Enhanced Treatment for Cryptosporidium (Federal Subpart W).

(1) General requirements.

(a) The rule requirements of this section establish or extend treatment technique requirements in lieu of maximum contaminant levels for Cryptosporidium. These requirements are in addition to requirements for filtration and disinfection in

R309-200 and other parts of R309-215.

(b) Applicability. The requirements of this subpart apply to all surface water systems, which are public water systems supplied by a surface water source and public water systems supplied by a ground water source under the direct influence of surface water.

(i) Wholesale systems, as defined in R309-110, must comply with the requirements of this section based on the population of the largest system in the combined distribution system.

(ii) The requirements of this sub-section apply to systems required by these rules to provide filtration treatment, whether or not the system is currently operating a filtration system.

(c) Requirements. Systems subject to this subpart must comply with the following requirements:

(i) Systems must conduct an initial and a second round of source water monitoring for each plant that treats a surface water or GWUDI source. This monitoring may include sampling for Cryptosporidium, E. coli, and turbidity as described in R309-215-15(2) through R309-215-15(7), to determine what level, if any, of additional Cryptosporidium treatment they must provide.

(ii) Systems that plan to make a significant change to their disinfection practice must develop disinfection profiles and calculate disinfection benchmarks, as described in R309-215-15(9) through R309-215-15(10).

(iii) Filtered systems must determine their Cryptosporidium treatment bin classification as described in R309-215-15(11) and provide additional treatment for Cryptosporidium, if required, as described in R309-215-15(12). Filtered must implement Cryptosporidium treatment according to the schedule in R309-215-14.

(iv) Systems required to provide additional treatment for Cryptosporidium must implement microbial toolbox options that are designed and operated as described in R309-215-15(15) through R309-215-15(20).

(v) Systems must comply with the applicable recordkeeping and reporting requirements described in R309-215-15(21) through R309-215-15(22).

(vi) Systems must address significant deficiencies identified in sanitary surveys performed by EPA as described in R309-215-15(22).

(2) Source Water Monitoring Requirements.

(a) Initial round of source water monitoring. Systems must conduct the following monitoring on the schedule in paragraph (c) of this section unless they meet the monitoring exemption criteria in paragraph (d) of this section.

(i) Filtered systems serving at least 10,000 people must sample their source water for Cryptosporidium, E. coli, and turbidity at least monthly for 24 months.

(ii) (A) Filtered systems serving fewer than 10,000 people must sample their source water for E. coli at least once every two weeks for 12 months.

(B) A filtered system serving fewer than 10,000 people may avoid E. coli monitoring if the system notifies the Executive Secretary that it will monitor for Cryptosporidium as described in paragraph (a)(iv) of this section. The system must notify the Executive Secretary no later than 3 months prior to the date the system is otherwise required to start E. coli monitoring under R309-215-15(2)(c).

(iii) Filtered systems serving fewer than 10,000 people must sample their source water for Cryptosporidium at least twice per month for 12 months or at least monthly for 24 months if they meet one of the following, based on monitoring conducted under paragraph (a)(iii) of this section:

(A) For systems using lake/reservoir sources, the annual mean E. coli concentration is greater than 10 E. coli/ 100 mL.

(B) For systems using flowing stream sources, the annual mean E. coli concentration is greater than 50 E. coli/ 100 mL.

(C) The system does not conduct E. coli monitoring as described in paragraph (a)(iii) of this section.

(D) Systems using ground water under the direct influence of surface water (GWUDI) must comply with the requirements of paragraph (a)(iv) of this section based on the E. coli level that applies to the nearest surface water body. If no surface water body is nearby, the system must comply based on the requirements that apply to systems using lake/reservoir sources.

(iv) For filtered systems serving fewer than 10,000 people, the Executive Secretary may approve monitoring for an indicator other than E. coli under paragraph (a)(ii) of this section. The Executive Secretary also may approve an alternative to the E. coli concentration in paragraph (a)(iii)(A), (B) or (D) of this section to trigger Cryptosporidium monitoring. This approval by the Executive Secretary must be provided to the system in writing and must include the basis for the Executive Secretary's determination that the alternative indicator and/or trigger level will provide a more accurate identification of whether a system will exceed the Bin 1 Cryptosporidium level in R309-215-15(11).

(v) Systems may sample more frequently than required under this section if the sampling frequency is evenly spaced throughout the monitoring period.

(b) Second round of source water monitoring. Systems must conduct a second round of source water monitoring that meets the requirements for monitoring parameters, frequency, and duration described in paragraph (a) of this section, unless they meet the monitoring exemption criteria in paragraph (d) of this section. Systems must conduct this monitoring on the schedule in paragraph (c) of this section.

(c) Monitoring schedule. Systems must begin the monitoring required in paragraphs (a) and (b) of this section no later than the month beginning with the date listed:

(i) Systems that serve at least 100,000 people must:

(A) begin the first round of source water monitoring no later than October 1, 2006; and

(B) begin the second round of source water monitoring no later than April 1, 2015.

(ii) Systems that serve from 50,000 to 99,999 people must:

(A) begin the first round of source water monitoring no later than April 1, 2007; and

(B) begin the second round of source water monitoring no later than October 1, 2015.

(iii) Systems that serve from 10,000 to 49,999 people must:

(A) begin the first round of source water monitoring no later than April 1, 2008; and

(B) begin the second round of source water monitoring no later than October 1, 2016.

(iv) Systems that serve less than 10,000 people and monitor for E. coli must:

(A) begin the first round of source water monitoring no later than October 1, 2008; and

(B) begin the second round of source water monitoring no later than October 1, 2017.

(C) Applies only to filtered systems.

(v) Systems that serve less than 10,000 people and monitor for Cryptosporidium must:

(A) begin the first round of source water monitoring no later than April 1, 2010; and

(B) begin the second round of source water monitoring no later than April 1, 2019.

(C) Applies to filtered systems that meet the conditions of paragraph (a)(iii) of this section.

(d) Monitoring avoidance.

(i) Filtered systems are not required to conduct source water monitoring under this sub-section if the system will provide a total of at least 5.5-log of treatment for Cryptosporidium, equivalent to meeting the treatment requirements of Bin 4 in R309-215-15(12).

(ii) If a system chooses to provide the level of treatment in paragraph (d)(i) of this section rather than start source monitoring, the system must notify the Executive Secretary in writing no later than the date the system is otherwise required to submit a sampling schedule for monitoring under R309-215-15(3). Alternatively, a system may choose to stop sampling at any point after it has initiated monitoring if it notifies the Executive Secretary in writing that it will provide this level of treatment. Systems must install and operate technologies to provide this level of treatment by the applicable compliance dates in R309-215-15(13).

(e) Plants operating only part of the year. Systems with surface water plants that operate for only part of the year must conduct source water monitoring in accordance with this subpart, but with the following modifications:

(i) Systems must sample their source water only during the months that the plant operates unless the Executive Secretary specifies another monitoring period based on plant operating practices.

(ii) Systems with plants that operate less than six months per year and that monitor for Cryptosporidium must collect at least six Cryptosporidium samples per year during each of two years of monitoring. Samples must be evenly spaced throughout the period the plant operates.

(f)(i) New sources. A system that begins using a new source of surface water or GWUDI after the system is required to begin monitoring under paragraph (c) of this section must monitor the new source on a schedule the Executive Secretary approves. Source water monitoring must meet the requirements of this sub-section. The system must also meet the bin classification and Cryptosporidium treatment requirements of R309-215-15(11) and (12) for the new source on a schedule the Executive Secretary approves.

(ii) The requirements of R309-215-15(2)(f) apply to surface water systems that begin operation after the monitoring start date applicable to the system's size under paragraph (c) of this section.

(iii) The system must begin a second round of source water monitoring no later than 6 years following initial bin classification under R309-215-15(11).

(g) Failure to collect any source water sample required under this section in accordance with the sampling schedule, sampling location, analytical method, approved laboratory, and reporting requirements of R309-215-15(3) through R309-215-15(7) is a monitoring violation.

(h) Grandfathering monitoring data. Systems may use (grandfather) monitoring data collected prior to the applicable monitoring start date in paragraph (c) of this section to meet the initial source water monitoring requirements in paragraph (a) of this section. Grandfathered data may substitute for an equivalent number of months at the end of the monitoring period. All data submitted under this paragraph must meet the requirements in R309-215-15(8).

(3) Sampling schedules.

(a) Systems required to conduct source water monitoring under R309-215-15(2) must submit a sampling schedule that specifies the calendar dates when the system will collect each required sample.

(i) Systems must submit sampling schedules no later than 3 months prior to the applicable date listed in R309-215-15(2)(c) for each round of required monitoring.

(ii) (A) Systems serving at least 10,000 people must submit their sampling schedule for the initial round of source water monitoring under R309-215-15(2)(a) to EPA electronically at https:// intranet.epa.gov/lt2/.

(B) If a system is unable to submit the sampling schedule electronically, the system may use an alternative approach for submitting the sampling schedule that EPA approves.

(iii) Systems serving fewer than 10,000 people must submit their sampling schedules for the initial round of source water monitoring R309-215-15(2)(a) to the Executive Secretary.

(iv) Systems must submit sampling schedules for the second round of source water monitoring R309-215-15(2)(b) to the Executive Secretary.

(v) If EPA or the Executive Secretary does not respond to a system regarding its sampling schedule, the system must sample at the reported schedule.

(b) Systems must collect samples within two days before or two days after the dates indicated in their sampling schedule (i.e., within a five-day period around the schedule date) unless one of the conditions of paragraph (b)(i) or (ii) of this section applies.

(i) If an extreme condition or situation exists that may pose danger to the sample collector, or that cannot be avoided and causes the system to be unable to sample in the scheduled five-day period, the system must sample as close to the scheduled date as is feasible unless the Executive Secretary approves an alternative sampling date. The system must submit an explanation for the delayed sampling date to the Executive Secretary concurrent with the shipment of the sample to the laboratory.

(ii)(A) If a system is unable to report a valid analytical result for a scheduled sampling date due to equipment failure, loss of or damage to the sample, failure to comply with the analytical method requirements, including the quality control requirements in R309-215-15(5), or the failure of an approved laboratory to analyze the sample, then the system must collect a replacement sample.

(B) The system must collect the replacement sample not later than 21 days after receiving information that an analytical result cannot be reported for the scheduled date unless the system demonstrates that collecting a replacement sample within this time frame is not feasible or the Executive Secretary approves an alternative resampling date. The system must submit an explanation for the delayed sampling date to the Executive Secretary concurrent with the shipment of the sample to the laboratory.

(c) Systems that fail to meet the criteria of paragraph (b) of this section for any source water sample required under R309-215-15(2) must revise their sampling schedules to add dates for collecting all missed samples. Systems must submit the revised schedule to the Executive Secretary for approval prior to when the system begins collecting the missed samples.

(4) Sampling locations.

(a) Systems required to conduct source water monitoring under R309-215-15(2) must collect samples for each plant that treats a surface water or GWUDI source. Where multiple plants draw water from the same influent, such as the same pipe or intake, the Executive Secretary may approve one set of monitoring results to be used to satisfy the requirements of R309-215-15(2) for all plants.

(b) (i) Systems must collect source water samples prior to chemical treatment, such as coagulants, oxidants and disinfectants, unless the system meets the condition of paragraph (b)(ii) of this section.

(ii) The Executive Secretary may approve a system to collect a source water sample after chemical treatment. To grant this approval, the Executive Secretary must determine that collecting a sample prior to chemical treatment is not feasible for the system and that the chemical treatment is unlikely to have a significant adverse effect on the analysis of the sample.

(c) Systems that recycle filter backwash water must collect source water samples prior to the point of filter backwash water addition.

(d) Bank filtration.

(i) Systems that receive Cryptosporidium treatment credit for bank filtration under R309-200-5(5)(a)(ii) must collect source water samples in the surface water prior to bank

filtration.

(ii) Systems that use bank filtration as pretreatment to a filtration plant must collect source water samples from the well (i.e., after bank filtration). Use of bank filtration during monitoring must be consistent with routine operational practice. Systems collecting samples after a bank filtration process may not receive treatment credit for the bank filtration under R309-215-15(16)(c).

(e) Multiple sources. Systems with plants that use multiple water sources, including multiple surface water sources and blended surface water and ground water sources, must collect samples as specified in paragraph (e)(i) or (ii) of this section. The use of multiple sources during monitoring must be consistent with routine operational practice.

(i) If a sampling tap is available where the sources are combined prior to treatment, systems must collect samples from the tap.

(ii) If a sampling tap where the sources are combined prior to treatment is not available, systems must collect samples at each source near the intake on the same day and must follow either paragraph (e)(ii)(A) or (B) of this section for sample analysis.

(A) Systems may composite samples from each source into one sample prior to analysis. The volume of sample from each source must be weighted according to the proportion of the source in the total plant flow at the time the sample is collected.

(B) Systems may analyze samples from each source separately and calculate a weighted average of the analysis results for each sampling date. The weighted average must be calculated by multiplying the analysis result for each source by the fraction the source contributed to total plant flow at the time the sample was collected and then summing these values.

(f) Additional Requirements. Systems must submit a description of their sampling location(s) to the Executive Secretary at the same time as the sampling schedule required under R309-215-15(3). This description must address the position of the sampling location in relation to the system's water source(s) and treatment processes, including pretreatment, points of chemical treatment, and filter backwash recycle. If the Executive Secretary does not respond to a system regarding sampling location(s), the system must sample at the reported location(s).

(5) Analytical methods.

(a) Cryptosporidium. Systems must analyze for Cryptosporidium using Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-002 or Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-001, which are incorporated by reference. You may obtain a copy of these methods online from http:// www.epa.gov/safewater/disinfection/lt2 or from the United States Environmental Protection Agency, Office of Ground Water and Drinking Water, 1201 Constitution Ave., NW, Washington, DC 20460 (Telephone: 800-426-4791). You may inspect a copy at the Water Docket in the EPA Docket Center, 1301 Constitution Ave., NW, Washington, DC, (Telephone: 202-566-2426) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. You may also obtain a copy of these methods by contacting the Division of Drinking Water at 801-536-4200.

(i) Systems must analyze at least a 10 L sample or a packed pellet volume of at least 2 mL as generated by the methods listed in paragraph (a) of this section. Systems unable to process a 10 L sample must analyze as much sample volume as can be filtered by two filters approved by EPA for the methods listed in paragraph (a) of this section, up to a packed pellet volume of at least 2 mL.

(ii) (A) Matrix spike (MS) samples, as required by the methods in paragraph (a) of this section, must be spiked and filtered by a laboratory approved for Cryptosporidium analysis under R309-215-15(6).

(B) If the volume of the MS sample is greater than 10 L, the system may filter all but 10 L of the MS sample in the field, and ship the filtered sample and the remaining 10 L of source water to the laboratory. In this case, the laboratory must spike the remaining 10 L of water and filter it through the filter used to collect the balance of the sample in the field.

(iii) Flow cytometer-counted spiking suspensions must be used for MS samples and ongoing precision and recovery (OPR) samples.

(b) E. coli. Systems must use methods for enumeration of E. coli in source water approved in R309-200-4(3) and (4).

(i) The time from sample collection to initiation of analysis may not exceed 30 hours unless the system meets the condition of paragraph (b)(ii) of this section.

(ii) The Executive Secretary may approve on a case-by-case basis the holding of an E. coli sample for up to 48 hours between sample collection and initiation of analysis if the Executive Secretary determines that analyzing an E. coli sample within 30 hours is not feasible. E. coli samples held between 30 to 48 hours must be analyzed by the Colilert reagent version of Standard Method 9223B as listed in R309-200-4(3) and (4).

(iii) Systems must maintain samples between 0 deg.C and 10 deg. C during storage and transit to the laboratory.

(c) Turbidity. Systems must use methods for turbidity measurement approved in R309-200-4(3) and (4).

(6) Approved laboratories.

(a) Cryptosporidium. Systems must have Cryptosporidium samples analyzed by a laboratory that is approved under EPA's Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium in Water or a laboratory that has been certified for Cryptosporidium analysis by an equivalent State laboratory certification program.

(b) E. coli. Any laboratory certified by the EPA, the National Environmental Laboratory Accreditation Conference or the State for total coliform or fecal coliform analysis under R309-200-4(3) and (4) is approved for E. coli analysis under this subpart when the laboratory uses the same technique for E. coli that the laboratory uses for R309-200-4(3), (4) and in R444-14-4(1).

(c) Turbidity. Measurements of turbidity must be made by a party approved by the State.

(7) Reporting source water monitoring results.

(a) Systems must report results from the source water monitoring required under R309-215-15(2) no later than 10 days after the end of the first month following the month when the sample is collected.

(b) (i) All systems serving at least 10,000 people must report the results from the initial source water monitoring required under R309-215-15(2)(a) to EPA electronically at https:// intranet.epa.gov/lt2/.

(ii) If a system is unable to report monitoring results electronically, the system may use an alternative approach for reporting monitoring results that EPA approves.

(c) Systems serving fewer than 10,000 people must report results from the initial source water monitoring required under R309-215-15(2)(a) to the Executive Secretary.

(d) All systems must report results from the second round of source water monitoring required under R309-215-15(2)(b) to the Executive Secretary.

(e) Systems must report the applicable information in paragraphs (e)(i) and (ii) of this section for the source water monitoring required under R309-215-15(2).

(i) Systems must report the following data elements for

each Cryptosporidium analysis:

(A) PWS ID.

(B) Facility ID.

(C) Sample collection date.

(D) Sample type (field or matrix spike).

(E) Sample volume filtered (L), to nearest 1/4 L.

(F) Was 100% of filtered volume examined.

(G) Number of oocysts counted.

(H) For matrix spike samples, systems must also report the sample volume spiked and estimated number of oocysts spiked. These data are not required for field samples.

(I) For samples in which less than 10 L is filtered or less than 100% of the sample volume is examined, systems must also report the number of filters used and the packed pellet volume.

(J) For samples in which less than 100% of sample volume is examined, systems must also report the volume of resuspended concentrate and volume of this resuspension processed through immunomagnetic separation.

(ii) Systems must report the following data elements for each E. coli analysis:

(A) PWS ID.

(B) Facility ID.

(C) Sample collection date.

(D) Analytical method number.

(E) Method type.

(F) Source type (flowing stream, lake/reservoir, GWUDI).

(G) E. coli/100 mL.

(H) Turbidity. (Systems serving fewer than 10,000 people that are not required to monitor for turbidity under R309-215-15(2) are not required to report turbidity with their E. coli results.)

(8) Grandfathering previously collected data.

(a) (i) Systems may comply with the initial source water monitoring requirements of R309-215-15(2)(a) by grandfathering sample results collected before the system is required to begin monitoring (i.e., previously collected data). To be grandfathered, the sample results and analysis must meet the criteria in this section and the Executive Secretary must approve.

(ii) A filtered system may grandfather Cryptosporidium samples to meet the requirements of R309-215-15(2)(a) when the system does not have corresponding E. coli and turbidity samples. A system that grandfathers Cryptosporidium samples without E. coli and turbidity samples is not required to collect E. coli and turbidity samples when the system completes the requirements for Cryptosporidium monitoring under R309-215-15(2)(a).

(b) E. coli sample analysis. The analysis of E. coli samples must meet the analytical method and approved laboratory requirements of R309-215-15(5) through R309-215-15(6).

(c) Cryptosporidium sample analysis. The analysis of Cryptosporidium samples must meet the criteria in this paragraph.

(i) Laboratories analyzed Cryptosporidium samples using one of the analytical methods in paragraphs (c)(i)(A) through (D) of this section, which are incorporated by reference. You may obtain a copy of these methods on-line from the United States Environmental Protection Agency, Office of Ground Water and Drinking Water, 1201 Constitution Ave, NW, Washington, DC 20460 (Telephone: 800-426-4791). You may inspect a copy at the Water Docket in the EPA Docket Center, 1301 Constitution Ave., NW, Washington, DC, (Telephone: 202-566-2426) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. You may also obtain a copy of these methods by contacting the Division of Drinking Water at 801-536-4200.

(A) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/ FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-002.

(B) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-001.

(C) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/ FA, 2001, United States Environmental Protection Agency, EPA-821-R-01-025.

(D) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2001, United States Environmental Protection Agency, EPA-821-R-01-026.

(E) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/ FA, 1999, United States Environmental Protection Agency, EPA-821-R-99-006.

(F) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 1999, United States Environmental Protection Agency, EPA-821-R-99-001.

(ii) For each Cryptosporidium sample, the laboratory analyzed at least 10 L of sample or at least 2 mL of packed pellet or as much volume as could be filtered by 2 filters that EPA approved for the methods listed in paragraph (c)(1) of this section.

(d) Sampling location. The sampling location must meet the conditions in R309-215-15(4).

(e) Sampling frequency. Cryptosporidium samples were collected no less frequently than each calendar month on a regular schedule, beginning no earlier than January 1999. Sample collection intervals may vary for the conditions specified in R309-215-15(3)(b)(i) and (ii) if the system provides documentation of the condition when reporting monitoring results.

(i) The Executive Secretary may approve grandfathering of previously collected data where there are time gaps in the sampling frequency if the system conducts additional monitoring the Executive Secretary specifies to ensure that the data used to comply with the initial source water monitoring requirements of R309-215-15(2)(a) are seasonally representative and unbiased.

(ii) Systems may grandfather previously collected data where the sampling frequency within each month varied. If the Cryptosporidium sampling frequency varied, systems must follow the monthly averaging procedure in R309-215-15(11)(b)(v) when calculating the bin classification for filtered systems.

(f) Reporting monitoring results for grandfathering. Systems that request to grandfather previously collected monitoring results must report the following information by the applicable dates listed in this paragraph. Systems serving at least 10,000 people must report this information to EPA unless the Executive Secretary approves reporting to the Executive Secretary rather than EPA. Systems serving fewer than 10,000 people must report this information to the Executive Secretary.

(i) Systems must report that they intend to submit previously collected monitoring results for grandfathering. This report must specify the number of previously collected results the system will submit, the dates of the first and last sample, and whether a system will conduct additional source water monitoring to meet the requirements of R309-215-15(2)(a). Systems must report this information no later than the date the sampling schedule under R309-215-15(3) is required.

(ii) Systems must report previously collected monitoring results for grandfathering, along with the associated documentation listed in paragraphs (f)(ii)(A) through (D) of this section, no later than two months after the applicable date listed in R309-215-15(2)(c).

(A) For each sample result, systems must report the applicable data elements in R309-215-15(7).

(B) Systems must certify that the reported monitoring

results include all results the system generated during the time period beginning with the first reported result and ending with the final reported result. This applies to samples that were collected from the sampling location specified for source water monitoring under this subpart, not spiked, and analyzed using the laboratory's routine process for the analytical methods listed in this section.

(C) Systems must certify that the samples were representative of a plant's source water(s) and the source water(s) have not changed. Systems must report a description of the sampling location(s), which must address the position of the sampling location in relation to the system's water source(s) and treatment processes, including points of chemical addition and filter backwash recycle.

(D) For Cryptosporidium samples, the laboratory or laboratories that analyzed the samples must provide a letter certifying that the quality control criteria specified in the methods listed in paragraph (c)(i) of this section were met for each sample batch associated with the reported results. Alternatively, the laboratory may provide bench sheets and sample examination report forms for each field, matrix spike, IPR, OPR, and method blank sample associated with the reported results.

(g) If the Executive Secretary determines that a previously collected data set submitted for grandfathering was generated during source water conditions that were not normal for the system, such as a drought, the Executive Secretary may disapprove the data. Alternatively, the Executive Secretary may approve the previously collected data if the system reports additional source water monitoring data, as determined by the Executive Secretary, to ensure that the data set used under R309-215-15(11) represents average source water conditions for the system.

(h) If a system submits previously collected data that fully meet the number of samples required for initial source water monitoring under R309-215-15(2)(a) and some of the data are rejected due to not meeting the requirements of this section, systems must conduct additional monitoring to replace rejected data on a schedule the Executive Secretary approves. Systems are not required to begin this additional monitoring until two months after notification that data have been rejected and additional monitoring is necessary.

(9) Disinfection Profiling and Benchmarking Requirements - Requirements when making a significant change in disinfection practice.

(a) Following the completion of initial source water monitoring under R309-215-15(2)(a), a system that plans to make a significant change to its disinfection practice, as defined in paragraph (b) of this section, must develop disinfection profiles and calculate disinfection benchmarks for Giardia lamblia and viruses as described in R309-215-15(10). Prior to changing the disinfection practice, the system must notify the Executive Secretary and must include in this notice the information in paragraphs (a)(i) through (iii) of this section.

(i) A completed disinfection profile and disinfection benchmark for Giardia lamblia and viruses as described in R309-215-15(10).

(ii) A description of the proposed change in disinfection practice.

(iii) An analysis of how the proposed change will affect the current level of disinfection.

(b) Significant changes to disinfection practice are defined as follows:

(i) Changes to the point of disinfection;

(ii) Changes to the disinfectant(s) used in the treatment plant;

(iii) Changes to the disinfection process; or

(iv) Any other modification identified by the Executive Secretary as a significant change to disinfection practice.

(10) Developing the disinfection profile and benchmark.

(a) Systems required to develop disinfection profiles under R309-215-15(9) must follow the requirements of this section. Systems must monitor at least weekly for a period of 12 consecutive months to determine the total log inactivation for Giardia lamblia and viruses. If systems monitor more frequently, the monitoring frequency must be evenly spaced. Systems that operate for fewer than 12 months per year must monitor weekly during the period of operation. Systems must determine log inactivation for Giardia lamblia through the entire plant, based on $CT_{99.9}$ values in Tables 1.1 through 1.6, 2.1 and 3.1 of Section 141.74(b) in the code of Federal Regulations as applicable (available from the Division). Systems must determine log inactivation for viruses through the entire treatment plant based on a protocol approved by the Executive Secretary.

(b) Systems with a single point of disinfectant application prior to the entrance to the distribution system must conduct the monitoring in paragraphs (b)(i) through (iv) of this section. Systems with more than one point of disinfectant application must conduct the monitoring in paragraphs (b)(i) through (iv) of this section for each disinfection segment. Systems must monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in R309-200-4(3) and (4).

(i) For systems using a disinfectant other than UV, the temperature of the disinfected water must be measured at each residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the Executive Secretary.

(ii) For systems using chlorine, the pH of the disinfected water must be measured at each chlorine residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the Executive Secretary.

(iii) The disinfectant contact time(s) (t) must be determined during peak hourly flow.

(iv) The residual disinfectant concentration(s) (C) of the water before or at the first customer and prior to each additional point of disinfectant application must be measured during peak hourly flow.

(c) In lieu of conducting new monitoring under paragraph (b) of this section, systems may elect to meet the requirements of paragraphs (c)(i) or (ii) of this section.

(i) Systems that have at least one year of existing data that are substantially equivalent to data collected under the provisions of paragraph (b) of this section may use these data to develop disinfection profiles as specified in this section if the system has neither made a significant change to its treatment practice nor changed sources since the data were collected. Systems may develop disinfection profiles using up to three years of existing data.

(ii) Systems may use disinfection profile(s) developed under R309-215-14 in lieu of developing a new profile if the system has neither made a significant change to its treatment practice nor changed sources since the profile was developed. Systems that have not developed a virus profile under R309-251-14 must develop a virus profile using the same monitoring data on which the Giardia lamblia profile is based.

(d) Systems must calculate the total inactivation ratio for Giardia lamblia as specified in paragraphs (d)(i) through (iii) of this section.

(i) Systems using only one point of disinfectant application may determine the total inactivation ratio for the disinfection segment based on either of the methods in paragraph (d)(1)(i) or (ii) of this section.

(A) Determine one inactivation ratio ($CTcalc/CT_{99.9}$) before or at the first customer during peak hourly flow.

(B) Determine successive $CTcalc/ CT_{99.9}$ values, representing sequential inactivation ratios, between the point of

disinfectant application and a point before or at the first customer during peak hourly flow. The system must calculate the total inactivation ratio by determining ($CTcalc/CT_{99.9}$) for each sequence and then adding the ($CTcalc/ CT_{99.9}$) values together to determine the sum of ($CTcalc/CT_{99.9}$).

(ii) Systems using more than one point of disinfectant application before the first customer must determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The ($CTcalc/ CT_{99.9}$) value of each segment and the sum of ($CTcalc/CT_{99.9}$) must be calculated using the method in paragraph (d)(i)(B) of this section.

(iii) The system must determine the total logs of inactivation by multiplying the value calculated in paragraph (d)(i) or (d)(ii) of this section by 3.0.

(iv) Systems must calculate the log of inactivation for viruses using a protocol approved by the Executive Secretary.

(e) Systems must use the procedures specified in paragraphs (e)(i) and (ii) of this section to calculate a disinfection benchmark.

(i) For each year of profiling data collected and calculated under paragraphs (a) through (d) of this section, systems must determine the lowest mean monthly level of both Giardia lamblia and virus inactivation. Systems must determine the mean Giardia lamblia and virus inactivation for each calendar month for each year of profiling data by dividing the sum of daily or weekly Giardia lamblia and virus log inactivation by the number of values calculated for that month.

(ii) The disinfection benchmark is the lowest monthly mean value (for systems with one year of profiling data) or the mean of the lowest monthly mean values (for systems with more than one year of profiling data) of Giardia lamblia and virus log inactivation in each year of profiling data.

(11) Treatment Technique Requirements - Bin classification for filtered systems.

(a) Following completion of the initial round of source water monitoring required under R309-215-15(2)(a), filtered systems must calculate an initial Cryptosporidium bin concentration for each plant for which monitoring was required. Calculation of the bin concentration must use the Cryptosporidium results reported under R309-215-15(2)(a) and must follow the procedures in paragraphs (b)(i) through (v) of this section.

(b)(i) For systems that collect a total of at least 48 samples, the bin concentration is equal to the arithmetic mean of all sample concentrations.

(ii) For systems that collect a total of at least 24 samples, but not more than 47 samples, the bin concentration is equal to the highest arithmetic mean of all sample concentrations in any 12 consecutive months during which Cryptosporidium samples were collected.

(iii) For systems that serve fewer than 10,000 people and monitor for Cryptosporidium for only one year (i.e., collect 24 samples in 12 months), the bin concentration is equal to the arithmetic mean of all sample concentrations.

(iv) For systems with plants operating only part of the year that monitor fewer than 12 months per year under R309-215-15(2)(e), the bin concentration is equal to the highest arithmetic mean of all sample concentrations during any year of Cryptosporidium monitoring.

(v) If the monthly Cryptosporidium sampling frequency varies, systems must first calculate a monthly average for each month of monitoring. Systems must then use these monthly average concentrations, rather than individual sample concentrations, in the applicable calculation for bin classification in paragraphs (b)(i) through (iv) of this section.

(c) Filtered systems must determine their initial bin classification from the following and using the Cryptosporidium bin concentration calculated under paragraphs (a) and (b) of this section:

(i) Systems that are required to monitor for Cryptosporidium under R309-215-15(2):

(A) with a cryptosporidium concentration of less than 0.075 oocyst/L, the bin classification is Bin 1.

(B) with a cryptosporidium concentration of 0.075 oocysts/L to less than 1.0 oocysts/L, the bin classification is Bin 2.

(C) with a cryptosporidium concentration of 1.0 oocysts/L to less than 3.0 oocysts/L, the bin classification is Bin 3.

(D) with a cryptosporidium concentration of equal to or greater than 3.0 oocysts/L, the bin classification is Bin 4.

(ii) Systems serving fewer than 10,000 people and not required to monitor for Cryptosporidium under R309-215-15(2)(a)(iii), the concentration of cryptosporidium is not applicable and their bin classification is Bin 1.

(iii) Based on calculations in paragraph (a) or (d) of this section, as applicable.

(d) Following completion of the second round of source water monitoring required under R309-215-15(2)(b), filtered systems must recalculate their Cryptosporidium bin concentration using the Cryptosporidium results reported under R309-215-15(2)(b) and following the procedures in paragraphs (b)(i) through (iv) of this section. Systems must then redetermine their bin classification using this bin concentration and the table in paragraph (c) of this section.

(e)(i) Filtered systems must report their initial bin classification under paragraph (c) of this section to the Executive Secretary for approval no later than 6 months after the system is required to complete initial source water monitoring based on the schedule in R309-215-15(2)(c).

(ii) Systems must report their bin classification under paragraph (d) of this section to the Executive Secretary for approval no later than 6 months after the system is required to complete the second round of source water monitoring based on the schedule in R309-215-15(2)(c).

(iii) The bin classification report to the Executive Secretary must include a summary of source water monitoring data and the calculation procedure used to determine bin classification.

(f) Failure to comply with the conditions of paragraph (e) of this section is a violation of the treatment technique requirement.

(12) Filtered system additional Cryptosporidium treatment requirements.

(a) Filtered systems must provide the level of additional treatment for Cryptosporidium specified in this paragraph based on their bin classification as determined under R309-215-15(11) and according to the schedule in R309-215-15(13). The filtration treatment used by the system in this paragraph must be utilized in full compliance with the requirements of R309-200-5(5), R309-200-7, R309-215-8 and 9.

(i) If the system bin classification is Bin 1 and the system uses:

(A) Conventional filtration treatment including softening there is no additional cryptosporidium treatment required.

(B) Direct filtration there is no additional cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is no additional cryptosporidium treatment required.

(D) Alternative filtration technologies there is no additional cryptosporidium treatment required.

(ii) If the system bin classification is Bin 2 and the system uses:

(A) Conventional filtration treatment including softening there is an additional 1-log cryptosporidium treatment required.

(B) Direct filtration there is an additional 1.5-log cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is an additional 1-log cryptosporidium treatment required.

(D) Alternative filtration technologies there is an additional cryptosporidium treatment required as determined by the Executive Secretary such that the total Cryptosporidium removal an inactivation is at least 4.0-log.

(iii) If the system bin classification is Bin 3 and the system uses:

(A) Conventional filtration treatment including softening there is an additional 2-log cryptosporidium treatment required.

(B) Direct filtration there is an additional 2.5-log cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is an additional 2-log cryptosporidium treatment required.

(D) Alternative filtration technologies there is an additional cryptosporidium treatment required as determined by the Executive Secretary such that the total Cryptosporidium removal an inactivation is at least 5.0-log.

(iv) If the system bin classification is Bin 4 and the system uses:

(A) Conventional filtration treatment including softening there is an additional 2.5-log cryptosporidium treatment required.

(B) Direct filtration there is an additional 3-log cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is an additional 2.5-log cryptosporidium treatment required.

(D) Alternative filtration technologies there is an additional cryptosporidium treatment required as determined by the Executive Secretary such that the total Cryptosporidium removal an inactivation is at least 5.5-log.

(b)(i) Filtered systems must use one or more of the treatment and management options listed in R309-215-15(14), termed the microbial toolbox, to comply with the additional Cryptosporidium treatment required in paragraph (a) of this section.

(ii) Systems classified in Bin 3 and Bin 4 must achieve at least 1-log of the additional Cryptosporidium treatment required under paragraph (a) of this section using either one or a combination of the following: bag filters, bank filtration, cartridge filters, chlorine dioxide, membranes, ozone, or UV, as described in R309-215-15(15) through R309-215-15(19).

(c) Failure by a system in any month to achieve treatment credit by meeting criteria in R309-215-15(15) through R309-215-15(19) for microbial toolbox options that is at least equal to the level of treatment required in paragraph (a) of this section is a violation of the treatment technique requirement.

(d) If the Executive Secretary determines during a sanitary survey or an equivalent source water assessment that after a system completed the monitoring conducted under R309-215-15(2)(a) or R309-215-15(2)(b), significant changes occurred in the system's watershed that could lead to increased contamination of the source water by Cryptosporidium, the system must take actions specified by the Executive Secretary to address the contamination. These actions may include additional source water monitoring and/or implementing microbial toolbox options listed in R309-215-15(14).

(13) Schedule for compliance with Cryptosporidium treatment requirements.

(a) Following initial bin classification under R309-215-15(11)(c), filtered systems must provide the level of treatment for Cryptosporidium required under R309-215-15(12) according to the schedule in paragraph (c) of this section.

(b) Cryptosporidium treatment compliance dates.

(i) Systems that serve at least 100,000 people must comply with Cryptosporidium treatment requirements no later than April 1, 2012.

(ii) Systems that serve from 50,000 to 99,999 people must comply with Cryptosporidium treatment requirements no later than October 1, 2012.

(iii) Systems that serve from 10,000 to 49,999 people must comply with Cryptosporidium treatment requirements no later than October 1, 2013.

(iv) Systems that serve less than 10,000 people must comply with Cryptosporidium treatment requirements no later than October 1, 2014.

(v) The Executive Secretary may allow up to an additional two years for complying with the treatment requirement for systems making capital improvements.

(c) If the bin classification for a filtered system changes following the second round of source water monitoring, as determined under R309-215-15(11)(d), the system must provide the level of treatment for Cryptosporidium required under R309-215-15(12) on a schedule the Executive Secretary approves.

(14) Microbial toolbox options for meeting Cryptosporidium treatment requirements.

(a) Systems receive the treatment credits listed in the table in paragraph (b) of this section by meeting the conditions for microbial toolbox options described in R309-215-15(15) through R309-215-15(19). Systems apply these treatment credits to meet the treatment requirements in R309-215-15(12).

(b) The following sub-section summarizes options in the microbial toolbox and the Cryptosporidium treatment credit with design and implementation criteria.

(i) Source Protection and Management Toolbox Options:

(A) Watershed control program: 0.5-log credit for Executive Secretary-approved program comprising required elements, annual program status report to Executive Secretary, and regular watershed survey. Specific criteria are in R309-215-15(15) (a).

(B) Alternative source/intake management: No prescribed credit. Systems may conduct simultaneous monitoring for treatment bin classification at alternative intake locations or under alternative intake management strategies. Specific criteria are in R309-215-15(15) (b).

(ii) Pre Filtration Toolbox Options:

(A) Presedimentation basin with coagulation: 0.5-log credit during any month that presedimentation basins achieve a monthly mean reduction of 0.5-log or greater in turbidity or alternative Executive Secretary-approved performance criteria. To be eligible, basins must be operated continuously with coagulant addition and all plant flow must pass through basins. Specific criteria are in R309-215-15(16) (a).

(B) Two-stage lime softening: 0.5-log credit for two-stage softening where chemical addition and hardness precipitation occur in both stages. All plant flow must pass through both stages. Single-stage softening is credited as equivalent to conventional treatment. Specific criteria are in R309-215-15(16) (b).

(C) Bank filtration: 0.5-log credit for 25-foot setback; 1.0-log credit for 50-foot setback; aquifer must be unconsolidated sand containing at least 10 percent fines; average turbidity in wells must be less than 1 NTU. Systems using wells followed by filtration when conducting source water monitoring must sample the well to determine bin classification and are not eligible for additional credit. Specific criteria are in R309-215-15(16) (c).

(iii) Treatment Performance Toolbox Options:

(A) Combined filter performance: 0.5-log credit for combined filter effluent turbidity less than or equal to 0.15 NTU in at least 95 percent of measurements each month. Specific criteria are in R309-215-15(17) (a).

(B) Individual filter performance: 0.5-log credit (in addition to 0.5-log combined filter performance credit) if individual filter effluent turbidity is less than or equal to 0.15 NTU in at least 95 percent of samples each month in each filter and is never greater than 0.3 NTU in two consecutive measurements in any filter. Specific criteria are in R309-215-

15(17) (b).

(C) Demonstration of performance: Credit awarded to unit process or treatment train based on a demonstration to the Executive Secretary with a Executive Secretary-approved protocol. Specific criteria are in R309-215-15(17) (c).

(iv) Additional Filtration Toolbox Options:

(A) Bag or cartridge filters (individual filters): Up to 2-log credit based on the removal efficiency demonstrated during challenge testing with a 1.0-log factor of safety. Specific criteria are in R309-215-15(18) (a).

(B) Bag or cartridge filters (in series): Up to 2.5-log credit based on the removal efficiency demonstrated during challenge testing with a 0.5-log factor of safety. Specific criteria are in R309-215-15(18) (a).

(C) Membrane filtration: Log credit equivalent to removal efficiency demonstrated in challenge test for device if supported by direct integrity testing. Specific criteria are in R309-215-15(18) (b).

(D) Second stage filtration: 0.5-log credit for second separate granular media filtration stage if treatment train includes coagulation prior to first filter. Specific criteria are in R309-215-15(18) (c).

(E) Slow sand filters: 2.5-log credit as a secondary filtration step; 3.0-log credit as a primary filtration process. No prior chlorination for either option. Specific criteria are in R309-215-15(18) (d).

(v) Inactivation Toolbox Options:

(A) Chlorine dioxide: Log credit based on measured CT in relation to CT table. Specific criteria in R309-215-15(19) (b).

(B) Ozone: Log credit based on measured CT in relation to CT table. Specific criteria in R309-215-15(19) (b).

(C) UV: Log credit based on validated UV dose in relation to UV dose table; reactor validation testing required to establish UV dose and associated operating conditions. Specific criteria in R309-215-15(19) (d).

(15) Source toolbox components.

(a) Watershed control program. Systems receive 0.5-log Cryptosporidium treatment credit for implementing a watershed control program that meets the requirements of this section.

(i) Systems that intend to apply for the watershed control program credit must notify the Executive Secretary of this intent no later than two years prior to the treatment compliance date applicable to the system in R309-215-15(13).

(ii) Systems must submit to the Executive Secretary a proposed watershed control plan no later than one year before the applicable treatment compliance date in R309-215-15(13). The Executive Secretary must approve the watershed control plan for the system to receive watershed control program treatment credit. The watershed control plan must include the elements in paragraphs (a)(ii)(A) through (D) of this section.

(A) Identification of an "area of influence" outside of which the likelihood of Cryptosporidium or fecal contamination affecting the treatment plant intake is not significant. This is the area to be evaluated in future watershed surveys under paragraph (a)(v)(B) of this section.

(B) Identification of both potential and actual sources of Cryptosporidium contamination and an assessment of the relative impact of these sources on the system's source water quality.

(C) An analysis of the effectiveness and feasibility of control measures that could reduce Cryptosporidium loading from sources of contamination to the system's source water.

(D) A statement of goals and specific actions the system will undertake to reduce source water Cryptosporidium levels. The plan must explain how the actions are expected to contribute to specific goals, identify watershed partners and their roles, identify resource requirements and commitments, and include a schedule for plan implementation with deadlines for completing specific actions identified in the plan.

(iii) Systems with existing watershed control programs (i.e., programs in place on January 5, 2006) are eligible to seek this credit. Their watershed control plans must meet the criteria in paragraph (a)(ii) of this section and must specify ongoing and future actions that will reduce source water Cryptosporidium levels.

(iv) If the Executive Secretary does not respond to a system regarding approval of a watershed control plan submitted under this section and the system meets the other requirements of this section, the watershed control program will be considered approved and 0.5 log Cryptosporidium treatment credit will be awarded unless and until the Executive Secretary subsequently withdraws such approval.

(v) Systems must complete the actions in paragraphs (a)(v)(A) through (C) of this section to maintain the 0.5-log credit.

(A) Submit an annual watershed control program status report to the Executive Secretary. The annual watershed control program status report must describe the system's implementation of the approved plan and assess the adequacy of the plan to meet its goals. It must explain how the system is addressing any shortcomings in plan implementation, including those previously identified by the Executive Secretary or as the result of the watershed survey conducted under paragraph (a)(v)(B) of this section. It must also describe any significant changes that have occurred in the watershed since the last watershed sanitary survey. If a system determines during implementation that making a significant change to its approved watershed control program is necessary, the system must notify the Executive Secretary prior to making any such changes. If any change is likely to reduce the level of source water protection, the system must also list in its notification the actions the system will take to mitigate this effect.

(B) Undergo a watershed sanitary survey every three years for community water systems and every five years for non-community water systems and submit the survey report to the Executive Secretary. The survey must be conducted according to State guidelines and by persons the Executive Secretary approves.

(I) The watershed sanitary survey must meet the following criteria: encompass the region identified in the Executive Secretary-approved watershed control plan as the area of influence; assess the implementation of actions to reduce source water Cryptosporidium levels; and identify any significant new sources of Cryptosporidium.

(II) If the Executive Secretary determines that significant changes may have occurred in the watershed since the previous watershed sanitary survey, systems must undergo another watershed sanitary survey by a date the Executive Secretary requires, which may be earlier than the regular date in paragraph (a)(v)(B) of this section.

(C) The system must make the watershed control plan, annual status reports, and watershed sanitary survey reports available to the public upon request. These documents must be in a plain language style and include criteria by which to evaluate the success of the program in achieving plan goals. The Executive Secretary may approve systems to withhold from the public portions of the annual status report, watershed control plan, and watershed sanitary survey based on water supply security considerations.

(vi) If the Executive Secretary determines that a system is not carrying out the approved watershed control plan, the Executive Secretary may withdraw the watershed control program treatment credit.

(b) Alternative source. (i) A system may conduct source water monitoring that reflects a different intake location (either in the same source or for an alternate source) or a different procedure for the timing or level of withdrawal from the source

(alternative source monitoring). If the Executive Secretary approves, a system may determine its bin classification under R309-215-15(11) based on the alternative source monitoring results.

(ii) If systems conduct alternative source monitoring under paragraph (b)(i) of this section, systems must also monitor their current plant intake concurrently as described in R309-215-15(2).

(iii) Alternative source monitoring under paragraph (b)(i) of this section must meet the requirements for source monitoring to determine bin classification, as described in R309-215-15(2) through R309-215-15(7). Systems must report the alternative source monitoring results to the Executive Secretary, along with supporting information documenting the operating conditions under which the samples were collected.

(iv) If a system determines its bin classification under R309-215-15(11) using alternative source monitoring results that reflect a different intake location or a different procedure for managing the timing or level of withdrawal from the source, the system must relocate the intake or permanently adopt the withdrawal procedure, as applicable, no later than the applicable treatment compliance date in R309-215-15(13).

(16) Pre-filtration treatment toolbox components.

(a) Presedimentation. Systems receive 0.5-log Cryptosporidium treatment credit for a presedimentation basin during any month the process meets the criteria in this paragraph.

(i) The presedimentation basin must be in continuous operation and must treat the entire plant flow taken from a surface water or GWUDI source.

(ii) The system must continuously add a coagulant to the presedimentation basin.

(iii) The presedimentation basin must achieve the performance criteria in paragraph (iii)(A) or (B) of this section.

(A) Demonstrates at least 0.5-log mean reduction of influent turbidity. This reduction must be determined using daily turbidity measurements in the presedimentation process influent and effluent and must be calculated as follows: log10(monthly mean of daily influent turbidity) minus log10(monthly mean of daily effluent turbidity).

(B) Complies with Executive Secretary-approved performance criteria that demonstrate at least 0.5-log mean removal of micron-sized particulate material through the presedimentation process.

(b) Two-stage lime softening. Systems receive an additional 0.5-log Cryptosporidium treatment credit for a two-stage lime softening plant if chemical addition and hardness precipitation occur in two separate and sequential softening stages prior to filtration. Both softening stages must treat the entire plant flow taken from a surface water or GWUDI source.

(c) Bank filtration. Systems receive Cryptosporidium treatment credit for bank filtration that serves as pretreatment to a filtration plant by meeting the criteria in this paragraph. Systems using bank filtration when they begin source water monitoring under R309-215-15(2)(a) must collect samples as described in R309-215-15(4)(d) and are not eligible for this credit.

(i) Wells with a ground water flow path of at least 25 feet receive 0.5-log treatment credit; wells with a ground water flow path of at least 50 feet receive 1.0-log treatment credit. The ground water flow path must be determined as specified in paragraph (c)(iv) of this section.

(ii) Only wells in granular aquifers are eligible for treatment credit. Granular aquifers are those comprised of sand, clay, silt, rock fragments, pebbles or larger particles, and minor cement. A system must characterize the aquifer at the well site to determine aquifer properties. Systems must extract a core from the aquifer and demonstrate that in at least 90 percent of the core length, grains less than 1.0 mm in diameter constitute at least 10 percent of the core material.

(iii) Only horizontal and vertical wells are eligible for treatment credit.

(iv) For vertical wells, the ground water flow path is the measured distance from the edge of the surface water body under high flow conditions (determined by the 100 year floodplain elevation boundary or by the floodway, as defined in Federal Emergency Management Agency flood hazard maps) to the well screen. For horizontal wells, the ground water flow path is the measured distance from the bed of the river under normal flow conditions to the closest horizontal well lateral screen.

(v) Systems must monitor each wellhead for turbidity at least once every four hours while the bank filtration process is in operation. If monthly average turbidity levels, based on daily maximum values in the well, exceed 1 NTU, the system must report this result to the Executive Secretary and conduct an assessment within 30 days to determine the cause of the high turbidity levels in the well. If the Executive Secretary determines that microbial removal has been compromised, the Executive Secretary may revoke treatment credit until the system implements corrective actions approved by the Executive Secretary to remediate the problem.

(vi) Springs and infiltration galleries are not eligible for treatment credit under this section, but are eligible for credit under R309-215-15(17)(c).

(vii) Bank filtration demonstration of performance. The Executive Secretary may approve Cryptosporidium treatment credit for bank filtration based on a demonstration of performance study that meets the criteria in this paragraph. This treatment credit may be greater than 1.0-log and may be awarded to bank filtration that does not meet the criteria in paragraphs (c)(i)-(v) of this section.

(A) The study must follow a Executive Secretary-approved protocol and must involve the collection of data on the removal of Cryptosporidium or a surrogate for Cryptosporidium and related hydrogeologic and water quality parameters during the full range of operating conditions.

(B) The study must include sampling both from the production well(s) and from monitoring wells that are screened and located along the shortest flow path between the surface water source and the production well(s).

(17) Treatment performance toolbox components.

(a) Combined filter performance. Systems using conventional filtration treatment or direct filtration treatment receive an additional 0.5-log Cryptosporidium treatment credit during any month the system meets the criteria in this paragraph. Combined filter effluent (CFE) turbidity must be less than or equal to 0.15 NTU in at least 95 percent of the measurements. Turbidity must be measured as described in R309-200-4(3) and (4).

(b) Individual filter performance. Systems using conventional filtration treatment or direct filtration treatment receive 0.5-log Cryptosporidium treatment credit, which can be in addition to the 0.5-log credit under paragraph (a) of this section, during any month the system meets the criteria in this paragraph. Compliance with these criteria must be based on individual filter turbidity monitoring as described in R309-215-9(4) or (5), as applicable.

(i) The filtered water turbidity for each individual filter must be less than or equal to 0.15 NTU in at least 95 percent of the measurements recorded each month.

(ii) No individual filter may have a measured turbidity greater than 0.3 NTU in two consecutive measurements taken 15 minutes apart.

(iii) Any system that has received treatment credit for individual filter performance and fails to meet the requirements of paragraph (b)(i) or (ii) of this section during any month does not receive a treatment technique violation under R309-215-

15(12)(c) if the Executive Secretary determines the following:

(A) The failure was due to unusual and short-term circumstances that could not reasonably be prevented through optimizing treatment plant design, operation, and maintenance.

(B) The system has experienced no more than two such failures in any calendar year.

(c) Demonstration of performance. The Executive Secretary may approve Cryptosporidium treatment credit for drinking water treatment processes based on a demonstration of performance study that meets the criteria in this paragraph. This treatment credit may be greater than or less than the prescribed treatment credits in R309-215-15(12) or R309-215-15(16) through R309-215-15(19) and may be awarded to treatment processes that do not meet the criteria for the prescribed credits.

(i) Systems cannot receive the prescribed treatment credit for any toolbox box option in R309-215-15(16) through R309-215-15(19) if that toolbox option is included in a demonstration of performance study for which treatment credit is awarded under this paragraph.

(ii) The demonstration of performance study must follow a Executive Secretary-approved protocol and must demonstrate the level of Cryptosporidium reduction the treatment process will achieve under the full range of expected operating conditions for the system.

(iii) Approval by the Executive Secretary must be in writing and may include monitoring and treatment performance criteria that the system must demonstrate and report on an ongoing basis to remain eligible for the treatment credit. The Executive Secretary may designate such criteria where necessary to verify that the conditions under which the demonstration of performance credit was approved are maintained during routine operation.

(18) Additional filtration toolbox components.

(a) Bag and cartridge filters. Systems receive Cryptosporidium treatment credit of up to 2.0-log for individual bag or cartridge filters and up to 2.5-log for bag or cartridge filters operated in series by meeting the criteria in paragraphs (a)(i) through (x) of this section. To be eligible for this credit, systems must report the results of challenge testing that meets the requirements of paragraphs (a)(ii) through (ix) of this section to the Executive Secretary. The filters must treat the entire plant flow taken from a surface water source.

(i) The Cryptosporidium treatment credit awarded to bag or cartridge filters must be based on the removal efficiency demonstrated during challenge testing that is conducted according to the criteria in paragraphs (a)(ii) through (a)(ix) of this section. A factor of safety equal to 1-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit. Systems may use results from challenge testing conducted prior to January 5, 2006 if the prior testing was consistent with the criteria specified in paragraphs (a)(ii) through (ix) of this section.

(ii) Challenge testing must be performed on full-scale bag or cartridge filters, and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the system will use for removal of Cryptosporidium. Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(iii) Challenge testing must be conducted using Cryptosporidium or a surrogate that is removed no more efficiently than Cryptosporidium. The microorganism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate must be determined using a method capable of discreetly quantifying the specific microorganism or surrogate used in the test; gross measurements such as turbidity may not be used.

(iv) The maximum feed water concentration that can be used during a challenge test must be based on the detection limit of the challenge particulate in the filtrate (i.e., filtrate detection limit) and must be calculated using the following equation: Maximum Feed Concentration = 1×10^4 x (Filtrate Detection Limit).

(v) Challenge testing must be conducted at the maximum design flow rate for the filter as specified by the manufacturer.

(vi) Each filter evaluated must be tested for a duration sufficient to reach 100 percent of the terminal pressure drop, which establishes the maximum pressure drop under which the filter may be used to comply with the requirements of this subpart.

(vii) Removal efficiency of a filter must be determined from the results of the challenge test and expressed in terms of log removal values using the following equation: $LRV = LOG_{10}(C_f)-LOG_{10}(C_p)$ Where: LRV = log removal value demonstrated during challenge testing; C_f = the feed concentration measured during the challenge test; and C_p = the filtrate concentration measured during the challenge test. In applying this equation, the same units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, then the term C_p must be set equal to the detection limit.

(viii) Each filter tested must be challenged with the challenge particulate during three periods over the filtration cycle: within two hours of start-up of a new filter; when the pressure drop is between 45 and 55 percent of the terminal pressure drop; and at the end of the cycle after the pressure drop has reached 100 percent of the terminal pressure drop. An LRV must be calculated for each of these challenge periods for each filter tested. The LRV for the filter (LRV_{filter}) must be assigned the value of the minimum LRV observed during the three challenge periods for that filter.

(ix) If fewer than 20 filters are tested, the overall removal efficiency for the filter product line must be set equal to the lowest LRV_{filter} among the filters tested. If 20 or more filters are tested, the overall removal efficiency for the filter product line must be set equal to the 10th percentile of the set of LRV_{filter} values for the various filters tested. The percentile is defined by (i/(n+1)) where i is the rank of n individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(x) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and submitted to the Executive Secretary.

(b) Membrane filtration.

(i) Systems receive Cryptosporidium treatment credit for membrane filtration that meets the criteria of this paragraph. Membrane cartridge filters that meet the definition of membrane filtration in R309-110 are eligible for this credit. The level of treatment credit a system receives is equal to the lower of the values determined under paragraph (b)(i)(A) and (B) of this section.

(A) The removal efficiency demonstrated during challenge testing conducted under the conditions in paragraph (b)(ii) of this section.

(B) The maximum removal efficiency that can be verified through direct integrity testing used with the membrane filtration process under the conditions in paragraph (b)(iii) of this section.

(ii) Challenge Testing. The membrane used by the system must undergo challenge testing to evaluate removal efficiency, and the system must report the results of challenge testing to the Executive Secretary. Challenge testing must be conducted according to the criteria in paragraphs (b)(ii)(A) through (G) of this section. Systems may use data from challenge testing

conducted prior to January 5, 2006 if the prior testing was consistent with the criteria in paragraphs (b)(ii)(A) through (G) of this section.

(A) Challenge testing must be conducted on either a full-scale membrane module, identical in material and construction to the membrane modules used in the system's treatment facility, or a smaller-scale membrane module, identical in material and similar in construction to the full-scale module. A module is defined as the smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(B) Challenge testing must be conducted using Cryptosporidium oocysts or a surrogate that is removed no more efficiently than Cryptosporidium oocysts. The organism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate, in both the feed and filtrate water, must be determined using a method capable of discretely quantifying the specific challenge particulate used in the test; gross measurements such as turbidity may not be used.

(C) The maximum feed water concentration that can be used during a challenge test is based on the detection limit of the challenge particulate in the filtrate and must be determined according to the following equation: Maximum Feed Concentration = 3.16×10^6 x (Filtrate Detection Limit).

(D) Challenge testing must be conducted under representative hydraulic conditions at the maximum design flux and maximum design process recovery specified by the manufacturer for the membrane module. Flux is defined as the throughput of a pressure driven membrane process expressed as flow per unit of membrane area. Recovery is defined as the volumetric percent of feed water that is converted to filtrate over the course of an operating cycle uninterrupted by events such as chemical cleaning or a solids removal process (i.e., backwashing).

(E) Removal efficiency of a membrane module must be calculated from the challenge test results and expressed as a log removal value according to the following equation: $LRV = LOG_{10}(C_f) - LOG_{10}(C_p)$ Where: LRV = log removal value demonstrated during the challenge test; C_f = the feed concentration measured during the challenge test; and C_p = the filtrate concentration measured during the challenge test. Equivalent units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, the term C_p is set equal to the detection limit for the purpose of calculating the LRV. An LRV must be calculated for each membrane module evaluated during the challenge test.

(F) The removal efficiency of a membrane filtration process demonstrated during challenge testing must be expressed as a log removal value ($LRV_{C\text{-}Test}$). If fewer than 20 modules are tested, then $LRV_{C\text{-}Test}$ is equal to the lowest of the representative LRVs among the modules tested. If 20 or more modules are tested, then $LRV_{C\text{-}Test}$ is equal to the 10th percentile of the representative LRVs among the modules tested. The percentile is defined by (i/(n+1)) where i is the rank of n individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(G) The challenge test must establish a quality control release value (QCRV) for a non-destructive performance test that demonstrates the Cryptosporidium removal capability of the membrane filtration module. This performance test must be applied to each production membrane module used by the system that was not directly challenge tested in order to verify Cryptosporidium removal capability. Production modules that do not meet the established QCRV are not eligible for the treatment credit demonstrated during the challenge test.

(H) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane or the applicability of the non-destructive performance test and associated QCRV, additional challenge testing to demonstrate the removal efficiency of, and determine a new QCRV for, the modified membrane must be conducted and submitted to the Executive Secretary.

(iii) Direct integrity testing. Systems must conduct direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration process and meets the requirements described in paragraphs (b)(iii)(A) through (F) of this section. A direct integrity test is defined as a physical test applied to a membrane unit in order to identify and isolate integrity breaches (i.e., one or more leaks that could result in contamination of the filtrate).

(A) The direct integrity test must be independently applied to each membrane unit in service. A membrane unit is defined as a group of membrane modules that share common valving that allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

(B) The direct integrity method must have a resolution of 3 micrometers or less, where resolution is defined as the size of the smallest integrity breach that contributes to a response from the direct integrity test.

(C) The direct integrity test must have a sensitivity sufficient to verify the log treatment credit awarded to the membrane filtration process by the Executive Secretary, where sensitivity is defined as the maximum log removal value that can be reliably verified by a direct integrity test. Sensitivity must be determined using the approach in either paragraph (b)(iii)(C)(I) or (II) of this section as applicable to the type of direct integrity test the system uses.

(I) For direct integrity tests that use an applied pressure or vacuum, the direct integrity test sensitivity must be calculated according to the following equation: $LRV_{DIT} = LOG_{10}(Q_p / (VCF \times Q_{breach}))$ Where: LRV_{DIT} = the sensitivity of the direct integrity test; Q_p = total design filtrate flow from the membrane unit; Q_{breach} = flow of water from an integrity breach associated with the smallest integrity test response that can be reliably measured, and VCF = volumetric concentration factor. The volumetric concentration factor is the ratio of the suspended solids concentration on the high pressure side of the membrane relative to that in the feed water.

(II) For direct integrity tests that use a particulate or molecular marker, the direct integrity test sensitivity must be calculated according to the following equation: $LRV_{DIT} = LOG_{10}(C_f) - LOG_{10}(C_p)$ Where: LRVDIT = the sensitivity of the direct integrity test; Cf = the typical feed concentration of the marker used in the test; and Cp = the filtrate concentration of the marker from an integral membrane unit.

(D) Systems must establish a control limit within the sensitivity limits of the direct integrity test that is indicative of an integral membrane unit capable of meeting the removal credit awarded by the Executive Secretary.

(E) If the result of a direct integrity test exceeds the control limit established under paragraph (b)(iii)(D) of this section, the system must remove the membrane unit from service. Systems must conduct a direct integrity test to verify any repairs, and may return the membrane unit to service only if the direct integrity test is within the established control limit.

(F) Systems must conduct direct integrity testing on each membrane unit at a frequency of not less than once each day that the membrane unit is in operation. The Executive Secretary may approve less frequent testing, based on demonstrated process reliability, the use of multiple barriers effective for Cryptosporidium, or reliable process safeguards.

(iv) Indirect integrity monitoring. Systems must conduct continuous indirect integrity monitoring on each membrane unit according to the criteria in paragraphs (b)(iv)(A) through (E) of this section. Indirect integrity monitoring is defined as monitoring some aspect of filtrate water quality that is indicative

of the removal of particulate matter. A system that implements continuous direct integrity testing of membrane units in accordance with the criteria in paragraphs (b)(iii)(A) through (E) of this section is not subject to the requirements for continuous indirect integrity monitoring. Systems must submit a monthly report to the Executive Secretary summarizing all continuous indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken in each case.

(A) Unless the Executive Secretary approves an alternative parameter, continuous indirect integrity monitoring must include continuous filtrate turbidity monitoring.

(B) Continuous monitoring must be conducted at a frequency of no less than once every 15 minutes.

(C) Continuous monitoring must be separately conducted on each membrane unit.

(D) If indirect integrity monitoring includes turbidity and if the filtrate turbidity readings are above 0.15 NTU for a period greater than 15 minutes (i.e., two consecutive 15-minute readings above 0.15 NTU), direct integrity testing must immediately be performed on the associated membrane unit as specified in paragraphs (b)(iii)(A) through (E) of this section.

(E) If indirect integrity monitoring includes a Executive Secretary-approved alternative parameter and if the alternative parameter exceeds a Executive Secretary-approved control limit for a period greater than 15 minutes, direct integrity testing must immediately be performed on the associated membrane units as specified in paragraphs (b)(iii)(A) through (E) of this section.

(c) Second stage filtration. Systems receive 0.5-log Cryptosporidium treatment credit for a separate second stage of filtration that consists of sand, dual media, GAC, or other fine grain media following granular media filtration if the Executive Secretary approves. To be eligible for this credit, the first stage of filtration must be preceded by a coagulation step and both filtration stages must treat the entire plant flow taken from a surface water or GWUDI source. A cap, such as GAC, on a single stage of filtration is not eligible for this credit. The Executive Secretary must approve the treatment credit based on an assessment of the design characteristics of the filtration process.

(d) Slow sand filtration (as secondary filter). Systems are eligible to receive 2.5-log Cryptosporidium treatment credit for a slow sand filtration process that follows a separate stage of filtration if both filtration stages treat entire plant flow taken from a surface water or GWUDI source and no disinfectant residual is present in the influent water to the slow sand filtration process. The Executive Secretary must approve the treatment credit based on an assessment of the design characteristics of the filtration process. This paragraph does not apply to treatment credit awarded to slow sand filtration used as a primary filtration process.

(19) Inactivation toolbox components.

(a) Calculation of CT values. (i) CT is the product of the disinfectant contact time (T, in minutes) and disinfectant concentration (C, in milligrams per liter). Systems with treatment credit for chlorine dioxide or ozone under paragraph (b) or (c) of this section must calculate CT at least once each day, with both C and T measured during peak hourly flow as specified in R309-200-4(3) and (4).

(ii) Systems with several disinfection segments in sequence may calculate CT for each segment, where a disinfection segment is defined as a treatment unit process with a measurable disinfectant residual level and a liquid volume. Under this approach, systems must add the Cryptosporidium CT values in each segment to determine the total CT for the treatment plant.

(b) CT values for chlorine dioxide and ozone. (i) Systems receive the Cryptosporidium treatment credit listed in this paragraph by meeting the corresponding chlorine dioxide CT value for the applicable water temperature, as described in paragraph (a) of this section.

(i) CT values ((MG)(MIN)/L) for Cryptosporidium inactivation by Chlorine Dioxide listed by the log credit with inactivation listed by water temperature in degrees Celsius.

(A) 0.25 Log Credit:
(I) less than or equal to 0.5 degrees: 159;
(II) 1 degree: 153;
(III) 2 degrees: 140;
(IV) 3 degrees: 128;
(V) 5 degrees: 107;
(VI) 7 degrees: 90;
(VII) 10 degrees: 69;
(VIII) 15 degrees: 45;
(IX) 20 degrees: 29;
(X) 25 degrees: 19; and
(XI) 30 degrees: 12.
(B) 0.5 Log Credit:
(I) less than or equal to 0.5 degrees: 319;
(II) 1 degree: 305;
(III) 2 degrees: 279;
(IV) 3 degrees: 256;
(V) 5 degrees: 214;
(VI) 7 degrees: 180;
(VII) 10 degrees: 138;
(VIII) 15 degrees: 89;
(IX) 20 degrees: 58;
(X) 25 degrees: 38; and
(XI) 30 degrees: 24.
(C) 1.0 Log Credit:
(I) less than or equal to 0.5 degrees: 637;
(II) 1 degree: 610;
(III) 2 degrees: 558;
(IV) 3 degrees: 511;
(V) 5 degrees: 429;
(VI) 7 degrees: 360;
(VII) 10 degrees: 277;
(VIII) 15 degrees: 179;
(IX) 20 degrees: 116;
(X) 25 degrees: 75; and
(XI) 30 degrees: 49.
(D) 1.5 Log Credit:
(I) less than or equal to 0.5 degrees: 956;
(II) 1 degree: 915;
(III) 2 degrees: 838;
(IV) 3 degrees: 767;
(V) 5 degrees: 643;
(VI) 7 degrees: 539;
(VII) 10 degrees: 415;
(VIII) 15 degrees: 268;
(IX) 20 degrees: 174;
(X) 25 degrees: 113; and
(XI) 30 degrees: 73.
(E) 2.0 Log Credit:
(I) less than or equal to 0.5 degrees: 1275;
(II) 1 degree: 1220;
(III) 2 degrees: 1117;
(IV) 3 degrees: 1023;
(V) 5 degrees: 858;
(VI) 7 degrees: 719;
(VII) 10 degrees: 553;
(VIII) 15 degrees: 357;
(IX) 20 degrees: 232;
(X) 25 degrees: 150; and
(XI) 30 degrees: 98.
(F) 2.5 Log Credit:
(I) less than or equal to 0.5 degrees: 1594;
(II) 1 degree: 1525;
(III) 2 degrees: 1396;
(IV) 3 degrees: 1278;

(V) 5 degrees: 1072;
(VI) 7 degrees: 899;
(VII) 10 degrees: 691;
(VIII) 15 degrees: 447;
(IX) 20 degrees: 289;
(X) 25 degrees: 188; and
(XI) 30 degrees: 122.
(G) 3.0 Log Credit:
(I) less than or equal to 0.5 degrees: 1912;
(II) 1 degree: 1830;
(III) 2 degrees: 1675;
(IV) 3 degrees: 1534;
(V) 5 degrees: 1286;
(VI) 7 degrees: 1079;
(VII) 10 degrees: 830;
(VIII) 15 degrees: 536;
(IX) 20 degrees: 347;
(X) 25 degrees: 226; and
(XI) 30 degrees: 147.

(F) Systems may use this equation to determine log credit between the indicated values above: Log credit = (0.001506 x $(1.09116)^{Temp}$) x CT.

(ii) Systems receive the Cryptosporidium treatment credit listed in this paragraph by meeting the corresponding ozone CT values for the applicable water temperature, as described in paragraph (a) of this section. CT values ((MG)(MIN)/L) for Cryptosporidium inactivation by Ozone listed by the log credit with inactivation listed by water temperature in degrees Celsius.

(A) 0.25 Log Credit:
(I) less than or equal to 0.5 degrees: 6.0;
(II) 1 degree: 5.8;
(III) 2 degrees: 5.2;
(IV) 3 degrees: 4.8;
(V) 5 degrees: 4.0;
(VI) 7 degrees: 3.3;
(VII) 10 degrees: 2.5;
(VIII) 15 degrees: 1.6;
(IX) 20 degrees: 1.0;
(X) 25 degrees: 0.6; and
(XI) 30 degrees: 0.39.
(B) 0.5 Log Credit:
(I) less than or equal to 0.5 degrees: 12;
(II) 1 degree: 12;
(III) 2 degrees: 10;
(IV) 3 degrees: 9.5;
(V) 5 degrees: 7.9;
(VI) 7 degrees: 6.5;
(VII) 10 degrees: 4.9;
(VIII) 15 degrees: 3.1;
(IX) 20 degrees: 2.0;
(X) 25 degrees: 1.2; and
(XI) 30 degrees: 0.78.
(C) 1.0 Log Credit:
(I) less than or equal to 0.5 degrees: 24;
(II) 1 degree: 23;
(III) 2 degrees: 21;
(IV) 3 degrees: 19;
(V) 5 degrees: 16;
(VI) 7 degrees: 13;
(VII) 10 degrees: 9.9;
(VIII) 15 degrees: 6.2;
(IX) 20 degrees: 3.9;
(X) 25 degrees: 2.5; and
(XI) 30 degrees: 1.6.
(D) 1.5 Log Credit:
(I) less than or equal to 0.5 degrees: 36;
(II) 1 degree: 35;
(III) 2 degrees: 31;
(IV) 3 degrees: 29;
(V) 5 degrees: 24;
(VI) 7 degrees: 20;
(VII) 10 degrees: 15;
(VIII) 15 degrees: 9.3;
(IX) 20 degrees: 5.9;
(X) 25 degrees: 3.7; and
(XI) 30 degrees: 2.4.
(E) 2.0 Log Credit:
(I) less than or equal to 0.5 degrees: 48;
(II) 1 degree: 46;
(III) 2 degrees: 42;
(IV) 3 degrees: 38;
(V) 5 degrees: 32;
(VI) 7 degrees: 26;
(VII) 10 degrees: 20;
(VIII) 15 degrees: 12;
(IX) 20 degrees: 7.8;
(X) 25 degrees: 4.9; and
(XI) 30 degrees: 3.1.
(F) 2.5 Log Credit:
(I) less than or equal to 0.5 degrees: 60;
(II) 1 degree: 58;
(III) 2 degrees: 52;
(IV) 3 degrees: 48;
(V) 5 degrees: 40;
(VI) 7 degrees: 33;
(VII) 10 degrees: 25;
(VIII) 15 degrees: 16;
(IX) 20 degrees: 9.8;
(X) 25 degrees: 6.2; and
(XI) 30 degrees: 3.9.
(G) 3.0 Log Credit:
(I) less than or equal to 0.5 degrees: 72;
(II) 1 degree: 69;
(III) 2 degrees: 63;
(IV) 3 degrees: 57;
(V) 5 degrees: 47;
(VI) 7 degrees: 39;
(VII) 10 degrees: 30;
(VIII) 15 degrees: 19;
(IX) 20 degrees: 12;
(X) 25 degrees: 7.4; and
(XI) 30 degrees: 4.7.

(F) Systems may use this equation to determine log credit between the indicated values: Log credit = (0.0397 x $(1.09757)^{Temp}$) x CT.

(c) Site-specific study. The Executive Secretary may approve alternative chlorine dioxide or ozone CT values to those listed in paragraph (b) above on a site-specific basis. The Executive Secretary must base this approval on a site-specific study a system conducts that follows a protocol approved by the Executive Secretary.

(d) Ultraviolet light. Systems receive Cryptosporidium, Giardia lamblia, and virus treatment credits for ultraviolet (UV) light reactors by achieving the corresponding UV dose values shown in paragraph (d)(i) of this section. Systems must validate and monitor UV reactors as described in paragraph (d)(ii) and (iii) of this section to demonstrate that they are achieving a particular UV dose value for treatment credit.

(i) UV dose table. The treatment credits listed in Table 215-5 are for UV light at a wavelength of 254 nm as produced by a low pressure mercury vapor lamp. To receive treatment credit for other lamp types, systems must demonstrate an equivalent germicidal dose through reactor validation testing, as described in paragraph (d)(ii). The UV dose values in Table 215-5 are applicable only to post-filter applications of UV in filtered systems.

TABLE 215-5
UV Dose Table for Cryptosporidium,

Giardia lamblia, and Virus Inactivation Credit

Log credit	Cryptosporidium UV dose (mJ/cm^2)	Giardia lamblia UV dose (mJ/cm^2)	Virus UV dose (mJ/cm^2)
0.5	1.6	1.5	39
1.0	2.5	2.1	58
1.5	3.9	3.0	79
2.0	5.8	5.2	100
2.5	8.5	7.7	121
3.0	12	11	143
3.5	15	15	163
4.0	22	22	186

(ii) Reactor validation testing. Systems must use UV reactors that have undergone validation testing to determine the operating conditions under which the reactor delivers the UV dose required in paragraph (d)(i) of this section (i.e., validated operating conditions). These operating conditions must include flow rate, UV intensity as measured by a UV sensor, and UV lamp status.

(A) When determining validated operating conditions, systems must account for the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps or other critical system components; and inlet and outlet piping or channel configurations of the UV reactor.

(B) Validation testing must include the following: Full scale testing of a reactor that conforms uniformly to the UV reactors used by the system and inactivation of a test microorganism whose dose response characteristics have been quantified with a low pressure mercury vapor lamp.

(C) The Executive Secretary may approve an alternative approach to validation testing.

(iii) Reactor monitoring.

(A) Systems must monitor their UV reactors to determine if the reactors are operating within validated conditions, as determined under paragraph (d)(ii) of this section. This monitoring must include UV intensity as measured by a UV sensor, flow rate, lamp status, and other parameters the Executive Secretary designates based on UV reactor operation. Systems must verify the calibration of UV sensors and must recalibrate sensors in accordance with a protocol the Executive Secretary approves.

(B) To receive treatment credit for UV light, systems must treat at least 95 percent of the water delivered to the public during each month by UV reactors operating within validated conditions for the required UV dose, as described in paragraphs (d)(i) and (ii) of this section. Systems must demonstrate compliance with this condition by the monitoring required under paragraph (d)(iii)(A) of this section.

(20) Reporting requirements.

(a) Systems must report sampling schedules under R309-215-15(3) and source water monitoring results under R309-215-15(7) unless they notify the Executive Secretary that they will not conduct source water monitoring due to meeting the criteria of R309-215-15(2)(d).

(b) Filtered systems must report their Cryptosporidium bin classification as described in R309-215-15(11).

(c) Systems must report disinfection profiles and benchmarks to the Executive Secretary as described in R309-215-15(9) through R309-215-15(10) prior to making a significant change in disinfection practice.

(d) Systems must report to the Executive Secretary in accordance with the following information on the following schedule for any microbial toolbox options used to comply with treatment requirements under R309-215-15(12). Alternatively, the Executive Secretary may approve a system to certify operation within required parameters for treatment credit rather than reporting monthly operational data for toolbox options.

(i) Watershed control program (WCP).

(A) Notice of intention to develop a new or continue an existing watershed control program no later than two years before the applicable treatment compliance date in R309-215-15(13).

(B) Watershed control plan no later than one year before the applicable treatment compliance date in R309-215-15(13).

(C) Annual watershed control program status report every 12 months, beginning one year after the applicable treatment compliance date in R309-215-15(13).

(D) Watershed sanitary survey report:

(I) For community water systems, every three years beginning three years after the applicable treatment compliance date in R309-215-15(13).

(II) For noncommunity water systems, every five years beginning five years after the applicable treatment compliance date in R309-215-15(13).

(ii) Alternative source/intake management:

(A) Verification that system has relocated the intake or adopted the intake withdrawal procedure reflected in monitoring results No later than the applicable treatment compliance date in R309-215-15(13).

(iii) Presedimentation: Monthly verification of the following:

(A) Continuous basin operation

(B) Treatment of 100% of the flow

(C) Continuous addition of a coagulant

(D) At least 0.5-log mean reduction of influent turbidity or compliance with alternative Executive Secretary-approved performance criteria.

(E) Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(iv) Two-stage lime softening: Monthly verification of the following:

(A) Chemical addition and hardness precipitation occurred in two separate and sequential softening stages prior to filtration.

(B) Both stages treated 100% of the plant flow.

(C) Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(v) Bank filtration:

(A) Initial demonstration of the following no later than the applicable treatment compliance date in R309-215-15(13).

(I) Unconsolidated, predominantly sandy aquifer

(II) Setback distance of at least 25 ft. (0.5-log credit) or 50 ft. (1.0-log credit).

(B) If monthly average of daily max turbidity is greater than 1 NTU then system must report result and submit an assessment of the cause. The report is due within 30 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(vi) Combined filter performance:

(A) Monthly verification of combined filter effluent (CFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of the 4 hour CFE measurements taken each month.

(B) Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(vii) Individual filter performance. Monthly verification of the following:

(A) Individual filter effluent (IFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of samples each month in each filter.

(B) No individual filter greater than 0.3 NTU in two consecutive readings 15 minutes apart.

(C) Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the

applicable treatment compliance date in R309-215-15(13).

(viii) Demonstration of performance.

(A) Results from testing following a Executive Secretary approved protocol no later than the applicable treatment compliance date in R309-215-15(13).

(B) As required by the Executive Secretary, monthly verification of operation within conditions of Executive Secretary approval for demonstration of performance credit within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(ix) Bag filters and cartridge filters.

(A) Demonstration that the following criteria are met no later than the applicable treatment compliance date in R309-215-15(13).

(I) Process meets the definition of bag or cartridge filtration;

(II) Removal efficiency established through challenge testing that meets criteria in this subpart.

(B) Monthly verification that 100% of plant flow was filtered within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(x) Membrane filtration.

(A) Results of verification testing demonstrating the following no later than the applicable treatment compliance date in R309-215-15(13).

(I) Removal efficiency established through challenge testing that meets criteria in this subpart;

(II) Integrity test method and parameters, including resolution, sensitivity, test frequency, control limits, and associated baseline.

(B) Monthly report summarizing the following within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(I) All direct integrity tests above the control limit;

(II) If applicable, any turbidity or alternative Executive Secretary-approved indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken.

(xi) Second stage filtration: Monthly verification that 100% of flow was filtered through both stages and that first stage was preceded by coagulation step within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(xii) Slow sand filtration (as secondary filter): Monthly verification that both a slow sand filter and a preceding separate stage of filtration treated 100% of flow from surface water sources within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(xiii) Chlorine dioxide: Summary of CT values for each day as described in R309-215-15(19) within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(xiv) Ozone: Summary of CT values for each day as described in R309-215-15(19) within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(xv) UV:

(A) Validation test results demonstrating operating conditions that achieve required UV dose no later than the applicable treatment compliance date in R309-215-15(13).

(B) Monthly report summarizing the percentage of water entering the distribution system that was not treated by UV reactors operating within validated conditions for the required dose as specified in R309-215-15(19) (d) within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in R309-215-15(13).

(21) Recordkeeping requirements.

(a) Systems must keep results from the initial round of source water monitoring under R309-215-15(2)(a) and the second round of source water monitoring under R309-215-15(2)(b) until 3 years after bin classification under R309-215-15(11) for filtered systems for the particular round of monitoring.

(b) Systems must keep any notification to the Executive Secretary that they will not conduct source water monitoring due to meeting the criteria of R309-215-15(2)(d) for 3 years.

(c) Systems must keep the results of treatment monitoring associated with microbial toolbox options under R309-215-15(15) through R309-215-15(19) for 3 years.

(22) Requirements for Sanitary Surveys Performed by EPA. Requirements to respond to significant deficiencies identified in sanitary surveys performed by EPA.

(a) A sanitary survey is an onsite review of the water source (identifying sources of contamination by using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a PWS to evaluate the adequacy of the PWS, its sources and operations, and the distribution of safe drinking water.

(b) For the purposes of this section, a significant deficiency includes a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that EPA determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.

(c) For sanitary surveys performed by EPA, systems must respond in writing to significant deficiencies identified in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.

(d) Systems must correct significant deficiencies identified in sanitary survey reports according to the schedule approved by EPA, or if there is no approved schedule, according to the schedule reported under paragraph (c) of this section if such deficiencies are within the control of the system.

KEY: drinking water, surface water treatment plant monitoring, disinfection monitoring, compliance determinations

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R309. Environmental Quality, Drinking Water.
R309-220. Monitoring and Water Quality: Public Notification Requirements.
R309-220-1. Purpose.

The purpose of this rule is to outline the public notification requirements for public water systems.

R309-220-2 Authority.
R309-220-3 Definitions.
R309-220-4 General public notification requirements.
R309-220-5 Tier 1 Public Notice - Form, manner, and frequency of notice.
R309-220-6 Tier 2 Public Notice - Form, manner, and frequency of notice.
R309-220-7 Tier 3 Public Notice - Form, manner, and frequency of notice.
R309-220-8 Content of the public notice.
R309-220-9 Notice to new billing units or new customers.
R309-220-10 Special notice of the availability of unregulated contaminant monitoring results.
R309-220-11 Special notice for exceedance of the SMCL for fluoride.
R309-220-12 Special notice for nitrate exceedances above MCL by non-community water systems (NCWS), where granted permission by the Executive Secretary.
R309-220-13 Special Notice for Repeated Failure to Conduct Monitoring of the Source Water for Cryptosporidium and for Failure to Determine Bin Classification or Mean Cryptospridium Level.
R309-220-14 Notice by Executive Secretary on behalf of the public water system.
R309-220-15 Standard Health Effects Language.

R309-220-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-220-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-220-4. General Public Notification Requirements.

(1) Violation Categories and Other Situations Requiring a Public Notice:

Each owner or operator of a public water system (community water systems, non-transient non-community water systems, and transient non-community water systems) must give notice for all violations of these rules and for other situations, as listed below. The term "UPDWR violations" is used in this subpart to include violations of the maximum contaminant level (MCL), maximum residual disinfection level (MRDL), treatment technique (TT), monitoring requirements, and testing procedures contained in R309-100 through R309-215.

(a) UPDWR Violations:

(i) Failure to comply with an applicable maximum contaminant level (MCL) or maximum residual disinfectant level (MRDL).

(ii) Failure to comply with a prescribed treatment technique (TT).

(iii) Failure to perform water quality monitoring, as required by the drinking water regulations.

(iv) Failure to comply with testing procedures as prescribed by a drinking water regulation.

(b) Variance and Exemptions Under R309-10 and R309-11.

(i) Operation under a variance or an exemption.

(ii) Failure to comply with the requirements of any schedule that has been set under a variance or exemption.

(c) Special Public Notices

(i) Occurrence of a waterborne disease outbreak or other waterborne emergency.

(ii) Exceedance of the nitrate MCL by non-community water systems (NCWS), where granted permission by the Executive Secretary under R309-200-5(1)(c), Table 200-1, note (4)(b).

(iii) Exceedance of the secondary maximum contaminant level (SMCL) for fluoride.

(iv) Availability of unregulated contaminant monitoring data.

(v) Other violations and situations determined by the Executive Secretary to require a public notice under this subpart.

(2) Definition of Public Notice Tiers:

Public notice requirements are divided into three tiers, to take into account the seriousness of the violation or situation and of any potential adverse health effects that may be involved. The public notice requirements for each violation or situation listed in paragraph (1) of this section are determined by the tier to which it is assigned. Each tier is defined below:

(a) Tier 1 public notice -- required for UPDWR violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure.

(b) Tier 2 public notice -- required for all other UPDWR violations and situations with potential to have serious adverse effects on human health.

(c) Tier 3 public notice -- required for all other UPDWR violations and situations not included in Tier 1 and Tier 2.

(3) Required Distribution of Notice

(a) Each public water system must provide public notice to persons served by the water system, in accordance with this rule. Public water systems that sell or otherwise provide drinking water to other public water systems (i.e., to consecutive systems) are required to give public notice to the owner or operator of the consecutive system; the consecutive system is responsible for providing public notice to the persons it serves.

(b) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the Executive Secretary may allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission by the Executive Secretary for limiting distribution of the notice must be granted in writing.

(c) A copy of the notice must also be sent to the Executive Secretary, in accordance with the requirements under R309-105-16.

R309-220-5. Tier 1 Public Notice -- Form, Manner and Frequency of Notice.

(1) Violation Categories and Other Situations Requiring a Tier 1 Public Notice:

(a) Violation of the MCL for total coliforms when fecal coliform or E. coli are present in the water distribution system (as specified in R309-200-5(6)(b)), or when the water system fails to test for fecal coliforms or E. coli when any repeat sample tests positive for coliform (as specified in R309-205-5(5));

(b) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, as defined in R309-200-5(1)(c), Table 200-1, or when the water system fails to take a confirmation sample within 24 hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in R309-205-5(1)(e)(ii);

(c) Exceedance of the nitrate MCL by non-community water systems, where permitted to exceed the MCL by the Executive Secretary under R309-200-5(1)(c), Table 200-1, note (4)(b), as required under R309-220-12;

(d) Violation of the MRDL for chlorine dioxide, as defined in 40 CFR section 141.65(a), when one or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceed the MRDL, or when the water system does not take the required samples in the distribution system, as specified in 40 CFR section 141.133(c)(2)(i);

(e) Violation of the turbidity MCL under R309-200-5(5)(a), where the Executive Secretary determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;

(f) Violation of the Surface Water Treatment Rule (SWTR), Interim Enhanced Surface Water Treatment rule (IESWTR) or the Long Term 1 Enhanced Surface Water Treatment rule (LT1ESWTR) treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit, where the Executive Secretary determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;

(g) Occurrence of a waterborne disease outbreak, as defined in R309-110, or other waterborne emergency (such as a failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination);

(h) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the Executive Secretary either in its rules or on a case-by-case basis.

(2) Frequency of the Tier 1 Public Notice and Additional Steps Required:

Public water systems must:

(a) Provide a public notice as soon as practical but no later than 24 hours after the system learns of the violation;

(b) Initiate consultation with the Executive Secretary as soon as practical, but no later than 24 hours after the public water system learns of the violation or situation, to determine additional public notice requirements; and

(c) Comply with any additional public notification requirements (including any repeat notices or direction on the duration of the posted notices) that are established as a result of the consultation with the Executive Secretary. Such requirements may include the timing, form, manner, frequency, and content of repeat notices (if any) and other actions designed to reach all persons served.

(3) Form and Manner of the Public Notice:

Public water systems must provide the notice within 24 hours in a form and manner reasonably calculated to reach all persons served. The form and manner used by the public water system are to fit the specific situation, but must be designed to reach residential, transient, and non-transient users of the water system. In order to reach all persons served, water systems are to use, at a minimum, one or more of the following forms of delivery:

(a) Appropriate broadcast media (such as radio and television);

(b) Posting of the notice in conspicuous locations throughout the area served by the water system;

(c) Hand delivery of the notice to persons served by the water system; or

(d) Another delivery method approved in writing by the Executive Secretary.

R309-220-6. Tier 2 Public Notice -- Form, Manner and Frequency of Notice.

(1) Violation Categories And Other Situations Requiring a Tier 2 Public Notice:

(a) All violations of the MCL, MRDL, and treatment technique requirements, except where a Tier 1 notice is required under R309-220-5(1) or where the Executive Secretary determines that a Tier 1 notice is required;

(b) Violations of the monitoring and testing procedure requirements, where the Executive Secretary determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation; and

(c) Failure to comply with the terms and conditions of any variance or exemption in place.

(2) Frequency of the Tier 2 Public Notice:

(a) Public water systems must provide the public notice as soon as practical, but no later than 30 days after the system learns of the violation. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but in no case for less than seven days, even if the violation or situation is resolved. The Executive Secretary may, in appropriate circumstances, allow additional time for the initial notice of up to three months from the date the system learns of the violation. It is not appropriate for the Executive Secretary to grant an extension to the 30-day deadline for any unresolved violation or to allow across-the-board extensions by rule or policy for other violations or situations requiring a Tier 2 public notice. Extensions granted by the Executive Secretary must be in writing.

(b) The public water system must repeat the notice every three months as long as the violation or situation persists, unless the Executive Secretary determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstance may the repeat notice be given less frequently than once per year. It is not appropriate for the Executive Secretary to allow less frequent repeat notice for an MCL violation under the Total Coliform Rule or a treatment technique violation under the Surface Water Treatment Rule, Interim Enhanced Surface Water Treatment Rule or Filter Backwash Recycling Rule. It is also not appropriate for the Executive Secretary to allow through its rules or policies across-the-board reductions in the repeat notice frequency for other ongoing violations requiring a Tier 2 repeat notice. Executive Secretary determinations allowing repeat notices to be given less frequently than once every three months must be in writing.

(c) For the turbidity violations specified in this paragraph, public water systems must consult with the Executive Secretary as soon as practical but no later than 24 hours after the public water system learns of the violation, to determine whether a Tier 1 public notice under R309-220-5(1) is required to protect public health. When consultation does not take place within the 24-hour period, the water system must distribute a Tier 1 notice of the violation within the next 24 hours (i.e., no later than 48 hours after the system learns of the violation), following the requirements under R309-220-5(2) and (3). Consultation with the Executive Secretary is required for:

(i) Violation of the turbidity MCL under R309-200-5(5)(a); or

(ii) Violation of the SWTR, IESWTR or LT1ESWTR treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit.

(3) Form and Manner of the Public Notice:

Public water systems must provide the initial public notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(a) Unless directed otherwise by the Executive Secretary in writing, community water systems must provide notice by:

(i) Mail or other direct delivery to each customer receiving

a bill and to other service connections to which water is delivered by the public water system; and

(ii) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in paragraph (3)(a)(i) of this section. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include: publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places served by the system or on the Internet; or delivery to community organizations.

(b) Unless directed otherwise by the Executive Secretary in writing, non-community water systems must provide notice by:

(i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and

(ii) Any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required in paragraph (3)(b)(i) of this section. Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include: publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).

R309-220-7. Tier 3 Public Notice -- Form, Manner and Frequency of Notice.

(1) Violation Categories And Other Situations Requiring a Tier 3 Public Notice:

(a) Monitoring violations under R309-205, R309-210 and R309-215, except where a Tier 1 notice is required under R309-220-5(1) or where the Executive Secretary determines that a Tier 2 notice is required;

(b) Failure to comply with a testing procedure established in R309-205, R309-210 and R309-215, except where a Tier 1 notice is required under R309-220-5(1) or where the Executive Secretary determines that a Tier 2 notice is required;

(c) Operation under a variance granted under R309-100-10;

(d) Availability of unregulated contaminant monitoring results, as required under R309-220-10; and

(e) Exceedance of the fluoride secondary maximum contaminant level (SMCL), as required under R309-220-11.

(2) Frequency of the Tier 2 Public Notice:

(a) Public water systems must provide the public notice not later than one year after the public water system learns of the violation or situation or begins operating under a variance or exemption. Following the initial notice, the public water system must repeat the notice annually for as long as the violation, variance, exemption, or other situation persists. If the public notice is posted, the notice must remain in place for as long as the violation, variance, exemption, or other situation persists, but in no case less than seven days (even if the violation or situation is resolved).

(b) Instead of individual Tier 3 public notices, a public water system may use an annual report detailing all violations and situations that occurred during the previous twelve months, as long as the timing requirements of paragraph (2)(a) of this section are met.

(3) Form and Manner of the Public Notice:

Public water systems must provide the initial notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(a) Unless directed otherwise by the Executive Secretary in writing, community water systems must provide notice by:

(i) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(ii) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in paragraph (3)(a)(i) of this section. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include: publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places or on the Internet; or delivery to community organizations.

(b) Unless directed otherwise by the Executive Secretary in writing, non-community water systems must provide notice by:

(i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and

(ii) Any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice required in paragraph (3)(b)(i) of this section. Such persons may include those who may not see a posted notice because the notice is not in a location they routinely pass by. Other methods may include: publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).

(4) Use of the Consumer Confidence Report to meet the Tier 3 public notice requirements:

For community water systems, the Consumer Confidence Report (CCR) required under R309-225 may be used as a vehicle for the initial Tier 3 public notice and all required repeat notices, as long as:

(a) The CCR is provided to persons served no later than 12 months after the system learns of the violation or situation as required under r309-220-7(2);

(b) The Tier 3 notice contained in the CCR follows the content requirements under R309-220-8; and

(c) The CCR is distributed following the delivery requirements under R309-220-7(3).

R309-220-8. Content of the Public Notice.

(1) When a public water system violates a UPDWR or has a situation requiring public notification, each public notice must include the following elements:

(a) A description of the violation or situation, including the contaminant(s) of concern, and (as applicable) the contaminant level(s);

(b) When the violation or situation occurred;

(c) Any potential adverse health effects from the violation or situation, including the standard language under paragraph (4)(a) or (4)(b) of this section, whichever is applicable;

(d) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;

(e) Whether alternative water supplies should be used;

(f) What actions consumers should take, including when they should seek medical help, if known;

(g) What the system is doing to correct the violation or situation;

(h) When the water system expects to return to compliance or resolve the situation;

(i) The name, business address, and phone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice; and

(j) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under paragraph (4)(c) of this section, where applicable.

(2) Required elements to be included in the public notice for public water systems operating under a variance or exemption:

(a) If a public water system has been granted a variance or an exemption, the public notice must contain:

(i) An explanation of the reasons for the variance or exemption;

(ii) The date on which the variance or exemption was issued;

(iii) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and

(iv) A notice of any opportunity for public input in the review of the variance or exemption.

(b) If a public water system violates the conditions of a variance or exemption, the public notice must contain the ten elements listed in paragraph (1) of this section.

(3) Presentation of the public notice.

(a) Each public notice required by this section:

(i) Must be displayed in a conspicuous way when printed or posted;

(ii) Must not contain overly technical language or very small print;

(iii) Must not be formatted in a way that defeats the purpose of the notice;

(iv) Must not contain language which nullifies the purpose of the notice.

(b) Each public notice required by this section must comply with multilingual requirements, as follows:

(i) For public water systems serving a large proportion of non-English speaking consumers, as determined by the Executive Secretary, the public notice must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.

(ii) In cases where the Executive Secretary has not determined what constitutes a large proportion of non-English speaking consumers, the public water system must include in the public notice the same information as in paragraph (3)(b)(i) of this section, where appropriate to reach a large proportion of non-English speaking persons served by the water system.

(4) Public water systems are required to include the following standard language in their public notice:

(a) Standard health effects language for MCL or MRDL violations, treatment technique violations, and violations of the condition of a variance or exemption. Public water systems must include in each public notice the health effects language specified in R309-220-14 corresponding to each MCL, MRDL, and treatment technique violation and for each violation of a condition of a variance or exemption.

(b) Standard language for monitoring and testing procedure violations.

Public water systems must include the following language in their notice, including the language necessary to fill in the blanks, for all monitoring and testing procedure violations: "We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During (compliance period), we ('did not monitor or test' or 'did not complete all monitoring or testing') for (contaminant(s)), and therefore cannot be sure of the quality of your drinking water during that time."

(c) Standard language to encourage the distribution of the public notice to all persons served. Public water systems must include in their notice the following language (where applicable): "Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail."

R309-220-9. Notice to New Billing Units or New Customers.

(1) Community water systems must give a copy of the most recent public notice for any continuing violation, the existence of a variance or exemption, or other ongoing situations requiring a public notice to all new billing units or new customers prior to or at the time service begins.

(2) Non-community water systems must continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation, variance or exemption, or other situation requiring a public notice for as long as the violation, variance, exemption, or other situation persists.

R309-220-10. Special Notice of the Availability of Unregulated Contaminant Monitoring Results.

(1) Applicability of the special notice: The owner or operator of a community water system or non-transient, non-community water system required to monitor under 40 CFR section 141.40 must notify persons served by the system of the availability of the results of such sampling no later than 12 months after the monitoring results are known.

(2) Required form and manner of the special notice: The form and manner of the public notice must follow the requirements for a Tier 3 public notice prescribed in R309-220-7(3), (4)(a), and (4)(c). The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.

R309-220-11. Special Notice for Exceedance of the Secondary MCL for Fluoride.

(1) Applicability of the special notice: Community water systems that exceed the fluoride secondary maximum contaminant level (SMCL) of 2 mg/l as specified in R309-200-6 (determined by the last single sample taken in accordance with R309-205-5), but do not exceed the maximum contaminant level (MCL) of 4 mg/l for fluoride (as specified in R309-200-5), must provide the public notice in paragraph (3) of this section to persons served. Public notice must be provided as soon as practical but no later than 12 months from the day the water system learns of the exceedance. A copy of the notice must also be sent to all new billing units and new customers at the time service begins and to the State public health officer. The public water system must repeat the notice at least annually for as long as the SMCL is exceeded. If the public notice is posted, the notice must remain in place for as long as the SMCL is exceeded, but in no case less than seven days (even if the exceedance is eliminated). On a case-by-case basis, the Executive Secretary may require an initial notice sooner than 12 months and repeat notices more frequently than annually.

(2) Required form and manner of the special notice: The form and manner of the public notice (including repeat notices) must follow the requirements for a Tier 3 public notice in R309-220-7(3), (4)(a), and (4)(c).

(3) Required mandatory language to be contained in the

special notice: The notice must contain the following language, including the language necessary to fill in the blanks:

This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 milligrams per liter (mg/l) of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). The drinking water provided by your community water system (name) has a fluoride concentration of (insert value) mg/l.

Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride-containing products. Older children and adults may safely drink the water.

Drinking water containing more than 4 mg/l of fluoride (the U.S. Environmental Protection Agency's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than 4 mg/l of fluoride, but we're required to notify you when we discover that the fluoride levels in your drinking water exceed 2 mg/l because of this cosmetic dental problem.

For more information, please call (name of water system contact) of (name of community water system) at (phone number). Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1-877-8-NSF-HELP.

R309-220-12. Special Notice for Nitrate Exceedances above MCL by Non-Community Water Wystems (NCWS), where Granted Permission by the Executive Secretary.

(1) Applicability of the special notice: The owner or operator of a non-community water system granted permission by the Executive Secretary under R309-200-5(1)(c), Table 200-1, note (4)(b) to exceed the nitrate MCL must provide notice to persons served according to the requirements for a Tier 1 notice under R309-220-5 (1) and (2).

(2) Required form and manner of the special notice: Non-community water systems granted permission by the Executive Secretary to exceed the nitrate MCL under R309-200-5(1)(c), Table 200-1, note (4)(b) must provide continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effects of exposure, according to the requirements for Tier 1 notice delivery under R309-220-5(3) and the content requirements under R309-220-8.

R309-220-13. Special Notice for Repeated Failure to Conduct Monitoring of the Source Water for Cryptosporidium and for Failure to Determine Bin Classification or Mean Cryptospridium Level.

(1) Applicability of the special notice for repeated failure to monitor: The owner or operator of a community or non-community water system that is required to monitor source water under R309-215-15(2) must notify persons served by the water system that monitoring has not been completed as specified no later than 30 days after the system has failed to collect any 3 months of monitoring as specified in R309-215-15(2)(c). The notice must be repeated as specified in R309-220-6(2).

(2) Applicability of the special notice for failure to determine bin classification: The owner or operator of a community or non-community water system that is required to determine a bin classification under R309-215-15(11) must notify persons served by the water system that the determination has not been made as required no later than 30 days after the system has failed report the determination as specified in R309-215-15(11)(e). The notice must be repeated as specified in R309-220-6(2). The notice is not required if the system is complying with a Executive Secretary-approved schedule to address the violation.

(3) Required form and manner of the special notice: The form and manner of the public notice must follow the requirements for a Tier 2 public notice prescribed in R309-220-6(3). The public notice must be presented as required in R309-220-8(3).

(4) Required mandatory language to be contained in the special notice: The notice must contain the following language, including the language necessary to fill in the blanks.

(a) The special notice for repeated failure to conduct monitoring must contain the following language: We are required to monitor the source of your drinking water for Cryptosporidium. Results of the monitoring are to be used to determine whether water treatment at the (treatment plant name) is sufficient to adequately remove Cryptosporidium from your drinking water. We are required to complete this monitoring and make this determination by (required bin determination date). We "did not monitor or test" or "did not complete all monitoring or testing on schedule" and, therefore, we may not be able to determine by the required date what treatment modifications, if any, must be made to ensure adequate Cryptosporidium removal. Missing this deadline may, in turn, jeopardize our ability to have the required treatment modifications, if any, completed by the deadline required, (date). For more information, please call (name of water system contact) of (name of water system) at (phone number).

(b) The special notice for failure to determine bin classification or mean Cryptosporidium level must contain the following language: We are required to monitor the source of your drinking water for Cryptosporidium in order to determine by (date) whether water treatment at the (treatment plant name) is sufficient to adequately remove Cryptosporidium from your drinking water. We have not made this determination by the required date. Our failure to do this may jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of (date). For more information, please call (name of water system contact) of (name of water system) at (phone number).

(c) Each special notice must also include a description of what the system is doing to correct the violation and when the system expects to return to compliance or resolve the situation.

R309-220-14. Notice by Executive Secretary on behalf of the Public Water System.

(1) The Executive Secretary may give the notice required by this rule on behalf of the owner and operator of the public water system if the Executive Secretary complies with the requirements of this rule.

(2) The owner or operator of the public water system remains responsible for ensuring that the requirements of this rule are met.

R309-220-15. Standard Health Effects Language.

Microbiological Contaminants:

(1) Total Coliform. Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.

(2) Fecal coliform/E.Coli. Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps,

nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

(3) Total organic carbon. Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acides (HAAs). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.

(4) Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches. Surface Water Treatment Rule (SWTR), Interim Enhanced Surface Water Treatment Rule (IESWTR), Long Term 1 Enhanced Surface Water Treatment Rule (LT1) and Filter Backwash Recycling Rule (FBRR) violations.

(5) Giardia lamblia. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(6) Viruses. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(7) Heterotrophic plate count (HPC) bacteria. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(8) Legionella. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(9) Cryptosporidium. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

Radioactive Contaminants:

(10) Alpha emitters. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(11) Beta/photon emitters. Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(12) Combined Radium 226/228. Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.

(13) Uranium. Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.

Inorganic Contaminants:

(14) Antimony. Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.

(15) Arsenic. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

(16) Asbestos. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.

(17) Barium. Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.

(18) Beryllium. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

(19) Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

(20) Chromium. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

(21) Copper. Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.

(22) Cyanide. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

(23) Fluoride. Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorisis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.

(24) Lead. Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

(25) Mercury (inorganic). Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

(26) Nitrate. Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(27) Nitrite. Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(28) Selenium. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.

(29) Thallium. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

Synthetic organic contaminants including pesticides and herbicides:

(30) 2,4-D. Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.

(31) 2,4,5-TP (Silvex). Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.

(32) Acrylamide. Some people who drink water containing high levels of acrylamide over a long period of time

could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

(33) Alachlor. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

(34) Atrazine. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

(35) Benzo(a)pyrene (PAH). Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.

(36) Carbofuran. Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.

(37) Chlordane. Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.

(38) Dalapon. Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(39) Di (2-ethylhexyl) adipate. Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.

(40) Di (2-ethylhexyl) phthalate. Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

(41) Dibromochloropropane (DBCP). Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(42) Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(43) Dioxin (2,3,7,8-TCDD). Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(44) Diquat. Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

(45) Endothall. Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

(46) Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(47) Epichlorohydrin. Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

(48) Ethylene dibromide. Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.

(49) Glyphosate. Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

(50) Heptachlor. Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(51) Heptachlor epoxide. Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.

(52) Hexachlorobenzene. Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.

(53) Hexachlorocyclopentadiene. Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.

(54) Lindane. Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

(55) Methoxychlor. Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

(56) Oxamyl (Vydate). Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

(57) PCBs (Polychlorinated biphenyls). Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.

(58) Pentachlorophenol. Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.

(59) Picloram. Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.

(60) Simazine. Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.

(61) Toxaphene. Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.

Volatile Organic Contaminants:

(62) Benzene. Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.

(63) Bromate. Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.

(64) Carbon Tetrachloride. Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(65) Chloramines. Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.

(66) Chlorine. Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.

(67) Chlorite. Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of

pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.

(68) Chlorine dioxide. Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.

(69) Chlorobenzene. Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.

(70) o-Dichlorobenzene. Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

(71) p-Dichlorobenzene. Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.

(72) 1,2-Dichloroethane. Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

(73) 1,1-Dichloroethylene. Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(74) cis-1,2-Dichloroethylene. Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(75) trans-1,2-Dicholoroethylene. Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.

(76) Dichloromethane. Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

(77) 1,2-Dichloropropane. Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.

(78) Ethylbenzene. Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

(79) Haloacetic Acids (HAA). Some piple who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.

(80) Styrene. Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(81) Tetrachloroethylene. Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.

(82) 1,2,4-Trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

(83) 1,1,1,-Trichloroethane. Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.

(84) 1,1,2-Trichloroethane. Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.

(85) Trichloroethylene. Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(86) TTHMs (Total Trihalomethanes). Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.

(87) Toluene. Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.

(88) Vinyl Chloride. Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.

(89) Xylenes. Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

KEY: drinking water, public notification, health effects
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R333. Financial Institutions, Banks.
R333-11. Ownership by State-Chartered Banks of Real Estate Other Than Property Used for Bank Business or Held as an Investment.
R333-11-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301 and 7-3-18.

(2) This rule applies to all banks chartered by the State of Utah.

(3) The purpose of this rule is to protect the safety and soundness of state chartered banks by prescribing requirements and restrictions for the prudent management of real estate held for purposes other than conducting the bank's business.

R333-11-2. Definitions.

For the purposes of this rule:

(1) "Bank premises" means real property recorded as an asset on a bank's books or otherwise held by a bank which is used in the conduct of the bank's business, including leasehold improvements and capital leases of real property. It also includes real property acquired and held for future banking use where the minutes of the board of directors show the bank in good faith intends to utilize such property in the conduct of the bank's business within three years.

(2) A "covered transaction" is a sale of a parcel of other real estate held by a bank where less than 10% of the total sales price is in cash; where the bank finances all or a portion of the sales price on terms more favorable than those customarily offered by the bank at that point in time when acting solely as lender; or where the transaction does not transfer from the bank 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 bank as a down payment together with that portion of the sales price guaranteed to the bank 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 bank resulting from a covered transaction, less the amount of any private mortgage insurance or equivalent guarantee, falls below 90% of the total sales price.

(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 bank except bank premises and real property acquired and held as a permitted investment.

(5) 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.

R333-11-3. Purchasing, Holding, and Conveying Other Real Estate.

A state chartered bank 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 bank in the property;

(3) former bank premises or property originally acquired for use as bank premises but no longer used or intended to be used as such within the next three years; or

(4) real property sold by a bank in a covered transaction after the effective date of this rule.

R333-11-4. Limitations on the Holding of Other Real Estate.

(1) A bank may not hold any parcel of other real estate for a period longer than five years from the date title is transferred to the bank without the prior written approval of the Supervisor of Banks.

(2) A bank may expend funds for the development and improvement of other real estate if the board of directors of the bank has determined there is a reasonable likelihood that the expenditure will increase the bank's recovery from sale or other disposition of the property in an amount greater than the total amounts to be expended, and the bank'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 bank may assume or pay superior liens on other real estate if the bank's interest in the property is sufficient to justify such expenditure.

(4) A bank 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 banking 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 of the bank or $150,000, 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 bank must obtain annually from an independent qualified appraiser an appraisal or a certification in letter form of the current fair value of each parcel of other real estate.

R333-11-5. Covered Transactions Authorized by Commissioner.

The commissioner may authorize any covered transaction to be booked as a receivable in accordance with Financial Accounting Standards Board Statement of Financial Accounting Standards No. 66, Accounting for Sales of Real Estate, which is incorporated by reference.

KEY: banks and banking, real estate, real estate investment
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R382. Health, Children's Health Insurance Program.
R382-10. Eligibility.
R382-10-1. Authority.

This rule sets forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP). It is authorized by Title 26, Chapter 40.

R382-10-2. Definitions.

(1) The Department adopts the definitions found in Sections 2110(b) and (c) of the Social Security Act as enacted by Pub. L. No. 105-33 which is incorporated by reference in this rule.

(2) "Agency" means any local office or outreach location of either the Department of Health or Department of Workforce Services that accepts and processes applications for CHIP.

(3) "Applicant" means a child on whose behalf an application has been made for benefits under the Children's Health Insurance Program, but who is not an enrollee.

(4) "Best estimate" means the Department's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(5) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(6) "Department" means the Utah Department of Health.

(7) "Employer-sponsored health plan" means health insurance that meets the requirements of R414-320-2(8) (a) (b) (c) (d) and (e).

(8) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(9) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(10) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(11) "Local office" means any Bureau of Eligibility Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(12) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

(13) "Renewal month" means the last month of the eligibility period for an enrollee.

(14) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in R414-320.

(15) "Verifications" means the proofs needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

R382-10-3. Actions on Behalf of a Minor.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

(a) The child, if 18 years old or an emancipated minor, the child's parent or legal guardian must indicate in writing to the Department who is authorized as the child's representative.

(b) The Department may designate an authorized representative if the child needs a representative but is unable to make a choice either in writing or orally in the presence of a witness.

(2) Where the statutes or rules governing the CHIP program require a child to take an action, the parent or adult who has assumed responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who has assumed responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(3) Notice to the parent or adult who has assumed responsibility for the care or supervision of the child is notice to the child.

R382-10-4. Applicant and Enrollee Rights and Responsibilities.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply or reapply for Children's Health Insurance Program benefits on behalf of a child during an open enrollment period. An emancipated child or an 18 year old child may apply on his own behalf.

(2) The applicant must provide the Department with verifications to establish the eligibility of the child, including information about the parents.

(3) Anyone may look at the eligibility policy manuals located at any local office, except at outreach or telephone locations.

(4) The parent or other individual who arranged for medical services on behalf of the child shall repay the Department for services paid for by the Department under this program if the child is determined not to be eligible for CHIP.

(5) The parent(s) or child, or other responsible person acting on behalf of a child must report certain changes to the local office within ten days of the day the change becomes known. Some examples of reportable changes include:

(a) An enrollee begins to receive coverage under a group health plan or other health insurance coverage.

(b) An enrollee begins to have access to coverage under a group health plan or other health insurance coverage.

(c) An enrollee leaves the household or dies.

(d) An enrollee or the household moves out of state.

(e) Change of address of an enrollee or the household.

(f) An enrollee enters a public institution or an institution for mental diseases.

(6) Applicants and enrollees have the right to be notified about actions the agency takes regarding their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action.

R382-10-5. Verification and Information Exchange.

(1) The applicant and enrollee upon renewal must provide verification of eligibility factors as requested by the agency.

(a) The agency will provide the enrollee a written request of the needed verifications.

(b) The enrollee has at least 10 calendar days from the date the agency gives or mails the verification request to the enrollee to provide verifications.

(c) The due date for returning verifications, forms or information requested by the agency is 5:00 p.m. on the date the agency sets as the due date in a written request to the enrollee, but not less than 10 calendar days from the date such request is given to or mailed to the enrollee.

(d) The agency allows additional time to provide verifications if the enrollee requests additional time by the due date. The agency will set a new due date that is at least 10 days from the date the enrollee asks for more time to provide the verifications or forms.

(e) If an enrollee has not provided required verifications by the due date, and has not contacted the agency to ask for more time to provide verifications, agency denies the application, renewal, or ends eligibility.

(2) The Department may release information concerning applicants and enrollees and their households to other state and

federal agencies to determine eligibility for other public assistance programs.

(3) The Department must release information to the Title IV-D agency and Social Security Administration to determine benefits.

(4) The Department may verify information by exchanging information with other public agencies as described in 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

R382-10-6. Citizenship and Alienage.

(1) To be eligible to enroll in the program, a child must be a citizen of the United States or a qualified alien as defined in Pub. L. No. 104-193(401) through (403), (411), (412), (421) through (423), (431), and (435), and amended by Pub. L. No. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), and (5571).

(2) Hmong or Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and who are lawfully admitted to the United States for permanent residence, and their family members who are also qualified aliens, may be eligible to enroll in the program regardless of their date of entry into the United States.

(3) One adult household member must declare the citizenship or alien status of all applicants in the household. The applicant must provide verification of his citizenship or alien status.

(4) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), admitted into the United States prior to August 22, 1996, may enroll in the program.

(5) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may enroll in the program after five years have passed from his date of entry into the United States.

R382-10-7. Utah Residence.

(1) A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

R382-10-8. Residents of Institutions.

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Social Security Act as enacted by Pub. L. No. 105-33 are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R382-10-9. Social Security Numbers.

(1) The Department may request applicants to provide the correct Social Security Number (SSN) or proof of application for a SSN for each household member at the time of application for the program.

(2) A child may not be denied CHIP enrollment for failure to provide a SSN.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Social Security Act as enacted by Pub. L. No. 105-33.

(2) A child who is covered under a group health plan or other health insurance coverage including coverage under a parent's or legal guardian's employer, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for CHIP assistance.

(3) A child who is covered under an absent parent's insurance coverage that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but has reached the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the household's gross annual income, is not eligible for CHIP. The child is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(6) A child who has access to an employer-sponsored health plan where the least expensive plan is equal to or greater than 5% of the household's gross annual income, and the employer offers an employer-sponsored health plan that meets the requirements of R414-320-2 (8) (a), (b), (c), (d) and (e), may choose to enroll in the employer-sponsored health plan and receive reimbursement through the UPP program or may choose to enroll in the CHIP program.

(a) If the employer-sponsored health plan does not include dental benefits, the child may enroll in CHIP dental benefits.

(b) A child who chooses to enroll in the UPP program may switch to CHIP coverage at any time.

(7) The Department shall deny eligibility if the applicant or a custodial parent has voluntarily terminated health insurance coverage in the 90 days prior to the application date for enrollment under CHIP.

(a) An applicant or applicant's parent(s) who voluntarily terminates coverage under a COBRA plan or under the Health Insurance Pool (HIP), or who is involuntarily terminated from an employer's plan is eligible for CHIP without a 90 day waiting period.

(b) An applicant who voluntarily terminates health insurance coverage purchased after the previous CHIP open enrollment period ended but before the beginning of the current open enrollment period and who met CHIP eligibility requirements at the time of purchase, is eligible for CHIP without a 90 day waiting period.

(8) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(9) An applicant must report at application and renewal whether any of the children in the household for whom enrollment is being requested has access to or is covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(10) The Department shall deny an application or renewal if the enrollee fails to respond to questions about health insurance coverage for children the household seeks to enroll or renew in the program.

R382-10-11. Household Composition.

(1) The following individuals who reside together must be included in the household for purposes of determining the household size and whose income will be counted, whether or not the individual is eligible to enroll in the program:

(a) A child who meets the CHIP age requirement and who does not have access to and is not covered by a group health plan or other health insurance;

(b) Siblings, half-siblings, adopted siblings, and step-

siblings of the child who meets the CHIP age requirement if these individuals also meet the CHIP age requirement;

(c) Parents and stepparents of any child who is included in the household size;

(d) Children of any child included in the household size;

(e) The spouse of any child who is included in the household size; and

(f) Unborn children of anyone included in the household size.

(2) Any individual described in Subsection (1) of this Section who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

(3) A household member described in Subsection (1) of this Section who does not qualify to enroll in the CHIP program due to his alien status is included in the household size and his income is counted as household income.

(4) If an individual is caring for a child of his or her former spouse, in a case in which a divorce has been finalized, the child may be included in the household if the child resides in the home.

R382-10-12. Age Requirement.

(1) A child must be under 19 years of age to enroll in the program.

(2) The month in which a child's 19th birthday occurs is the last month of eligibility for CHIP enrollment.

R382-10-13. Income Provisions.

To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size. All gross income, earned and unearned, received by the parents and stepparents of any child who is included in the household size, is counted toward household income, unless this section specifically describes a different treatment of the income.

(1) The Department does not count income that is defined in 20 CFR 416(K) Appendix, 2006 edition, which is adopted and incorporated by reference.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 is countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

(6) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(7) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the eligibility period.

(8) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(9) SSI and State Supplemental Payments are countable income.

(10) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(11) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(12) Child Care Assistance under Title XX is not countable income.

(13) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(14) Needs-based Veteran's pensions are not counted as income. If the income is not needs-based, only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(15) Income of a child is excluded if the child is not the head of a household.

(16) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(17) Reimbursements for expenses incurred by an individual are not countable income.

(18) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103-286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(19) Victim's Compensation payments as defined in Pub. L. No. 101-508 are not countable income.

(20) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103-286 are not countable income.

(21) Income of an alien's sponsor or the sponsor's spouse, is not countable income.

R382-10-14. Budgeting.

The following section describes methods that the Department will use to determine the household's countable monthly or annual income.

(1) The gross income for parents and stepparents of any child included in the household size is counted to determine a child's eligibility, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department shall determine monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department shall multiply the weekly amount by 4.3 to obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and cost-sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility. The Department shall determine

prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming eligibility period. The Department shall prorate income that is received less often than monthly over the eligibility period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(5) The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department shall request income information from a recent time period during which the individual had farm or self-employment income. The Department shall deduct 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department shall request expense information and deduct the expenses from the gross income. The Department shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and in particular for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

R382-10-15. Assets.

An asset test is not required for CHIP eligibility.

R382-10-16. Application and Renewal.

The application is the initial request from an applicant for CHIP enrollment for a child. The application process includes gathering information and verifications to determine the child's eligibility for enrollment in the program. Renewal is the process of gathering information and verifications on a periodic basis to determine continued eligibility of an enrollee.

(1) The applicant must complete and sign a written application to become enrolled in the program.

(2) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply for enrollment during open enrollment periods in person, through the mail, by fax, or online.

(4) A family who has a child enrolled in CHIP, may enroll a new child born to or adopted by a household member without waiting for the next open enrollment period.

(5) A child who loses Medicaid coverage because he or she has reached the maximum age limit and does not qualify for any other Medicaid program without paying a spenddown, may enroll in CHIP without waiting for the next open enrollment period.

(6) A child who loses Medicaid coverage because he or she is no longer deprived of parental support and does not qualify for any other Medicaid program without paying a spenddown, may enroll in CHIP without waiting for the next open enrollment period.

(7) A child enrolled in the UPP program who discontinues his or her coverage under an employer-sponsored health plan, may enroll in CHIP without waiting for the next open enrollment period.

(8) The Department may interview applicants, the applicant's parents, and any adult who has assumed responsibility for the care or supervision of the child to assist in determining eligibility.

(9) If eligibility for CHIP enrollment ends, the Department shall review the case for eligibility under any other medical assistance program without requiring a new application. The Department may request additional verification from the household if there is insufficient information to make a determination.

R382-10-17. Eligibility Decisions.

(1) The Department must determine eligibility for CHIP within 45 days of the date of application. If a decision can not be made in 45 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the Department's control delay the eligibility decision, the Department shall document the reason for the delay in the case record. The Department must inform the applicant of the status of the application and the time frame for completing the application process.

(2) The Department may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility because the Department has not determined eligibility within that time.

(3) The Department shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdrew the application and the Department sent a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant can not be located or has not responded to requests for information within the 30 day application period.

(4) The Department must redetermine eligibility at least every 12 months.

(5) At application and renewal, the Department must determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid. A child who is eligible for Medicaid coverage is not eligible for CHIP. A child who must meet a spend-down to receive Medicaid and chooses not to meet the spenddown can be enrolled in CHIP.

R382-10-18. Effective Date of Enrollment and Renewal.

(1) The effective date of CHIP enrollment is the date a completed and signed application is received at a local office by 5:00 p.m. on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after 5:00 p.m. of a business day, the effective date of CHIP enrollment is the next business day.

(2) The effective date of CHIP enrollment for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the effective date of enrollment is the date the outreach staff receives the application.

(b) If the application is delivered at a time when the outreach office is closed, including being closed for weekends or holidays, the effective date of enrollment is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(3) The Department may allow a grace enrollment period beginning no earlier than four days before the date a completed and signed application is received by the Department. The Department shall not pay for any services received before the effective enrollment date.

(4) For a family who has a child enrolled in CHIP and who

adds a newborn or adopted child, the effective date of enrollment is the date of birth or adoption if the family requests the coverage within 30 days of the birth or adoption. If the request is made more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the date of report, except as otherwise provided in R382-10-18(1).

(5) The effective date of enrollment for a renewal is the first day of the month after the renewal month, if the renewal process is completed by the end of the renewal month, or by the last day of the month immediately following the renewal month, and the child continues to be eligible.

(6) If the renewal process is not completed by the end of the renewal month, the case will be closed unless the enrollee has good cause for not completing the renewal process on time. Good cause includes a medical emergency, death of an immediate family member, or natural disaster, or other similar occurrence.

(7) The Department may require an interview with the parent, child, or adult who has assumed responsibility for the care or supervision of a child, or other authorized representative as part of the renewal process.

R382-10-19. Open Enrollment Period.

(1) The Department accepts applications for enrollment at times when sufficient funding is available to justify enrolling more individuals. The Department limits the number it enrolls according to the funds available for the program.

(a) The Department shall notify the public of the open enrollment period 10 days in advance through a newspaper of general circulation.

(b) During an open enrollment period, the Department accepts applications in person, through the mail, by fax, or online. The Department sorts applications according to the date received. If the applications received on a day exceed the number of openings available, the Department shall randomize all applications for that day and select the number needed to fill the openings.

(c) The Department will not accept applications prior to the open enrollment date, except as provided in R382-10-16.

R382-10-20. Enrollment Period.

(1) The enrollment period begins with either the date of application, or an earlier date as defined in R382-10-18, if the applicant is determined eligible for CHIP enrollment. Covered services the child received on or after the effective date of enrollment are payable by CHIP for a child who was eligible upon application.

(2) A child eligible for CHIP enrollment receives 12 months of coverage unless the child turns 19 years of age before the end of the 12-month enrollment period, moves out of the state, becomes eligible for Medicaid, begins to be covered under a group health plan or other health insurance coverage, enters a public institution, or does not pay his or her quarterly premium. The month a child turns 19 years of age is the last month the child is eligible for CHIP.

R382-10-21. Quarterly Premiums.

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) A family whose countable income is equal to or less than 100% of the federal poverty level or who are American Indian pays no premium.

(b) A family with countable income greater than 100% and up to 150% of the federal poverty level must pay a quarterly premium of $13.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of $25.

(2) A family who does not pay its quarterly premium by the premium due date will be terminated from CHIP. Coverage may be reinstated when any of the following events occur:

(a) The family pays the premium by the last day of the month immediately following the termination;

(b) The family's countable income decreased to below 100% of the federal poverty level prior to the first month of the quarter.

(c) The family's countable income decreases prior to the first month of the quarter and the family owes a lower premium amount. The new premium must be paid within 30 days.

(3) A family who was terminated from CHIP who reapplies within one year of the termination date, must pay any outstanding premiums before the children can be re-enrolled.

R382-10-22. Termination and Notice.

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or at renewal.

(2) The Department shall notify an enrollee in writing ten days before taking a proposed action adversely affecting the enrollee's eligibility.

(3) Notices under this section shall provide the following information:

(a) the action to be taken;

(b) the reason for the action;

(c) the regulations or policy that support the action;

(d) the applicant's or enrollee's right to a hearing;

(e) how an applicant or enrollee may request a hearing; and

(f) the applicant's or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(4) The Department need not give ten-day notice of termination if:

(a) the child is deceased;

(b) the child has moved out of state and is not expected to return;

(c) the child has entered a public institution; or

(d) the child has enrolled in other health insurance coverage, in which case eligibility ends the day before the new coverage begins.

R382-10-23. Case Closure or Withdrawal.

The Department shall terminate a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time prior to approval of the application.

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R386. Health, Community Health Services, Epidemiology.
R386-702. Communicable Disease Rule.
R386-702-1. Purpose Statement.

(1) The Communicable Disease Rule is adopted under authority of Sections 26-1-30, 26-6-3, and 26-23b.

(2) This rule outlines a multidisciplinary approach to communicable and infectious disease control and emphasizes reporting, surveillance, isolation, treatment and epidemiological investigation to identify and control preventable causes of infectious diseases. Reporting requirements and authorizations are specified for communicable and infectious diseases, outbreaks, and unusual occurrence of any disease. Each section has been adopted with the intent of reducing disease morbidity and mortality through the rapid implementation of established practices and procedures.

(3) The successes of medicine and public health dramatically reduced the risk of epidemics and early loss of life due to infectious agents during the twentieth century. However, the recent emergence of new diseases, such as Human Immunodeficiency Virus, Hantavirus, and Severe Acute Respiratory Syndrome, and the rapid spread of diseases to the United States from other parts of the world, such as West Nile virus, made possible by advances in transportation, trade, food production, and other factors highlight the continuing threat to health from infectious diseases. Continual attention to these threats and cooperation among all health care providers, government agencies and other entities that are partners in protecting the public's health are crucial to maintain and improve the health of the citizens of Utah.

R386-702-2. Definitions.

(1) Terms in this rule are defined in Section 26-6-2 and 26-23b-102, except that for purposes of this rule, "Department" means the Utah Department of Health.

(2) In addition:

(a) "Outbreak" means an epidemic limited to a localized increase in incidence of disease.

(b) "Case" means a person identified as having a disease, health disorder, or condition that is reportable under this rule or that is otherwise under public health investigation.

(c) "Suspect" case means a person who a reporting entity, local health department, or Department believes might be a case, but for whom it has not been established that the criteria necessary to become a case have been met.

R386-702-3. Reportable Diseases, Emergency Illnesses, and Health Conditions.

(1) The Utah Department of Health declares the following conditions to be of concern to the public health and reportable as required or authorized by Section 26-6-6 and Title 26, Chapter 23b of the Utah Health Code.

(a) Acquired Immunodeficiency Syndrome
(b) Adverse event resulting after smallpox vaccination
(c) Amebiasis
(d) Anthrax
(e) Arbovirus infection, including Saint Louis encephalitis and West Nile virus infection
(f) Botulism
(g) Brucellosis
(h) Campylobacteriosis
(i) Chancroid
(j) Chickenpox
(k) Chlamydia trachomatis infection
(l) Cholera
(m) Coccidioidomycosis
(n) Colorado tick fever
(o) Creutzfeldt-Jakob disease and other transmissible human spongiform encephalopathies
(p) Cryptosporidiosis
(q) Cyclospora infection
(r) Dengue fever
(s) Diphtheria
(t) Echinococcosis
(u) Ehrlichiosis, human granulocytic, human monocytic, or unspecified
(v) Encephalitis
(w) Shiga toxin-producing Escherichia coli (STEC) infection
(x) Giardiasis
(y) Gonorrhea: sexually transmitted and ophthalmia neonatorum
(z) Haemophilus influenzae, invasive disease
(aa) Hansen Disease (Leprosy)
(bb) Hantavirus infection and pulmonary syndrome
(cc) Hemolytic Uremic Syndrome, postdiarrheal
(dd) Hepatitis A
(ee) Hepatitis B, cases and carriers
(ff) Hepatitis C, acute and chronic infection
(gg) Hepatitis, other viral
(hh) Human Immunodeficiency Virus Infection. Reporting requirements are listed in R388-803
(ii) Influenza-associated hospitalization
(jj) Influenza-associated death, in a person less than 18 years of age
(kk) Legionellosis
(ll) Listeriosis
(mm) Lyme Disease
(nn) Malaria
(oo) Measles
(pp) Meningitis
(qq) Meningococcal Disease
(rr) Mumps
(ss) Norovirus, formerly called Norwalk-like virus, infection
(tt) Pelvic Inflammatory Disease
(uu) Pertussis
(vv) Plague
(ww) Poliomyelitis, paralytic
(xx) Poliovirus infection, nonparalytic
(yy) Psittacosis
(zz) Q Fever
(aaa) Rabies, human and animal
(bbb) Relapsing fever, tick-borne and louse-borne
(ccc) Rocky Mountain spotted fever
(ddd) Rubella
(eee) Rubella, congenital syndrome
(fff) Salmonellosis
(ggg) Severe Acute Respiratory Syndrome (SARS)
(hhh) Shigellosis
(iii) Smallpox
(jjj) Staphylococcus aureus with resistance or intermediate resistance to vancomycin isolated from any site
(kkk) Streptococcal disease, invasive, organism isolated from a normally sterile site
(lll) Syphilis, all stages and congenital
(mmm) Tetanus
(nnn) Toxic-Shock Syndrome, staphyloccal or streptococcal
(ooo) Trichinosis
(ppp) Tuberculosis. Special Measures for the Control of Tuberculosis are listed in R388-804.
(qqq) Tularemia
(rrr) Typhoid, cases and carriers
(sss) Vibriosis
(ttt) Viral hemorrhagic fever
(uuu) Yellow fever
(vvv) Any unusual occurrence of infectious or communicable disease or any unusual or increased occurrence

of any illness that may indicate a Bioterrorism event or public health hazard, including any single case or multiple cases of a newly recognized, emergent or re-emergent disease or disease-producing agent, including newly identified multi-drug resistant bacteria or a novel influenza strain such as a pandemic influenza strain.

(www) Any outbreak, epidemic, or unusual or increased occurrence of any illness that may indicate an outbreak or epidemic. This includes suspected or confirmed outbreaks of foodborne disease, waterborne disease, disease caused by antimicrobial resistant organisms, any infection that may indicate a bioterrorism event, or of any infection that may indicated a public health hazard.

(2) In addition to the reportable conditions set forth in R386-702-3(1) the Department declares the following reportable emergency illnesses or health conditions to be of concern to the public health and reporting is authorized by Title 26, Chapter 23b, Utah Code, unless made mandatory by the declaration of a public health emergency:

(a) respiratory illness (including upper or lower respiratory tract infections, difficulty breathing and Adult Respiratory Distress Syndrome);

(b) gastrointestinal illness (including vomiting, diarrhea, abdominal pain, or any other gastrointestinal distress);

(c) influenza-like constitutional symptoms and signs;

(d) neurologic symptoms or signs indicating the possibility of meningitis, encephalitis, or unexplained acute encephalopathy or delirium;

(e) rash illness;

(f) hemorrhagic illness;

(g) botulism-like syndrome;

(h) lymphadenitis;

(i) sepsis or unexplained shock;

(j) febrile illness (illness with fever, chills or rigors);

(k) nontraumatic coma or sudden death; and

(l) other criteria specified by the Department as indicative of disease outbreaks or injurious exposures of uncertain origin.

R386-702-4. Reporting.

(1) Each reporting entity shall report each confirmed case and any case who the reporting entity believes in its professional judgment is likely to harbor an illness, infection, or condition reportable under R386-702-3(1), and each outbreak, epidemic, or unusual occurrence described in R386-(1)(vvv) or (www) to the local health department or to the Bureau of Epidemiology, Utah Department of Health. Unless otherwise specified, the report of these diseases to the local health department or to the Bureau of Epidemiology, Utah Department of Health shall provide the following information: name, age, sex, address, date of onset, and all other information as prescribed by the Department. A standard report form has been adopted and is supplied to physicians and other reporting entities by the Department. Upon receipt of a report, the local health department shall promptly forward a written or electronic copy of the report to the Bureau of Epidemiology, Utah Department of Health.

(2) Where immediate reporting is required, the reporting entity shall report as soon as possible, but not later than 24 hours after identification. Immediate reporting shall be made by telephone to the local health department or to the Bureau of Epidemiology, Utah Department of Health at 801-538-6191 or 888-EPI-UTAH (888-374-8824). All diseases not required to be reported immediately or by number of cases shall be reported within three working days from the time of identification. Reporting entities shall send reports to the local health department or the Bureau of Epidemiology, 288 North 1460 West, P. O. Box 142104, Salt Lake City, Utah 84114-2104.

(3) Entities Required to Report Communicable Diseases: Title 26, Chapter 6, Section 6 Utah Code lists those individuals and facilities required to report diseases known or suspected of being communicable.

(a) Physicians, hospitals, health care facilities, home health agencies, health maintenance organizations, and other health care providers shall report details regarding each case.

(b) Schools, child day care centers, and citizens shall provide any relevant information.

(c) Laboratories and other testing sites shall report laboratory evidence confirming any of the reportable diseases. Laboratories and other testing sites shall also report any test results that provide presumptive evidence of infection such as positive tests for syphilis, measles, and viral hepatitis.

(d) Pharmacists shall report unusual prescriptions or patterns of prescribing as specified in section 26-23b-105.

(4) Immediately Reportable Conditions: Cases and suspect cases of anthrax, botulism, cholera, diphtheria, Haemophilus influenzae (invasive disease), hepatitis A, measles, meningococcal disease, plague, poliomyelitis, rabies, rubella, Severe Acute Respiratory Syndrome (SARS), smallpox, Staphylococcus aureus with resistance (VRSA) or intermediate resistance (VISA) to vancomycin isolated from any site, syphilis (primary or secondary stage), tuberculosis, tularemia, typhoid, viral hemorrhagic fever, yellow fever, and any condition described in R386-702-3(1)(vvv) or (www) are to be made immediately as provided in R386-702-4(2).

(5) Full reporting of all relevant patient information related to methicillin-resistant Staphylococcus aureus (MRSA) infections, vancomycin-resistant enterococcal (VRE) infections, and laboratory-confirmed influenza are authorized and may be required by local or state health department personnel for purposes of public health investigation of a documented threat to public health.

(6) Reports of emergency illnesses or health conditions under R386-702-3(2) shall be made as soon as practicable using a process and schedule approved by the Department. Full reporting of all relevant patient information is authorized. The report shall include at least, if known:

(a) name of the facility;

(b) a patient identifier;

(c) date of visit;

(d) time of visit;

(e) patient's age;

(f) patient's sex;

(g) zip code of patient's residence;

(h) the reportable condition suspected; and

(i) whether the patient was admitted to the hospital.

(7) An entity reporting emergency illnesses or health conditions under R386-702-3(2) is authorized to report on other encounters during the same time period that do not meet definition for a reportable emergency illness or health condition. Submission of an isolate does not replace the requirement to report the case also to the local health department or Bureau of Epidemiology, Utah Department of Health. The report shall include the following information for each such encounter:

(a) facility name;

(b) date of visit;

(c) time of visit;

(d) patient's age;

(e) patient's sex; and

(f) patient's zip code for patient's residence.

(8) Mandatory Submission of Isolates: Laboratories shall submit all isolates of the following organisms to the Utah Department of Health, public health laboratory:

(a) Bacillus anthracis;

(b) Bordetella pertussis;

(c) Brucella species;

(d) Campylobacter species;

(e) Clostridium botulinum;

(f) Cornybacterium diphtheriae;

(g) Shiga toxin-producing Escherichia coli (STEC) (including enrichment and/or MacKonkey broths that tested positive by enzyme immunoassay for Shiga toxin);
(h) Francisella tularensis;
(i) Haemophilus influenzae, from normally sterile sites;
(j) Influenza, types A and B;
(k) Legionella species;
(l) Listeria monocytogenes;
(m) Mycobacterium tuberculosis complex;
(n) Neisseria gonorrhoeae;
(o) Neisseria meningitidis, from normally sterile sites;
(p) Salmonella species;
(q) Shigella species;
(r) Staphylococcus aureus with resistance or intermediate resistance to vancomycin isolated from any site;
(s) Vibrio species;
(t) Yersinia species; and
(u) any organism implicated in an outbreak when instructed by authorized local or state health department personnel.

(9) Epidemiological Review: The Department or local health department may conduct an investigation, including review of the hospital and health care facility medical records and contacting the individual patient to protect the public's health.

(10) Confidentiality of Reports: All reports required by this rule are confidential and are not open to public inspection. Nothing in this rule, however, precludes the discussion of case information with the attending physician or public health workers. All information collected pursuant to this rule may not be released or made public, except as provided by Section 26-6-27. Penalties for violation of confidentiality are prescribed in Section 26-6-29.

R386-702-5. General Measures for the Control of Communicable Diseases.

(1) The local health department shall maintain all reportable disease records as needed to enforce Chapter 6 of the Health Code and this rule, or as requested by the Utah Department of Health.

(2) General Control Measures for Reportable Diseases.

(a) The local health department shall, when an unusual or rare disease occurs in any part of the state or when any disease becomes so prevalent as to endanger the state as a whole, contact the Bureau of Epidemiology, Utah Department of Health for assistance, and shall cooperate with the representatives of the Utah Department of Health.

(b) The local health department shall investigate and control the causes of epidemic, infectious, communicable, and other disease affecting the public health. The local health department shall also provide for the detection, reporting, prevention, and control of communicable, infectious, and acute diseases that are dangerous or important or that may affect the public health. The local health department may require physical examination and measures to be performed as necessary to protect the health of others.

(c) If, in the opinion of the local health officer it is necessary or advisable to protect the public's health that any person shall be kept from contact with the public, the local health officer shall establish, maintain and enforce involuntary treatment, isolation and quarantine as provided by Section 26-6-4. Control measures shall be specific to the known or suspected disease agent. Guidance is available from the Bureau of Epidemiology, Utah Department of Health or official reference listed in R386-702-11.

(3) Prevention of the Spread of Disease From a Case.

The local health department shall take action and measures as may be necessary within the provisions of Section 26-6-4; Title 26, Chapter 6b; and this rule, to prevent the spread of any communicable disease, infectious agent, or any other condition which poses a public health hazard. Action shall be initiated upon discovery of a case or upon receipt of notification or report of any disease.

(4) Public Food Handlers.

A person known to be infected with a communicable disease that can be transmitted by food, water, or milk, or who is suspected of being infected with such a disease may not engage in the commercial handling of food, water, or other drink or be employed in a dairy or on any premises handling milk or milk products, until he is determined by the local health department to be free of communicable disease, or incapable of transmitting the infection.

(5) Communicable Diseases in Places Where Milk or Food Products are Handled or Processed.

If a case, carrier, or suspected case of a disease that can be conveyed by milk or food products is found at any place where milk or food products are handled or offered for sale, or if a disease is found or suspected to have been transmitted by these milk or food products, the local health department may immediately prohibit the sale, or removal of milk and all other food products from the premises. Sale or distribution of milk or food products from the premise may be resumed when measures have been taken to eliminate the threat to health from the food and its processing as prescribed by R392-100.

(6) Request for State Assistance.

If a local health department finds it is not able to completely comply with this rule, the local health officer or his representative shall request the assistance of the Utah Department of Health. In such circumstances, the local health department shall provide all required information to the Bureau of Epidemiology. If the local health officer fails to comply with the provisions of this rule, the Utah Department of Health shall take action necessary to enforce this rule.

(7) Approved Laboratories.

Laboratory analyses which are necessary to identify the causative agents of reportable diseases or to determine adequacy of treatment of patients with a disease shall be ordered by the physician or other health care provider to be performed in or referred to a laboratory holding a valid certificate under the Clinical Laboratory Improvement Amendments of 1988.

R386-702-6. Special Measures for Control of Rabies.

(1) Rationale of Treatment.

A physician must evaluate individually each exposure to possible rabies infection. The physician shall also consult with local or state public health officials if questions arise about the need for rabies prophylaxis.

(2) Management of Biting Animals.

(a) A healthy dog, cat, or ferret that bites a person shall be confined and observed at least daily for ten days from the date of bite as specified by local animal control ordinances. It is recommended that rabies vaccine not be administered during the observation period. Such animals shall be evaluated by a veterinarian at the first sign of illness during confinement. A veterinarian or animal control officer shall immediately report any illness in the animal to the local health department. If signs suggestive of rabies develop, a veterinarian or animal control officer shall direct that the animal be euthanized, its head removed, and the head shipped under refrigeration, not frozen, for examination of the brain by a laboratory approved by the Utah Department of Health.

(b) If the dog, cat, or ferret shows no signs of rabies or illness during the ten day period, the veterinarian or animal control officer shall direct that the unvaccinated animal be vaccinated against rabies at the owner's expense before release to the owner. If a veterinarian is not available, the animal may be released, but the owner shall have the animal vaccinated within 72 hours of release. If the dog, cat, or ferret was

appropriately vaccinated against rabies before the incident, the animal may be released from confinement after the 10-day observation period with no further restrictions.

(c) Any stray or unwanted dog, cat, or ferret that bites a person may be euthanized immediately by a veterinarian or animal control officer, if permitted by local ordinance, and the head submitted, as described in R386-702-6(2)(a), for rabies examination. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(d) Wild animals include raccoons, skunks, coyotes, foxes, bats, the offspring of wild animals crossbred to domestic dogs and cats, and any carnivorous animal other than a domestic dog, cat, or ferret.

(e) Signs of rabies in wild animals cannot be interpreted reliably. If a wild animal bites or scratches a person, the person or attending medical personnel shall notify an animal control or law enforcement officer. A veterinarian, animal control officer or representative of the Division of Wildlife Resources shall kill the animal at once, without unnecessary damage to the head, and submit the brain, as described in R386-702-6(2)(a), for examination for evidence of rabies. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(f) Rabbits, opossums, squirrels, chipmunks, rats, and mice are rarely infected and their bites rarely, if ever, call for rabies prophylaxis or testing. Unusual exposures to any animal should be reported to the local health department or the Bureau of Epidemiology, Utah Department of Health.

(g) When rare, valuable, captive wild animals maintained in zoological parks approved by the United States Department of Agriculture or research institutions, as defined by Section 26-26-1, bite or scratch a human, the Bureau of Epidemiology, Utah Department of Health shall be notified. The provisions of subsection R386-702-6(2)(e) may be waived by the Bureau of Epidemiology, Utah Department of Health if zoological park operators or research institution managers can demonstrate that the following rabies control measures are established:

(i) Employees who work with the animal have received preexposure rabies immunization.

(ii) The person bitten by the animal voluntarily agrees to accept postexposure rabies immunization provided by the zoological park or research facility.

(iii) The director of the zoological park or research facility shall direct that the biting animal be held in complete quarantine for a minimum of 180 days. Quarantine requires that the animal be prohibited from direct contact with other animals or humans.

(h) Any animal bitten or scratched by a wild, carnivorous animal or a bat that is not available for testing shall be regarded as having been exposed to rabies.

(i) For maximum protection of the public health, unvaccinated dogs, cats, and ferrets bitten or scratched by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer. If the owner is unwilling to have the animal euthanized, the local health officer shall order that the animal be held in strict isolation in a municipal or county animal shelter or a veterinary medical facility approved by the local health department, at the owner's expense, for at least six months and vaccinated one month before being released. If any illness suggestive of rabies develops in the animal, the veterinarian or animal control officer shall immediately report the illness to the local health department and the veterinarian or animal control officer shall direct that the animal be euthanized and the head shall be handled as described in subsection R386-702-6(2)(a).

(j) Dogs, cats, and ferrets that are currently vaccinated and are bitten by rabid animals, shall be revaccinated immediately by a veterinarian and confined and observed by the animal's owner for 45 days. If any illness suggestive of rabies develops in the animal, the owner shall report immediately to the local health department and the animal shall be euthanized by a veterinarian or animal control officer and the head shall be handled as described in subsection R386-702-6(2)(a).

(k) Livestock exposed to a rabid animal and currently vaccinated with a vaccine approved by the United States Department of Agriculture for that species shall be revaccinated immediately by a veterinarian and observed by the owner for 45 days. Unvaccinated livestock shall be slaughtered immediately. If the owner is unwilling to have the animal slaughtered, the animal shall be kept under close observation by the owner for six months.

(l) Unvaccinated animals other than dogs, cats, ferrets, and livestock bitten by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer.

(3) Measures for Standardized Rabies Control Practices.

(a) Humans requiring either pre- or post-exposure rabies prophylaxis shall be treated in accordance with the recommendations of the U.S. Public Health Service Immunization Practices Advisory Committee, as adopted and incorporated by reference in R386-702-11(2). A copy of the recommendations shall be made available to licensed medical personnel, upon request to the Bureau of Epidemiology, Utah Department of Health.

(b) A physician or other health care provider that administers rabies vaccine shall immediately report all serious systemic neuroparalytic or anaphylactic reactions to rabies vaccine to the Bureau of Epidemiology, Utah Department of Health, using the process described in R386-702-4.

(c) The Compendium of Animal Rabies Prevention and Control, as adopted and incorporated by reference in R386-702-11(3), is the reference document for animal vaccine use.

(d) A county, city, town, or other political subdivision that requires licensure of animals shall also require rabies vaccination as a prerequisite to obtaining a license.

(e) Animal rabies vaccinations are valid only if performed by or under the direction of a licensed veterinarian in accordance with the Compendium of Animal Rabies Prevention and Control.

(f) All agencies and veterinarians administering vaccine shall document each vaccination on the National Association of State Public Health Veterinarians (NASPHV) form number 51, Rabies Vaccination Certificate, which can be obtained from vaccine manufacturers. The agency or veterinarian shall provide a copy of the report to the animal's owner. Computer-generated forms containing the same information are also acceptable.

(g) Animal rabies vaccines may be sold or otherwise provided only to licensed veterinarians or veterinary biologic supply firms. Animal rabies vaccine may be purchased by the Utah Department of Health and the Utah Department of Agriculture.

(4) Measures to Prevent or Control Rabies Outbreaks.

(a) The most important single factor in preventing human rabies is the maintenance of high levels of immunity in the pet dog, cat, and ferret populations through vaccination.

(i) All dogs, cats, and ferrets in Utah should be immunized against rabies by a licensed veterinarian; and

(ii) Local governments should establish effective programs to ensure vaccination of all dogs, cats, and ferrets and to remove strays and unwanted animals.

(b) If the Utah Department of Health determines that a rabies outbreak is present in an area of the state, the Utah Department of Health may require that:

(i) all dogs, cats, and ferrets in that area and adjacent areas be vaccinated or revaccinated against rabies as appropriate for each animal's age;

(ii) any such animal be kept under the control of its owner

at all times until the Utah Department of Health declares the outbreak to be resolved;

(iii) an owner who does not have an animal vaccinated or revaccinated surrender the animal for confinement and possible destruction; and

(iv) such animals found at-large be confined and possibly destroyed.

R386-702-7. Special Measures for Control of Typhoid.

(1) Because typhoid control measures depend largely on sanitary precautions and other health measures designed to protect the public, the local health department shall investigate each case of typhoid and strictly manage the infected individual according to the following outline:

(2) Cases: Standard precautions are required during hospitalization. Use contact precautions for diapered or incontinent children under 6 years of age for the duration of illness. Hospital care is desirable during acute illness. Release of the patient from supervision by the local health department shall be based on three or more negative cultures of feces, and of urine in patients with schistosomiasis, taken at least 24 hours apart. Cultures must have been taken at least 48 hours after antibiotic therapy has ended and not earlier than one month after onset of illness as specified in R386-702-7(6). If any of these cultures is positive, repeat cultures at intervals of one month during the 12-month period following onset until at least three consecutive negative cultures are obtained as specified in R386-702-7(6). The patient shall be restricted from food handling and from providing patient care during the period of supervision by the local health department.

(3) Contacts: Administration of typhoid vaccine is required for all household members of known typhoid carriers. Household and close contacts shall not be employed in occupations likely to facilitate transmission of the disease, such as food handling, during the period of contact with the infected person until at least two negative feces and urine cultures, taken at least 24 hours apart, are obtained from each contact.

(4) Carriers: If a laboratory or physician identifies a carrier of typhoid, the attending physician shall immediately report the details of the case by telephone to the local health department or the Bureau of Epidemiology, Utah Department of Health using the process described in R386-702-4. Each infected individual shall submit to the supervision of the local health department. Carriers are prohibited from food handling and patient care until released in accordance with R386-702-7(4)(a) or R386-702-7(4)(b). All reports and orders of supervision shall be kept confidential and may be released only as allowed by Subsection 26-6-27(2)(c).

(a) Convalescent Carriers: Any person who harbors typhoid bacilli for three but less than 12 months after onset is defined as a convalescent carrier. Release from occupational and food handling restrictions may be granted at any time from three to 12 months after onset, as specified in R386-702-7(6).

(b) Chronic Carriers: Any person who continues to excrete typhoid bacilli for more than 12 months after onset of typhoid is a chronic carrier. Any person who gives no history of having had typhoid or who had the disease more than one year previously, and whose feces or urine are found to contain typhoid bacilli is also a chronic carrier.

(c) Other Carriers: If typhoid bacilli are isolated from surgically removed tissues, organs, including the gallbladder or kidney, or from draining lesions such as osteomyelitis, the attending physician shall report the case to the local health department or the Bureau of Epidemiology, Utah Department of Health. If the person continues to excrete typhoid bacilli for more than 12 months, he is a chronic carrier and may be released after satisfying the criteria for chronic carriers in R386-702-7(6).

(5) Carrier Restrictions and Supervision: The local health department shall report all typhoid carriers to the Bureau of Epidemiology, and shall:

(a) Require the necessary laboratory tests for release;

(b) Issue written instructions to the carrier;

(c) Supervise the carrier.

(6) Requirements for Release of Convalescent and Chronic Carriers: The local health officer or his representative may release a convalescent or chronic carrier from occupational and food handling restrictions only if at least one of the following conditions is satisfied:

(a) For carriers without schistosomiasis, three consecutive negative cultures obtained from fecal specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(b) for carriers with schistosomiasis, three consecutive negative cultures obtained from both fecal and urine specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped; or

(c) the local health officer or his representative determine that additional treatment such as cholecystectomy or nephrectomy has terminated the carrier state.

R386-702-8. Special Measures for the Control of Ophthalmia Neonatorum.

Every physician or midwife practicing obstetrics or midwifery shall, within three hours of the birth of a child, instill or cause to be instilled in each eye of such newborn one percent silver nitrate solution contained in wax ampules, or tetracycline ophthalmic preparations or erythromycin ophthalmic preparations, as these are the only antibiotics of currently proven efficacy in preventing development of ophthalmia neonatorum. The value of irrigation of the eyes with normal saline or distilled water is unknown and not recommended.

R386-702-9. Special Measures to Prevent Perinatal and Person-to-Person Transmission of Hepatitis B Infection.

(1) A licensed healthcare provider who provides prenatal care shall routinely test each pregnant woman for hepatitis B surface antigen (HBsAg) at an early prenatal care visit. The provisions of this section do not apply if the pregnant woman, after being informed of the possible consequences, objects to the test on the basis of religious or personal beliefs.

(2) The licensed healthcare provider who provides prenatal care should repeat the HBsAg test during late pregnancy for those women who tested negative for HBsAg during early pregnancy, but who are at high risk based on:

(a) evidence of clinical hepatitis during pregnancy;

(b) injection drug use;

(c) occurrence during pregnancy or a history of a sexually transmitted disease;

(d) occurrence of hepatitis B in a household or close family contact; or

(e) the judgement of the healthcare provider.

(3) In addition to other reporting required by this rule, each positive HBsAg result detected in a pregnant woman shall be reported to the local health department or the Utah Department of Health, as specified in Section 26-6-6. That report shall indicate that the woman was pregnant at time of testing if that information is available to the reporting entity.

(4) A licensed healthcare provider who provides prenatal care shall document a woman's HBsAg test results, or the basis of the objection to the test, in the medical record for that patient.

(5) Every hospital and birthing facility shall develop a policy to assure that:

(a) when a pregnant woman is admitted for delivery, or for

monitoring of pregnancy status, the result from a test for HBsAg performed on that woman during that pregnancy is available for review and documented in the hospital record ;

(b) when a pregnant woman is admitted for delivery if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg as soon as possible, but before discharge from the hospital or birthing facility;

(c) if a pregnant woman who has not had prenatal care during that pregnancy is admitted for monitoring of pregnancy status only, if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg status before discharge from the hospital or birthing facility;

(d) positive HBsAg results identified by testing performed or documented during the hospital stay are reported as specified in this rule;

(e) infants born to HBsAg positive mothers receive hepatitis B immune globulin (HBIG) and hepatitis B vaccine, administered at separate injection sites, within 12 hours of birth;

(f) infants born to mothers whose HBsAg status is unknown receive hepatitis B vaccine within 12 hours of birth, and if the infant is born preterm with birth weight less than 2,000 grams, that infant also receives HBIG within 12 hours; and

(g) if at the time of birth the mother's HbsAg status is unknown and the HBsAg test result is later determined to be positive, that infant receives HBIG as soon as possible but within 7 days of birth.

(6) Local health departments shall perform the following activities or assure that they are performed:

(a) Infants born to HBsAg positive mothers complete the hepatitis B vaccine series as specified in Table 3.18, page 328 and Table 3.21, page 333 of the reference listed in subsection (9).

(b) Children born to HBsAg positive mothers are tested for HBsAg and antibody against hepatitis B surface antigen (anti-HBs) at 9 to 15 months of age (3-9 months after the third dose of hepatitis B vaccine) to monitor the success of therapy and identify cases of perinatal hepatitis B infection.

(i) Children who test negative for HBsAg and do not demonstrate serological evidence of immunity against hepatitis B when tested as described in (b) receive additional vaccine doses and are retested as specified on page 332 of the reference listed in subsection (9).

(c) HBsAg positive mothers are advised regarding how to reduce their risk of transmitting hepatitis B to others.

(d) Household members and sex partners of HBsAg positive mothers are evaluated to determine susceptibility to hepatitis B infection and if determined to be susceptible, are offered or advised to obtain vaccination against hepatitis B.

(7) The provisions of subsections (5) and (6) do not apply if the pregnant woman or the child's guardian, after being informed of the possible consequences, objects to any of the required procedures on the basis of religious or moral beliefs. The hospital or birthing facility shall document the basis of the objection.

(8) Prevention of transmission by individuals with chronic hepatitis B infection.

(a) An individual with chronic hepatitis B infection is defined as an individual who is:

(i) HBsAg positive, and total antibody against hepatitis B core antigen (anti-HBc) positive (if done) and IgM anti-HBc negative; or

(ii) HBsAg positive on two tests performed on serum samples obtained at least 6 months apart.

(b) An individual with chronic hepatitis B infection should be advised regarding how to reduce the risk that the individual will transmit hepatitis B to others.

(c) Household members and sex partners of individuals with chronic hepatitis B infection should be evaluated to determine susceptibility to hepatitis B infection and if determined to be susceptible, should be offered or advised to obtain vaccination against Hepatitis B.

(9) The Red Book, 2003 Report of the Committee on Infectious Diseases, as referenced in R386-702-12(4) is the reference source for details regarding implementation of the requirements of this section.

R386-702-10. Public Health Emergency.

(1) Declaration of Emergency: With the Governor's and Executive Director's or in the absence of the Executive Director, his designee's, concurrence, the Department or a local health department may declare a public health emergency by issuing an order mandating reporting emergency illnesses or health conditions specified in sections R386-702-3 for a reasonable time.

(2) For purposes of an order issued under this section and for the duration of the public health emergency, the following definitions apply.

(a) "emergency center" means:

(i) a health care facility licensed under the provisions of Title 26, Chapter 21, Utah Code, that operates an emergency department; or

(ii) a clinic that provides emergency or urgent health care to an average of 20 or more persons daily.

(b) "encounter" means an instance of an individual presenting at the emergency center who satisfies the criteria in section R386-702-3(2); and

(c) "diagnostic information" means an emergency center's records of individuals who present for emergency or urgent treatment, including the reason for the visit, chief complaint, results of diagnostic tests, presenting diagnosis, and final diagnosis, including diagnostic codes.

(3) Reporting Encounters: The Department shall designate the fewest number of emergency centers as is practicable to obtain the necessary data to respond to the emergency.

(a) Designated emergency centers shall report using the process described in R386-702-4.

(b) An emergency center designated by the Department shall report the encounters to the Department by:

(i) allowing Department representatives or agents, including local health department representatives, to review its diagnostic information to identify encounters during the previous day; or

(ii) reviewing its diagnostic information on encounters during the previous day and reporting all encounters by 9:00 a.m. the following day, or

(iii) identifying encounters and submitting that information electronically to the Department, using a computerized analysis method, and reporting mechanism and schedule approved by the Department; or

(iv) by other arrangement approved by the Department.

(4) For purposes of epidemiological and statistical analysis, the emergency center shall report on encounters during the public health emergency that do not meet the definition for a reportable emergency illness or health condition. The report shall be made using the process described in 702-9(3)(b) and shall include the following information for each such encounter:

(a) facility name;

(b) date of visit;

(c) time of visit;

(d) patient's age;

(e) patient's sex;

(f) patient's zip code for patient's residence.

(5) If either the Department or a local health department collects identifying health information on an individual who is the subject of a report made mandatory under this section, it shall destroy that identifying information upon the earlier of its determination that the information is no longer necessary to

carry out an investigation under this section or 180 days after the information was collected. However, the Department and local health departments shall retain identifiable information gathered under other sections of this rule or other legal authority.

(6) Reporting on encounters during the public health emergency does not relieve a reporting entity of its responsibility to report under other sections of this rule or other legal authority.

R386-702-11. Penalties.

Any person who violates any provision of R386-702 may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

R386-702-12. Official References.

All treatment and management of individuals and animals who have or are suspected of having a communicable or infectious disease that must be reported pursuant to this rule shall comply with the following documents, which are adopted and incorporated by reference:

(1) American Public Health Association. "Control of Communicable Diseases Manual". 18th ed., Heymann, David L., editor, 2004.

(2) Centers for Disease Control and Prevention. Recommendation of the Immunization Practices Advisory Committee (ACIP): Human rabies Prevention - United States, 1999. "Morbidity and Mortality Weekly Report." 1999; 48: RR-1, 1-21.

(3) The National Association of State Public Health Veterinarians, Inc., "Compendium of Animal Rabies Prevention and Control, 2006, Part II."

(4) American Academy of Pediatrics. "Red Book: 2003 Report of the Committee on Infectious Diseases" 26th Edition. Elk Grove Village, IL, American Academy of Pediatrics; 2003.

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R388. Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health.
R388-803. HIV Test Reporting.
R388-803-1. Authority and Purpose.

(1) Authority for this rule is established in Title 26, Chapter 6, Sections 3 and 3.5 of the Utah Communicable Disease Control Act.

(2) This rule establishes requirements for:

(a) reporting screening, diagnostic, and treatment test results related to Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS); and

(b) partner identification and notification.

(c) Reporting of HIV infection and AIDS is required by R386-702, Communicable Disease Rule.

R388-803-2. Reporting of AIDS, HIV Infection, and Related Tests.

(1) A health care provider who administers or causes to have administered any of the following tests shall report all positive results to the Utah Department of Health or the local health department where the patient resides:

(a) presence of antibodies to HIV, repeatedly reactive on two or more tests; presence of antibodies to HIV that are verified by a positive confirmatory test; repeatedly reactive tests with indeterminate confirmatory tests.

(b) presence of HIV antigen;

(c) isolation of HIV;

(d) demonstration of HIV proviral DNA;

(e) demonstration of HIV specific nucleic acids; and

(f) any other test or condition indicative of HIV infection.

(2) A health care provider who administers or causes to have administered any of the following tests shall report the results of each test to the Utah Department of Health or the local health department where the patient resides:

(a) CD4+ T-Lymphocyte tests; and

(b) HIV viral load determination;

(3)(a) A laboratory that analyzes samples for any of the tests listed in subsection (1) shall report all positive results to the Utah Department of Health or the local health department where the patient resides, except that it need not report patient name if it does not have the name.

(b) A laboratory that analyzes samples for any of the tests listed in subsection (2) shall report all results to the Utah Department of Health or the local health department where the patient resides, except that it need not report patient name if it does not have the name.

(4) Reports shall include:

(a) patient name, if available;

(b) patient number, if the name is not available;

(c) date of birth;

(d) date of test administration;

(e) test result; and

(f) name of the health care provider who ordered the test.

(5) Reports may be made in writing, by telephone, or by other electronic means acceptable to the Department.

R388-803-3. Exemptions for Reporting of HIV Infection, AIDS and Related Tests.

(1) A university or hospital that conducts research studies exempt from reporting AIDS and HIV infection under Section 26-6-3.5 shall submit the following to the Department:

(a) a summary of the research protocol;

(b) written approval of the institutional review board; and

(c) a letter showing funding sources and the justification for requiring anonymity.

(2) The university or hospital shall provide the Department a quarterly report indicating the number of HIV infected individuals enrolled in the study.

R388-803-4. Partner Identification and Notification.

(1) "Partner" is defined as any individual, including a spouse, who has shared needles, syringes, or drug paraphernalia or who has had sexual contact with an HIV infected individual. "Spouse" is defined as any individual who is the marriage partner of that person at any time within the ten-year period prior to the diagnosis of HIV infection.

(2) If an individual is tested and found to have an HIV infection, the Utah Department of Health or local health department shall conduct partner notification activities.

KEY: HIV/AIDS, reporting, spousal notification
October 19, 1999 26-6-3
Notice of Continuation May 29, 2007

R388. Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health.
R388-804. Special Measures for the Control of Tuberculosis.
R388-804-1. Authority and Purpose.

(1) This rule establishes standards for the control and prevention of tuberculosis as required by Section 26-6-4, Section 26-6-6, Section 26-6-7, Section 26-6-8, and Section 26-6-9 of the Utah Communicable Disease Control Act and Title 26, Chapter 6b, Communicable Diseases-Treatment, Isolation and Quarantine Procedures.

(2) The purpose of this rule is to focus the efforts of tuberculosis control on disease elimination. The standards outlined in this rule constitute the minimum expectations in the care and treatment of individuals diagnosed with, suspected to have, or exposed to tuberculosis.

R388-804-2. Definitions.

(1) The definitions described in Section 26-6b apply to this rule, and in addition:

(a) Tuberculosis. A disease caused by Mycobacterium tuberculosis complex, i.e., Mycobacterium tuberculosis, Mycobacterium bovis, or Mycobacterium africanum.

(b) Case of tuberculosis. An episode of tuberculosis disease meeting the clinical or laboratory criteria for tuberculosis as defined in the document entitled "Case Definitions for Infectious Conditions Under Public Health Surveillance." The Department incorporates by reference the Centers for Disease Control and Prevention "Case Definitions for Infectious Conditions under Public Health Surveillance," MMWR;46(no. RR-10):40-41, 1997.

(c) Tuberculosis infection. The presence of M. tuberculosis in the body but the absence of clinical or radiographic evidence of active disease as documented by a significant tuberculin skin test, a negative chest radiograph and the absence of clinical signs and symptoms.

(d) Tuberculosis disease. A state of infectious or communicable tuberculosis, pulmonary or extra-pulmonary, as determined by a chest radiograph, the bacteriologic examination of body tissues or secretions, other diagnostic procedures or physician diagnosis.

(e) Directly observed therapy. A method of treatment in which health-care providers or other designated individuals physically observe the individual ingesting anti-tuberculosis medications.

(f) Drug resistant tuberculosis. Tuberculosis bacteria which is resistant to one or more anti-tuberculosis drug.

(g) Multi-drug resistant tuberculosis. Tuberculosis bacteria which is resistant to at least isoniazid and rifampin.

(h) Suspect case. An individual who is suspected to have tuberculosis disease, e.g., a known contact to an active tuberculosis case or a person with signs and symptoms consistent with tuberculosis.

(i) Program. Utah Department of Health: Bureau of HIV/AIDS, Tuberculosis Control and Refugee Health: Tuberculosis Control/Refugee Health Program.

(j) Department. Utah Department of Health.

R388-804-3. Required Reporting.

(1) Tuberculosis is a reportable disease. Individuals shall immediately notify the Department by telephone of all suspect and confirmed cases of pulmonary and extra-pulmonary tuberculosis as required by R386-702-2, R386-702-3.

(2) The report may also be made to the local health department, who shall notify the Department of all suspect and confirmed cases within 72 hours of report.

R388-804-4. Screening Priorities and Procedures.

(1) Private physicians and local health departments shall screen individuals considered to be at high risk for tuberculosis disease and infection before screening is conducted in the general population. Priorities shall be established based on those at greatest risk for disease and in consideration of the resources available.

(2) Individuals considered at high risk for tuberculosis include the following:

(a) Close contacts of those with infectious tuberculosis;

(b) Persons infected with human immunodeficiency virus;

(c) Individuals who inject illicit drugs;

(d) Inmates of adult and youth correctional facilities;

(e) Residents of nursing homes, mental institutions, other long term residential facilities and homeless shelters;

(f) Recently arrived foreign-born individuals, within five years, from countries that have a high tuberculosis incidence or prevalence;

(g) Low income or traditionally under-served groups with poor access to health care, e.g., migrant farm workers and homeless persons;

(h) Individuals who are substance abusers and members of traditionally under-served groups;

(i) Individuals with certain medical conditions that may predispose them to tuberculosis infection and disease, e.g., diabetes, cancer, silicosis, and immune-suppressive disorders;

(j) Individuals who have traveled for extended periods of time in countries that have a high tuberculosis incidence or prevalence;

(k) Other groups may be identified by order of the Department, as needed to protect public health.

(3) Employers who are required to follow Occupational Safety and Health Administration guidelines for the prevention of tuberculosis transmission disease shall develop and implement an employee screening program.

(4) Tuberculosis screening by skin test shall be completed using the Mantoux tuberculin skin test method.

(a) Screening for tuberculosis with chest radiographs or sputum smears to identify individuals with tuberculosis disease is acceptable in places where the risk of transmission is high and the time required to give the skin test makes the method impractical.

(b) If the skin test yields results indicating tuberculosis exposure, the individual shall be referred for further medical evaluation.

R388-804-5. Diagnostic Criteria.

(1) The Department incorporates by reference the American Thoracic Society (ATS/CDC) diagnostic and classification standards as described in the segment entitled "Diagnostic Standards and Classification of Tuberculosis in Adults and Children," published in the American Journal of Respiratory and Critical Care Medicine, Vol 161, pp. 1376-1395, 2000. In diagnosing tuberculosis, health care providers shall be expected to adhere to the standards listed in this document.

R388-804-6. Treatment and Control.

(1) The Department incorporates by reference the ATS/CDC treatment standards as described in the segment entitled "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children," as published in the American Journal of Respiratory and Critical Care Medicine, Vol 149, pp. 1359-1374, 1994 and "Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection," American Journal of Respiratory and Critical Care Medicine, Vol. 161, pp. S221-S247, 2000. In treating tuberculosis, health care providers shall be expected to adhere to the standards listed in this document.

(2) A health-care provider who treats an individual with tuberculosis disease shall use the ATS/CDC treatment standards as a reference for the development of a comprehensive treatment and follow-up plan for each individual. The plan shall be

developed in cooperation with the individual and approved by the local health department or the Program. Health-care providers shall routinely document an individuals' adherence to prescribed therapy for tuberculosis infection and disease. If isolation is indicated, the plan for isolation shall be approved by the local health department or the Program.

(3) A health-care provider who treats an individual with tuberculosis disease shall provide for directly observed therapy for individuals who do not adhere to self-administered therapy, have drug-resistant tuberculosis or have multi-drug resistant tuberculosis.

(4) Individuals with infectious tuberculosis disease shall wear a mask approved by the local health department or the Program when outside the isolation area.

R388-804-7. Epidemiologic Investigations.

(1) The local health department shall conduct a contact investigation immediately upon report of a suspected or confirmed case of tuberculosis disease.

(2) The contact investigation shall include interviewing, counseling, educating, examining and obtaining comprehensive information about those who have been in contact with individuals who have infectious tuberculosis. The investigation shall begin within three days of notification and be completed within fourteen days of notification.

R388-804-8. Payment for Isolation and Quarantine.

(1) Individuals who are quarantined at the expense of the Department shall provide the Department with information to determine if any other payment source for the costs associated with quarantine are available.

R388-804-9. Penalty for Violation.

(1) Any person who violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: tuberculosis, screening, communicable disease

February 2, 2001	**26-6-4**
Notice of Continuation May 29, 2007	**26-6-6**
	26-6-7
	26-6-8
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	26-6b

R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-302. Design, Construction and Operation of Public Pools.
R392-302-1. Authority and Purpose of Rule.

This rule is authorized under Section 26-15-2. It establishes minimum standards for the design, construction, operation and maintenance of public pools. This rule does not regulate any pool used only by an individual, family, or members or guests of multiple housing units of three or fewer units.

R392-302-2. Definitions.

The following definitions apply in this rule.

(1) "Bather Area" means any area normally occupied by bathers as they participate in bathing activities. Bather areas include pools, decks, slides, and dressing rooms.

(2) "Bather Load" means the number of persons using a pool at any one time or specified period of time.

(3) "Department" means the Utah Department of Health.

(4) "Diver area" means the area of a pool that is designed, operated, and reserved around each diving board or platform.

(5) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.

(6) "Facility" means any premises, building, pool, equipment, system, and appurtenance which appertains to the operation of a public pool.

(7) "Float Tank or Relaxation Tank" means a tank containing skin-temperature salt water that is designed to provide for solitary body floatation upon or within the water.

(8) "High Bather Load" means 90% or greater of the designed maximum bather load."

(9) "Hydrotherapy Pool" means a pool designed primarily for medically prescribed therapeutic use.

(10) "Illuminance Uniformity" means the ratio between the brightest illuminance falling on a surface compared to the lowest illuminance falling on a surface within an area. The value of illuminance falling on a surface is measured in foot candles.

(11) "Lamp Lumens" means the quantity of light, illuminance, produced by a lamp.

(12) "Lifeguard" means an attendant who supervises the safety of bathers.

(13) "Living Unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.

(14) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.

(15) "Non-swimmer area" means each area of a pool with water 5 feet, 1.52 meters, or less in depth.

(16) "Pool" means a man-made basin, chamber, receptacle, tank, or tub which, when filled with water, creates an artificial body of water used for swimming, bathing, diving, recreational and therapeutic uses.

(17) "Pool Deck" means the area contiguous to the outside of the pool curb, diving boards, diving towers and slides.

(18) "Private Residential Pool" means a swimming pool, spa pool or wading pool used only by an individual, family, or living unit members and guests, but not serving any type of multiple unit housing complex of four or more living units.

(19) "Public Pool" means a swimming pool, spa pool, wading pool, or special purpose pool facility which is not a private residential pool."

(20) "Saturation Index" means a value determined by application of the formula for calculating the saturation index in Table 5, which is based on interrelation of temperature, calcium hardness, total alkalinity and pH which indicates if the pool water is corrosive, scale forming or neutral.

(21) "Spa Pool" means a pool which uses therapy jet circulation, hot water, cold water, bubbles produced by air induction, or any combination of these, to impart a massaging effect upon a bather. Spa pools include, spas, whirlpools, hot tubs, or hot spas.

(22) "Special Purpose Pool" means a pool with design and operational features that provide patrons recreational, instructional, or therapeutic activities which are different from that associated with a pool used primarily for swimming, diving, or spa bathing.

(23) "Splash Pool" means the area of water located at the terminus of a water slide or vehicle slide.

(24) "Swimmer area" means each area of a pool with water over 5 feet, 1.52 meters, in depth, which is not designed, operated, or reserved as a diver area.

(25) "Swimming Pool" means a pool used primarily for recreational, sporting, or instructional purposes in bathing, swimming, or diving activities.

(26) "Surge Tank" means a tank receiving the gravity flow from an overflow gutter and main drain or drains from which the circulation pump takes water which is returned to the system.

(27) "Turnover" means the circulation of a quantity of water equal to the pool volume through the filter and treatment facilities.

(28) "Vehicle Slide" means a recreational pool where bathers ride vehicles, toboggans, sleds, etc., down a slide to descend into a splash pool.

(29) "Wading Pool" means any pool or pool area used or designed to be used by children five years of age or younger for wading or water play activities.

(30) "Water play activity" means play associated with or facilitated by playground type equipment or recreational features and incorporates water as part of its designed function. Water play does not include swimming, diving, waterslides as described in R392-302-31,or organized sports, or instruction of these activities.

(31) "Water Slide" means a recreational facility consisting of flumes upon which bathers descend into a splash pool.

R392-302-3. General Requirements.

This rule does not require a construction change in any portion of a public pool facility if the facility was installed and in compliance with law in effect at the time the facility was installed, except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order construction changes consistent with the requirements of this rule to existing facilities.

R392-302-4. Water Supply.

(1) The water supply serving a public pool and all plumbing fixtures, including drinking fountains, lavatories and showers, must meet the requirements for drinking water established by the Department of Environmental Quality.

(2) All portions of water supply, re-circulation, and distribution systems serving the facility must be protected against backflow. Water introduced into the pool, either directly or through the circulation system, must be supplied through an air gap.

R392-302-5. Sewer System.

(1) Each public pool must discharge waste water to a public sanitary sewer system if the sewer system is within 300 feet of the property line. Where no public sanitary sewer system

is available within 300 feet of the property line, the local health department may approve connections made to a disposal system designed, constructed, and operated in accordance with the minimum requirements of the Department of Environmental Quality.

(2) Each public pool must connect to a sewer or wastewater disposal system through an air break to preclude the possibility of sewage or waste backup into the piping system.

R392-302-6. Construction Materials.

(1) Each public pool and the appurtenances necessary for its proper function and operation must be constructed of materials which are inert, non-toxic to humans, impervious, enduring over time, and resists the affects of wear and deterioration from chemical, physical, radiological, and mechanical actions.

(2) Construction of a public pool must withstand the stresses associated with the normal uses for which the public pool was designed.

(3) Each pool shell must be bonded to the supporting members.

(4) Each pool shell must be designed and constructed in a manner that provides a smooth, easily cleanable surface.

(5) Except for spa pools, the pool shell surface must be of a white or light pastel color.

(6) Sand, clay, or earth bottoms are prohibited.

(7) Vinyl or other flexible liners are prohibited.

(8) The pool shell surface coatings and textures, including flexible coating materials of at least 60 mils in thickness, may be used if they are bonded to a pool shell that is constructed as provided in Subsections R392-302-6(1), (2) and (3).

(a) The coatings must provide a smooth surface that is easily cleanable.

(b) The coatings must be slip resistant.

(9) The pool shell surfaces must be free of cracks or open joints with the exception of structural expansion joints.

(10) A pool shell constructed of materials other than concrete must:

(a) be listed by the International Association of Plumbing and Mechanical Officials (IAPMO) and the spa or other pool basin or tub shall bear the IAPMO logo; or

(b) meet construction and material standards that are equivalent to IAPMO's.

R392-302-7. Bather Load.

(1) The bather load capacity for each area of a public pool is determined as follows:

(a) Ten square feet, 0.929 square meters, of pool water surface area must be provided for each bather in a non-swimmer area during maximum load.

(b) Twenty-four square feet, 2.23 square meters, of pool water surface area must be provided for each bather in a swimmer area during maximum load.

(c) Three hundred square feet, 27.87 square meters, of pool water surface area must be reserved for each diving area. This area may not be included in computing swimmer and non-swimmer areas.

(d) A design limit of nine persons is allowed for each diving area.

(2) The department may make additional allowance for bathers when the facility operator can demonstrate that lounging and sunbathing patrons will not adversely affect water quality due to over-loading of the pool.

R392-302-8. Design Detail and Structural Stability.

(1) The designing architect or engineer is responsible to certify the design for structural stability and safety of the public pool.

(2) The shape of a pool and design and location of appurtenances must be such that the circulation of pool water and control of swimmer's safety are not impaired. The designing architect or engineer shall designate sidewalls and endwalls on pool plans. The pool design shall separate wading pools from other pools. Wading pools may not share common circulation, filtration, or chemical treatment systems, or walls.

(3) A pool must have a circulation system with necessary treatment and filtration equipment as required in R392-302-16, unless turnover rate requirements as specified in sub-section R392-302-16(1) can be met by continuous introduction of fresh water and wasting of pool water under conditions satisfying all other requirements of this rule.

(4) Where a facility is subject to freezing temperatures, all parts of the facility subject to freezing damage must be adequately and properly protected from damage due to freezing, including the pool, piping, filter system, pump, motor, and other components and systems.

(5) The pool operator or the designing architect or engineer shall submit plans for a new pool, pool renovation or pool remodeling project to the local health department for approval. This includes the replacement of equipment which is different from that originally approved by a health authority having jurisdiction. The local health department may require a pool renovation or pool remodeling project to meet the current requirements of R392-302.

R392-302-9. Depths and Floor Slopes.

(1) In determining the horizontal slope ratio of a pool floor, the first number shall indicate the vertical change in value or rise and the second number shall indicate the horizontal change in value or run of the slope.

(a) The horizontal slope of the floor of any portion of a pool having a water depth of less than 5 feet, 1.52 meters, may not be steeper than a ratio of 1 to 10.

(b) The horizontal slope of the floor of any portion of a pool having a water depth greater than 5 feet, 1.52 meters, must be uniform, must allow complete drainage and may not exceed a ratio of 1 to 3. The horizontal slope of the pool bottom in diving areas must be consistent with the requirements for minimum water depths as specified in Section R392-302-11 for diving areas.

(2) A wading pool may not exceed a maximum water depth of 2 feet, 60.96 centimeters.

(3) A spa pool may not exceed a maximum water depth of 4 feet, 1.22 meters. The department may grant exceptions for a spa pool designed for special purposes, such as instruction, treatment, or therapy.

R392-302-10. Walls.

(1) Pool walls must be vertical or within 11 degrees of vertical for a minimum distance of 2 feet 9 inches, 83.82 centimeters, below the water line in areas with a depth of 5 feet, 1.52 meters, or greater. Pool walls must be vertical or within 11 degrees of vertical for a minimum distance equal to or greater than one half the pool depth as measured from the water line.

(2) Where walls form an arc to join the floors, the transitional arc from wall to floor must:

(a) Have its center no less than 2 feet 9 inches, 83.82 centimeters, below the normal water level in areas with a depth greater than 5 feet, 1.52 meters.

(b) Have its center no less than 75% of the pool depth beneath the normal water level, in areas of the pool with a depth of 5 feet, 1.52 meters, or less.

(c) Be tangent to the wall.

(d) Have a radius at least equal to or greater than the depth of the pool minus the vertical wall depth measured from the water line, as described in Subsection R392-302-9(1), minus 3 inches, 7.62 centimeters, to allow draining to the main drain. Radius minimum = Pool Depth - Vertical wall depth - 3 inches,

7.62 centimeters, where the water depth is greater than 5 feet, 1.52 meters.

(e) Have a radius which may not exceed a length greater than 25% of the water depth, in areas with a water depth of 5 feet, 1.52 meters, or less.

(3) Underwater ledges are prohibited.

R392-302-11. Diving Areas.

(1) Where diving is permitted, the diving area design, equipment placement, and clearances must meet the minimum standards established by the USA Diving Rules and Regulations 2004, Appendix B, which are incorporated by reference.

(2) Where diving from a height of less than 3.28 feet, 1 meter, from normal water level is permitted, the diving bowl shall meet the minimum depths outlined in Section 6, Figure 1 and Table 2 of ANSI/NSPI-1, 2003, which is adopted by reference, for type VI, VII and VIII pools according to the height of the diving board above the normal water level. ANSI/NSPI pool type VI is a maximum of 26 inches, 2/3 meter, above the normal water level; type VII is a maximum of 30 inches, 3/4 meter, above the normal water level; and type VIII is a maximum of 39.37 inches, 1 meter, above the normal water level.

(3) The use of a starting platform is restricted to competitive swimming events or supervised training for competitive swimming events.

(a) If starting platforms are used for competitive swimming or training, the water depth shall be at least four feet.

(b) The operator shall either remove the starting platforms or secure them with a lockable cone-type platform safety cover when not in competitive use.

(4) Areas of a pool where diving is not permitted must have "NO DIVING" or the international no diving icon, or both provided in block letters at least four inches in height in a contrasting color on the deck, located on the horizontal surface of the deck or coping as close to the water's edge as practical.

(a) Where the "NO DIVING" warnings are used, the spacing between each warning may be no greater than 25 feet.

(b) Where the icon alone is used on the deck as required, the operator shall also post at least one "NO DIVING" sign in plain view within the enclosure. Letters shall be at least four inches in height with a stroke width of at least one-half inch.

R392-302-12. Ladders, Recessed Steps, and Stairs.

(1) In areas of a pool where the water depth is greater than 2 feet, 60.96 centimeters, and less than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, steps or ladders must be provided, and be located in the area of shallowest depth.

(2) In areas of the pool where the water depth is greater than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, ladders or recessed steps must be provided.

(3) A pool over 30 feet, 9.14 meters, wide must be equipped with steps, recessed steps, or ladders as applicable, installed on each end of both side walls.

(4) A pool over 30 feet, 9.14 meters, wide and 75 feet, 22.8 meters, or greater in length, must have ladders or recessed steps midway on both side walls of the pool, or must have ladders or recessed steps spaced at equal distances from each other along both sides of the pool at distances not to exceed 30 feet, 9.14 meters, in swimming and diving areas, and 50 feet, 15.23 meters, in non-swimming areas.

(5) Ladders or recessed steps must be located within 15 feet, 4.56 meters, of the diving area end wall.

(6) The steps, recessed steps, and ladders, must have one or more handrails.

(a) Handrails must be rigidly installed and constructed in such a way that they can only be removed with tools.

(b) Handrails must be constructed of corrosion resistant materials.

(c) The outside diameter of handrails may not exceed 2 inches, 5.08 centimeters.

(d) Submerged steps or rungs which are not recessed must be guarded by handrails. The hand rail must be mounted on the deck and extend to the bottom step.

(7) Steps must be constructed of corrosion-resistant material, be easily cleanable, and be of a safe design.

(a) Steps leading into pools must be of non-slip design, have a minimum run of 10 inches, 25.4 centimeters, and a maximum rise of 12 inches, 30.48 centimeters.

(b) Steps must have a line at least 1 inch, 2.54 centimeters, in width, and be of a contrasting dark color for maximum visual distinction within 2 inches, 5.08 centimeters, of the leading edge of each step.

(c) Steps must have a minimum width of 18 inches, 45.72 centimeters, as measured at the leading edge of the step.

(d) In a spa pool where the bottom step serves as a bench or seat, the bottom riser must be a maximum of 14 inches, 35.56 centimeters.

(8) Pool ladders must meet the following requirements:

(a) Pool ladders must be corrosion-resistant and must be equipped with non-slip rungs.

(b) All ladders must be designed to provide a handhold and must be rigidly installed.

(c) There must be a clearance of not more than 5 inches, 12.7 centimeters, nor less than 3 inches, 7.62 centimeters, between any ladder rung and the pool wall.

(9) Full or partial recessed steps must meet the following requirements:

(a) Where full or partial recessed steps are used, a set of handrails must be located at the top of the course with a rail on each side. The handrails must extend over the coping or edge of the deck.

(b) Full or partial recessed steps must be designed to be readily cleanable and to provide drainage into the pool to prevent the accumulation of dirt on the step.

(c) Full or partial recessed steps must have a minimum run of 5 inches, 12.7 centimeters, and a minimum width of 14 inches, 35.56 centimeters.

(10) The designing architect or engineer or the facility owner must anticipate maximum loads on supports, platforms and steps for diving boards, and ensure that supports, platforms, and steps are of substantial construction and of sufficient structural strength to safely carry the maximum anticipated loads.

(a) Handrails must be provided at all steps and ladders leading to diving boards more than 3'3" feet, 1 meter, above the water.

(11) Platforms and diving boards which are over 3'3" feet, 1 meter, high, must be designed to protect divers from falls to the deck or pool curb by the installation of guard railings.

(12) A spa pool must be equipped with at least one handrail for each 50 feet, 15.24 meters, of perimeter, or portion thereof, to designate the point of entry and exit. Points of entry and exit must be evenly spaced around the perimeter of the spa pool and afford unobstructed entry and egress.

R392-302-13. Decks and Walkways.

(1) A continuous, unobstructed deck at least 5 feet, 1.52 meters, wide as measured from the pool side edge of the coping must extend completely around the pool.

(2) At least 5 feet, 1.52 meters, of deck area must be provided behind the deck end of any diving board, platform, slide, step, or ladder.

(3) The deck must slope away from the pool to floor drains at a grade of 1/4 inch, 6.35 millimeters, to 3/8 inch, 9.53 millimeters, per linear foot.

(4) Decks and walkways must be maintained free of standing water and must have non-slip surfaces.

(5) Wooden decks, walks or steps are prohibited.

(a) The department may grant exceptions for deck construction materials for spa pools or other applications where sealed, clear-heart redwood is used.

(6) Deck drains may not return water to the pool or the circulation system.

(7) Decks must be maintained in a sanitary condition and free from litter.

(8) Carpeting may not be installed within 5 feet, 1.52 meters, of the water side edge of the coping and must be wet vacuumed as often as necessary to keep it clean and free of accumulated water.

(9) Steps serving decks must meet the following requirements:

(a) Risers of steps for the deck must be uniform and have a minimum height of 3-3/4 inches, 9.53 centimeters, and a maximum height of 7-3/4 inches, 19.7 centimeters.

(b) The minimum run of steps shall be 10 inches, 25.4 centimeters.

(c) Steps must have a minimum width of 18 inches, 45.72 centimeters.

(10) The deck of a wading pool may be included as part of adjacent pool decks.

(11) A spa deck must meet each of the following requirements:

(a) A spa pool must have a continuous, unobstructed deck at least 3 feet, 91.44 centimeters, wide around 25 percent or more of the spa. This width may include the coping.

(b) A pool deck may be included as part of the spa deck if the pools are separated by a minimum of 5 feet, 1.52 meters. The department may grant an exception to deck and pool separation requirements if a spa pool and another pool are constructed adjacent to each other and share a common pool sidewall which separates the two pools. The common pool side wall may not exceed 12 inches, 30.48 centimeters, in width.

R392-302-14. Fencing.

(1) A fence or other barrier is required and must provide complete perimeter security of the facility, and be at least 6 feet, 1.83 meters, in height. Openings through the fence or barrier, other than entry or exit access, may not permit a sphere greater than 4 inches, 10.16 centimeters, to pass through it at any location.

(a) If the local health department determines that the safety of children is not compromised, it may exempt indoor pools from the fencing requirements.

(b) The local health department may grant exceptions to the height requirements in consideration of architectural and landscaping features for pools designed for hotels, motels and apartment houses.

(2) A fence or barrier that has an entrance to the facility must be equipped with a self-closing and self-latching gate or door. Except for self-locking mechanisms, self-latching mechanisms must be at least 54 inches, 1.37 meters, above the ground and must be provided with hardware for locking the gate when the facility is not in use.

(3) Bathing areas must be separated from non-bathing areas by barriers with a minimum height of 4 feet, 1.22 meters, or by a minimum of 5 feet, 1.53 meters, distance separation.

R392-302-15. Depth Markings and Safety Ropes.

(1) The depth of the water must be plainly marked at locations of maximum and minimum pool depth, and at the points of separation between the swimming and non-swimming areas of a pool. Pools must also be marked at intermediate 1 foot, 30.48 centimeters, increments of depth, spaced at distances which do not exceed 25 feet, 7.62 meters. Markings must be located above the water line or within 2 inches, 5.8 centimeters, from the coping on the vertical wall of the pool and on the edge of the deck or walk next to the pool with numerals at least 4 inches, 10.16 centimeters, high.

(2) A pool with both swimming and diving areas must have a floating safety rope separating the swimming and diving areas. An exception to this requirement is made for special activities, such as swimming contests or training exercises when the full unobstructed length of the pool is used.

(a) The safety rope must be securely fastened to wall anchors. Wall anchors must be of corrosion-resistant materials and must be recessed or have no projections that may be a safety hazard if the safety rope is removed.

(b) The safety rope must be marked with visible floats spaced at intervals of 7 feet, 2.13 meters or less.

(c) The rope must be at least 0.5 inches, 1.27 centimeters, in diameter, and of sufficient strength to support the loads imposed on it during normal bathing activities.

(3) A pool constructed with a change in the slope of the pool floor must have the change in slope designated by a floating safety rope and a line of demarcation on the pool floor.

(a) The floating safety rope designating a change in slope of the pool floor must be attached at the locations on the pool wall that place it directly above and parallel to the line on the bottom of the pool. The floating safety rope must meet the requirements of Subsections R392-302-15(2)(a),(b),(c).

(b) A line of demarcation on the pool floor must be marked with a contrasting dark color.

(c) The line must be at least 2 inches, 5.08 centimeters, in width.

(d) The line must be located 12 inches, 30.48 centimeters, toward the shallow end from the point of change in slope.

(4) The department may exempt a spa pool from the depth marking requirement if the spa pool owner can successfully demonstrate to the department that bather safety is not compromised by the elimination of the markings.

R392-302-16. Circulation Systems.

(1) A circulation system, consisting of pumps, piping, filters, water conditioning and disinfection equipment and other related equipment must be provided. The normal water line of the pool must be maintained within 9 inches, 22.86 centimeters, of the deck whenever the pool is open for bathing. An exemption to this requirement may be granted by the department if it can be demonstrated that the safety of the bathers is not compromised.

(a) Except for spas, wading pools, wave pools, slide pools, vehicle slide pools, and floatation tanks, the circulation system shall clarify and disinfect the entire volume of pool water in eight hours or less, thus providing a minimum turnover of at least three times in 24 hours.

(b) The turnover rate must be increased to provide a six hour turnover for pools subjected to high bather loads if a review of bacteriological water quality reports by the department or local health department having jurisdiction demonstrates that high bather loads may have contributed to unsatisfactory water samples.

(c) The circulation equipment must be operated continuously except for periods of routine or other necessary maintenance and must be designed to permit complete drainage of the system. Table 1 further describes these requirements.

(d) Piping must be of non-toxic material, resistant to corrosion and be able to withstand operating pressures.

(e) Plumbing must be identified by a color code or labels.

(2) The water velocity in discharge piping may not exceed 10 feet, 3.05 meters, per second, except for copper pipe where the velocity for piping may not exceed 8 feet, 2.44 meters, per second.

(3) Suction velocity for all piping may not exceed 6 feet,

1.83 meters, per second.

(4) The circulation system must include a strainer to prevent hair, lint, etc., from reaching the pump.

(a) Strainers must be corrosion-resistant with openings not more than 1/8 inch, 3.18 millimeters, in size.

(b) Strainers must provide a free flow capacity of at least four times the area of the pump suction line.

(c) Strainers must be readily accessible for frequent cleaning.

(d) Strainers must be maintained in a clean and sanitary condition.

(e) Each pump strainer must be provided with necessary valves to facilitate cleaning of the system without excessive flooding.

(5) A vacuum-cleaning system must be provided.

(a) If this system is an integral part of the circulation system, connections must be located in the walls of the pool, at least 8 inches, 20.32 centimeters, below the water line. This requirement does not apply to vacuums operated from skimmers.

(b) The number of connections provided must facilitate access to all areas of the pool through hoses less than 50 feet, 15.24 meters, in length.

(6) A rate-of-flow indicator, reading in gallons per minute, must be properly installed and located according to manufacturer recommendations. The indicator must be located in a place and position where it can be easily read.

(7) Pumps must be of adequate capacity to provide the required number of turnovers of pool water as specified in Subsection R392-302-16, Table 1. The pump or pumps must be capable of providing flow adequate for the backwashing of filters. Under normal conditions, the pump or pumps must supply the circulation rate of flow at a dynamic head which includes, in addition to the usual equipment, fitting and friction losses, an additional loss of 15 feet, 4.57 meters, for rapid sand filters, vacuum diatomite filters or vacuum cartridge filters and 40 feet, 12.19 meters, for pressure diatomite filters, high rate sand filters or cartridge filters, as well as pool inlet orifice loss of 15 feet, 4.57 meters.

(8) A pool equipped with heaters must meet the requirements for boilers and pressure vessels as required by the State of Utah Boiler and Pressure Vessel Rules, R576-201, and must have a fixed thermometer mounted in the pool circulation line downstream from the heater outlet. The heater must be provided with a heatsink as required by manufacturer's instructions.

(9) The area housing the circulation equipment must be designed with adequate working space so that all equipment may be easily disassembled, removed, and replaced for proper maintenance.

(10) All circulation lines to and from the pool must be regulated with valves in order to control the circulation flow.

(a) All valves must be located where they will be readily and easily accessible for maintenance and removal.

(b) Multiport valves must comply with National Sanitation Foundation NSF/ANSI 50-2004, which is incorporated and adopted by reference.

(11) Written operational instructions must be immediately available at the facility at all times.

(12) A wading pool must have a minimum of one turnover per hour and have a separate circulation system.

(13) A spa pool must have a minimum of one turnover every 30 minutes. The circulation lines of jet systems and other forms of water agitation used in spa and therapy pool must be independent and separate from the circulation-filtration and heating systems.

(14) Float tank circulation systems, consisting of pumps, piping, filters, and disinfection equipment must be provided which will clarify and disinfect the tank's volume of water in 15 minutes or less. The total volume of water within a float tank must be turned over at least twice between uses by patrons.

(15) Wave pool circulation-filtration systems must be operated at a minimum of one turnover every six hours.

(16) Slide and vehicle slide pools must be operated at a minimum of one turnover every hour.

TABLE 1

Circulation

Type of Pool	Minimum Number of Wall Inlets	Minimum Number of Skimmers per 3,500 square feet or less	Minimum Turnover Time
1. Swim	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters.	8 hours
2. Swim, high bather load	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	6 hours
3. Wading pool	1 per 20 feet, 6.10 meters, minimum of 2 equally spaced	1 per 500 sq. ft. 46.45 sq. meters	1 hour
4. Spa	One per 20 feet, 6.10 meters	1 per 100 sq. ft., 9.29 sq. meters	30 minutes
5. Wave	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	6 hours
6. Slide	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	1 hour
7. Vehicle slide	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	1 hour
8. Float tank	1	1	15 minutes with 2 turnovers between patrons
9. Special Purpose Pool	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	1 hour

(17) Each air induction system installed must comply with the following requirements:

(a) An air induction system must be designed and maintained to prevent any possibility of water back-up that could cause electrical shock hazards.

(b) An air intake may not introduce contaminants such as noxious chemicals, fumes, deck water, dirt, etc. into the pool.

R392-302-17. Inlets.

(1) Inlets for fresh or treated water must be located to produce uniform circulation of water and to facilitate the maintenance of a uniform disinfectant residual throughout the entire pool.

(2) If wall inlets from the circulation system are used, they must be flush with the pool wall and submerged at least 5 feet, 1.52 meters, below the normal water level or at the bottom of the vertical wall surface tangent to the arc forming the transition between the vertical wall and the floor of the pool. Except as provided in Subsections R392-302-17(4) and (5), wall inlets must be placed every 10 feet, 3.05 meters, around the pool perimeter.

(a) The department or the local health officer may require floor inlets to be installed in addition to wall inlets if a pool has a width greater than 50 feet, 4.57 meters, to assure thorough chemical distribution. If floor inlets are installed in addition to

wall inlets, there must be a minimum of one row of floor inlets centered on the pool width. Individual inlets and rows of inlets shall be spaced a maximum of 15 feet, 4.57 meters, from each other. Floor inlets must be at least 15 feet, 4.57 meters, from a pool wall with wall inlets.

(b) Each wall inlet must be designed as a non-adjustable orifice with sufficient head loss to insure balancing of flow through all inlets. The return loop piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(3) If floor inlets from the circulation system are used, they must be flush with the floor. Floor inlets shall be placed at maximum 15 foot, 4.46 meter, intervals. The distance from floor inlets to a pool wall shall not exceed 7.5 feet, 2.29 meters if there are no wall inlets on that wall. Each floor inlet must be designed such that the flow can be adjusted to provide sufficient head loss to insure balancing of flow through all inlets. All floor inlets must be designed such that the flow cannot be adjusted without the use of a special tool to protect against swimmers being able to adjust the flow. The return supply piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(4) A wading pool that utilizes wall inlets shall have a minimum of two equally spaced inlets around its perimeter at a minimum of one in each 20 feet, 6.10 meters, or fraction thereof.

(a) Each wading pool shall have a minimum of two equally spaced wall inlets located to avoid the creation of a vortex in the pool.

(5) Spa pool filtration system inlets shall be wall-type inlets and the number of inlets shall be based on a minimum of one for each 20 feet, 6.10 meters, or fraction thereof, of pool perimeter.

(6) The department may grant an exemption to the inlet placement requirements on a case by case basis for inlet designs that can be demonstrated to produce uniform mixing of pool water.

R392-302-18. Outlets.

(1) Each pool shall have a minimum of either two grated outlets, two anti-entrapment outlets, or two anti-vortex type outlets that meet the following design criteria:

(a) Outlets shall have a suitable protective grate or cover securely fastened in such a way that the use of tools is required to remove it. A pool shall not operate with broken, damaged or missing drain grates or covers. Protective grates or covers shall be listed by a nationally recognized testing laboratory in accordance with ASME/ANSI A112.19.8M.

(b) The outlets must be constructed so that if one of the outlets is completely obstructed, the remaining outlet(s) will be capable of handling 100 percent of the maximum design circulation flow.

(c) All pool outlets must connect to pipes of equal diameter.

(d) The outlet system must not allow any outlet to be cut out of the suction line by a valve or other means.

(e) The outlets centered in the deepest area of the pool must permit the pool to be completely and easily emptied.

(f) There must be one main drain outlet for each 30 feet, 9.14 meters, of pool width. To prevent body entrapment, multiple main drain outlets shall not be spaced more than 30 feet, 9.14 meters, apart nor spaced closer than 4 feet, 1.22 meters, apart. The outermost main drain outlets must be located within 15 feet, 4.57 meters, from a side wall.

(g) If an outlet discharge pipe is 8 inches, 20.32 centimeters, or greater in diameter it shall have an additional device that shall prevent the passage of a sphere greater than 6 inches, 15.24 centimeters, in diameter. Such a device shall be designed by the designing architect or engineer and may not alter the required flow design characteristics.

(h) Devices or methods used for draining pools shall prevent overcharging the sanitary sewer.

(i) Multiple pumps may utilize the same outlets only if the outlets are sized to accommodate 100 percent of the total combined design flow from all pumps and only if the flow characteristics of the system meet the requirements of subsection R392-302-18(2)(a) or (3)(a).

(j) No feature or circulation pump shall be connected to less than two outlets unless connected to an anti-entrapment outlet system that the operator demonstrates to the Department as being effective in preventing entrapment.

(2) Grated Outlets.

(a) The designing architect or engineer shall ensure that outlet grate openings in the floor of the pool are at least four times the area of discharge or provide sufficient area so the maximum velocity of the water passing through the grate will not exceed 1.5 feet per second.

(b) The openings in a grate shall have a minimum width of 0.25 inches, 0.635 centimeters, and a maximum length of 1.5 inches, 3.81 centimeters. A grate opening that is neither square nor rectangular in shape, may not be greater than 0.75 inches, 1.905 centimeters., measured in any dimension along the exposed surface of the grate.

(3) Anti-vortex or anti-entrapment drains.

The total velocity of water through the open area of an anti-vortex or anti-entrapment drain shall not exceed the manufacturer's recommended maximum velocity or a maximum of three feet per second through the open area of the drain, whichever is more restrictive.

(4) Spa pool outlets shall meet all of the requirements of subsections R392-302-18(1) through R392-302-18(3); however, the following exceptions apply:

(a) The designing architect or engineer shall ensure multiple spa outlets are spaced at least three feet apart from each other or that a third drain is provided and that the separation distance between individual outlets is at the maximum possible spacing.

(b) The department may exempt an acrylic or fiberglass spa from the requirement to locate outlets at the deepest point in the pool, if the outlets are located on side walls within three inches of the pool floor, and a wet-vacuum is available on site to remove any water left in the pool after draining.

(5) A wading pool shall have drainage to waste through a quick opening valve to facilitate emptying the wading pool should accidental bowel discharge or other contamination occur.

(6) Subsections R392-302-18(6) through R392-302-18(6)(c) supersede section R392-302-3. The pool owner or certified pool operator shall retrofit each swimming pool circulation system on existing pools that do not meet the requirements of subsections R392-302-18(1) through R392-302-18(5) by any of the following means:

(a) A vacuum switch that meets both the American Society for Testing and Materials Standard Provisional Specification for Manufactured Safety Vacuum Release Systems (SVRS) for Swimming Pools, Spas, and Hot Tubs, PS 10-03, and the requirements of American Society of Mechanical Engineers Manufactured Safety Vacuum Release Systems for Residential and Commercial Pools, ASME A112.19.17 - 2002, which are incorporated by reference, installed on the suction side of the pump to prevent outlet entrapment. To ensure proper operation, the certified pool operator shall inspect and test the vacuum switch at least once a week but no less often than established by the manufacturer. The certified pool operator shall test the switch in a manner specified by the manufacturer. The certified pool operator shall log all inspections, tests and maintenance and retain the records for a minimum of two years for review by the Department and local health department upon request.

(b) An outlet system that includes no fewer than two suction outlets separated by no less than 4 feet, 1.22 meters, on the horizontal plane or located on two different planes and connected to pipes of equal diameter. The suction outlets shall be plumbed so water is drawn simultaneously without valves through the outlets to a common line to the pump system; or

(c) Any other system that the operator demonstrates to the Department to prevent outlet entrapment.

R392-302-19. Overflow Gutters and Skimming Devices.

(1) A pool having a surface area of over 3,500 square feet, 325.15 square meters, must have overflow gutters. A pool having a surface area less than 3,500 square feet, 325.15 square meters, must have either overflow gutters or skimmers provided.

(2) Overflow gutters must extend completely around the pool, except at steps, ramps, or recessed ladders. The gutter system must be capable of continuously removing pool water at 100 percent of the maximum flow rate. This system must be connected to the circulation system by means of a surge tank.

(3) Overflow gutters must be designed and constructed in compliance with the following requirements:

(a) The opening into the gutter beneath the coping must be at least 3 inches, 7.62 centimeters, in height with a depth of at least 3 inches, 7.62 centimeters.

(b) Gutters must be designed to prevent entrapment of any part of a bather's body.

(c) The edge must be rounded so it can be used as a handhold and must be no thicker than 2.5 inches, 6.35 centimeters, for the top 2 inches, 5.08 centimeters.

(d) Gutter outlet pipes must be at least 2 inches, 5.08 centimeters, in diameter. The outlet grates must have clear openings and be equal to at least one and one-half times the cross sectional area of the outlet pipe.

(4) Skimmers complying with National Sanitation Foundation NSF/ANSI 50-2004 standards or equivalent are permitted on any pool with not more than 3,500 square feet, 325.15 square meters, of surface area. At least one skimming device must be provided for each 500 square feet, 46.45 square meters, of water surface area or fraction thereof. Where two or more skimmers are required, they must be spaced to provide an effective skimming action over the entire surface of the pool.

(5) Skimming devices must be built into the pool wall and must meet the following general specifications:

(a) The piping and other components of a skimmer system must be designed for a total capacity of at least 80 percent of the maximum flow rate of the circulation system.

(b) Skimmers must be designed with a minimum flow rate of 25 gallons, 94.64 liters, per minute and a maximum flow rate of 55 gallons, 208.12 liters, per minute. Alternatively, skimmers may also be designed with a minimum of 3.125 gallons, 11.83 liters, to 6.875 gallons, 26.02 liters, per lineal inch, 2.54 centimeters, of weir.

(6) Each skimmer weir must be automatically adjustable and must operate freely with continuous action to variations in water level over a range of at least 4 inches, 10.16 centimeters. The weir must operate at all flow variations.

(7) An easily removable and cleanable basket or screen through which all overflow water passes, must be provided to trap large solids.

(8) The skimmer must be provided with a device to prevent air-lock in the suction line. These devices may include an equalizer pipe, surge tank, or other arrangement that will assure a sufficient amount of water for pump suction in the event the pool water drops below the weir level.

(a) If an equalizer pipe is used, the following requirements must be met:

(i) An equalizer pipe must be sized to meet the capacity requirements for the filter and pump.

(ii) An equalizer pipe may not be less than 2 inches, 5.08 centimeters, in diameter.

(iii) This pipe must be located at least 1 foot, 30.48 centimeters, below a valve or equivalent device that will remain tightly closed under normal operating conditions. In a shallow pool, such as a wading pool, where an equalizer outlet can not be submerged at least one foot below the skimmer valve, the equalizer pipe shall be connected to a separate outlet with an anti-entrapment cover in the floor of the pool.

(iv) The equalizer pipe must have an anti-vortex cover.

(9) The skimmer weir and basket must be maintained in a clean and sanitary condition.

(10) A spa pool must have a minimum number of surface skimmers based on one skimmer for each 100 square feet, 9.29 square meters of surface area.

R392-302-20. Filtration.

(1) The filter system must provide for isolation of individual filters for backwashing or other service.

(2) The filtration system must be designed to allow the pool operator to easily observe the discharge backwash water from the filter in order to determine if the filter cells are clean.

(3) A public pool must use either a rapid sand filter, hi-rate sand filter, diatomaceous earth filter, or a cartridge filter.

(4) The following requirements are applicable to gravity and pressure rapid sand filters, all of which must comply with the standards of the National Sanitation Foundation, NSF/ANSI 50-2004 or is determined to be equivalent by the department.

(a) Rapid sand filters must be designed for a filter rate of 3 gallons, 11.36 liters, or less, per minute per square foot, 929 square centimeters, of bed area at time of maximum head loss. The filter bed surface area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover.

(b) The filter system must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filters. Air-relief valves must be provided at or near the high point of the filter or piping system.

(c) The filter system must be designed with necessary valves and piping to permit:

(i) filtering of all pool water;

(ii) individual backwashing of filters to a sanitary sewer at a minimum rate of 15 gallons, 56.78 liters, per minute per square foot, 929 square centimeters, of filter area;

(iii) isolation of individual filters;

(iv) complete drainage of all parts of the system;

(v) necessary maintenance, operation and inspection in a convenient manner.

(d) Each pressure type filter tank must be provided with an access opening of at least a standard size 11 inch, 27.94 centimeters, by 15 inch, 38.10 centimeters, manhole with a cover.

(5) Hi-rate sand filters must comply with the standards of the National Sanitation Foundation, NSF/ANSI 50-2004, or be determined to be equivalent by the department.

(a) Hi-rate sand filters must be designed for a filter rate of less than 18 gallons, 68.14 liters, per minute per square foot, 929 square centimeters, of bed area. The filter bed area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover. Minimum flow rates must be at least 13 gallons, 49.21 liters, per minute per square foot, 929 square centimeters, of bed area.

(b) The filter tank and all components must be installed in compliance with the manufacturer's recommendations.

(c) An air-relief valve must be provided at or near the high point of the filter.

(d) The filter system must be provided with an influent pressure gauge to indicate the condition of the filter.

(6) Diatomaceous earth filters, whether of the vacuum or pressure type, must comply in all respects with the standards of

the National Sanitation Foundation, NSF/ANSI 50-2004, or be determined to be equivalent standards by the department. The filtering area must be compatible with the design pump capacity as required by Section R392-302-16, Table 1.

(a) The design rate of filtration may not exceed 2.0 gallons per minute per square foot, 7.57 liters per 929 square centimeters, of effective filtering surface without continuous body feed, nor greater than 2.5 gallons per minute per square foot, 9.46 liters per 929 square centimeters, with continuous body feed.

(b) Where body feed is provided, the feeder device must be accurate to within 10 percent, must be capable of continual feeding within a calibrated range, and must be adjustable from two to six parts per million. The device must feed at the design capacity of the circulation pump.

(c) Where fabric is used, filtering area must be determined on the basis of effective filtering surfaces.

(d) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations.

(e) If a precoat device is supplied with a potable water supply, then the water must be delivered through an air gap.

(f) The filter plant must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filter. In vacuum-type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off device must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(g) A filter must be designed to facilitate cleaning by one or more of the following methods: backwashing, air-bump-assist backwashing, automatic or manual water spray, or agitation.

(h) The filter system must provide for complete and rapid draining of the filter.

(i) Diatomaceous earth filter backwash water must discharge to the sanitary sewer system through a separation tank. The separation tank must have a visible precautionary statement warning the user not to start up the filter pump without first opening the air relief valve.

(j) Personal protection equipment suitable for preventing inhalation of diatomaceous earth must be provided.

(7) The department may waive National Sanitation Foundation, NSF/ANSI 50-2004, standards for diatomaceous earth filters and approve site-built or custom-built vacuum diatomite filters, if the diatomaceous earth filter elements are easily accessible for cleaning by hand hosing after each filtering cycle. Site-built or custom-built vacuum diatomaceous earth filters must comply with all design requirements as specified in Subsection R392-302-20(6). Any design which provides the equivalent washing effectiveness as determined by the department may be acceptable. Where the department or the local health department determines that a potential cross-connection exits, a hose bib in the vicinity of the filter to facilitate the washing operation must be equipped with a vacuum breaker listed by the International Association of Plumbing and Mechanical Officials, IAPMO, the American Society of Sanitary Engineering, A.S.S.E., or other nationally recognized standard.

(8) Vacuum or pressure type cartridge filters must comply with the standards of the National Sanitation Foundation, NSF/ANSI 50-2004, or equivalent standards covering such filters as determined by the department.

(a) Sufficient filter area must be provided to meet the design pump capacity as required by Subsection R392-302-16, Table 1.

(b) The designed rate of filtration may not exceed 0.375 gallons, 1.42 liters, per minute per square foot, 929 square centimeters, of effective filter area.

(c) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations. The filter element must be constructed of polyester fiber only.

(d) The filter must be fitted with influent and effluent pressure gauges, vacuum, or compound gauges to indicate the condition of the filter. In vacuum type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(e) Cleaning of cartridge type filters must be accomplished in accordance with the manufacturer's recommendations.

R392-302-21. Disinfectant and Chemical Feeders.

(1) A pool must be equipped with a disinfectant feeder or feeders which conform to the National Sanitation Foundation, NSF/ANSI 50-2004, standards relating to adjusted output rate chemical-feeding equipment and flow through chemical feeding equipment for swimming pools, or be deemed equivalent by the department.

(2) A spa pool must be equipped with oxidation reduction potential controllers which monitor chemical demands, including pH and disinfectant demands, and regulate the amount of chemicals fed into the pool circulation system. A spa pool constructed and approved prior to September 16, 1996 is exempt from this requirement if it is able to meet bacteriological quality as required in Subsection R392-302-27(10). Supervisory water testing, calibration checks, inspection and cleaning of sensor probes and chemical injectors must be performed in accordance with the manufacturer's recommendations. If specific manufacturer's recommendations are not made, the inspections, calibration checks, and cleaning of sensor probes must be done at least weekly.

(3) Where compressed chlorine gas is used, the following additional features must be provided:

(a) Chlorine and chlorinating equipment must be located in a secure, well-ventilated enclosure separate from other equipment systems or equipment rooms. Such enclosures may not be below ground level. If an enclosure is a room within a building, it must be provided with vents near the floor which terminate at a location out-of-doors. Enclosures must be located to prevent contamination of air inlets to any buildings and areas used by people. Forced air ventilation capable of providing at least one complete air change per minute, must be provided for enclosures.

(b) Substances which are incompatible with chlorine may not be kept in the chlorine enclosure.

(c) Chlorine cylinders must be secured to prevent their falling over. An approved valve stem wrench must be maintained on the chlorine cylinder so the supply can be shut off quickly in case of emergency. Valve protection hoods and cap nuts must be kept in place except when the cylinder is connected.

(d) Doors to chlorine gas and equipment rooms must be labeled DANGER CHLORINE GAS in letters at least 4 inches, 10.16 centimeters, in height and display the United States Department of Transportation placard and I.D. number for chlorine gas.

(e) The chlorinator must be designed so that leaking chlorine gas will be vented to the out-of-doors.

(f) The chlorinator must be a solution feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Injector water must be furnished from the pool circulation system with necessary water pressure increases supplied by a booster pump. The booster must be interlocked with both the pool circulation pump and

with a flow switch on the return line.

(g) Chlorine feed lines may not carry pressurized chlorine gas.

(h) An unbreakable bottle of ammonium hydroxide, of approximately 28 percent solution in water, must be readily available for chlorine leak detection.

(i) A self-contained breathing apparatus approved by NIOSH for entering environments that are immediately dangerous to life or health must be available and must have a minimum capacity of fifteen minutes.

(j) The breathing apparatus must be kept in a closed cabinet located outside of the room in which the chlorinator is maintained, and must be accessible without use of a key or lock combination.

(k) The facility operator shall demonstrate to the local health department through training documentation, that all persons who operate, or handle gas chlorine equipment, including the equipment specified in Subsections R392-203-21(3)(h) and (i) are knowledgeable about safety and proper equipment handling practices to protect themselves, staff members, and the public from accidental exposure to chlorine gas.

(l) The facility operator or his designee shall immediately notify the local health department of any inadvertent escape of chlorine gas.

(4) Bactericidal agents, other than chlorine and bromine, and their feeding apparatus may be acceptable if approved by the department. Each bactericidal agent must be registered by the U.S. Environmental Protection Agency for use in swimming pools.

(5) Equipment of the positive displacement type and piping used to apply chemicals to the water must be sized, designed, and constructed of materials which can be cleaned and maintained free from clogging at all times. Materials used for such equipment and piping must be resistant to the effects of the chemicals in use.

(6) All auxiliary chemical feed pumps must be wired electrically to the main circulation pump so that the operation of these pumps is dependent upon the operation of the main circulation pump. If a chemical feed pump has an independent timer, the main circulation pump and chemical feed pump timer must be interlocked.

R392-302-22. Safety Requirements and Lifesaving Equipment.

(1) A public pool where a lifeguard is required under Subsection R392-302-30(2) shall provide for a minimum number of elevated lifeguard chair(s) in accordance with Table 2. Lifeguard chair(s) shall be located to provide a clear unobstructed view of the pool bottom by lifeguards on duty.

(2) A public pool must have at least one unit of lifesaving equipment. One unit of lifesaving equipment must consist of the following: a Coast Guard-approved ring buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet, American Red Cross-approved rescue tube; a life pole or shepherd's crook type pole with blunted ends and a minimum length of 12 feet, 3.66 meters. The facility operator may substitute a rescue tube for a ring buoy where lifeguard service is provided. Additional units must be provided at the rate of one for each 2,000 square feet, 185.8 square meters, of surface area or fraction thereof. The operator of a pool that has lifeguard services shall provide at least one backboard designed with straps and head stabilization capability.

(3) A public pool must be equipped with a Utah Department of Health standard 27-unit first aid kit which includes the following items:

2 Units 1 inch adhesive compress.
2 Units 2 inch bandage compress.
2 Units 3 inch bandage compress.
2 Units 4 inch bandage compress.
2 Units 3 inch square plain gauze pads.
2 Units gauze roller bandage.
2 Units eye dressing packet.
1 Unit plain absorbent gauze, .5 sq. yard.
1 Unit plain absorbent gauze, 24 inches by 72 inches.
2 Units bandage tape.
1 Unit butterfly closures, 1 box.
1 Unit 3 inch ace bandage.
1 Unit assorted adhesive band-aids, 1 box.
2 Units triangular bandages.
1 Unit microshield.
1 Unit scissors.
1 Unit tweezers.
1 Unit latex gloves, 6 pairs per unit.

(a) The 27 unit first-aid kit must be kept filled, available and ready for use.

(4) Lifesaving equipment must be mounted in readily accessible, conspicuous places around the pool deck. It must be maintained in good repair and operable condition. Lifesaving equipment may not be used or removed by anyone for any reason other than its intended purpose.

(5) Where no lifeguard service is provided in accordance with Subsection R392-302-30(2), a warning sign must be placed in plain view and shall state: WARNING - NO LIFEGUARD ON DUTY and BATHERS SHOULD NOT SWIM ALONE, with clearly legible letters, at least 4 inches high, 10.16 centimeters. In addition, the sign must also state CHILDREN 14 AND UNDER SHOULD NOT USE POOL WITHOUT RESPONSIBLE ADULT SUPERVISION.

(6) Where lifeguard service is required, the facility must have a readily accessible area designated and equipped for emergency first aid care.

TABLE 2

Safety Equipment and Signs

	POOLS WITH LIFEGUARD	POOLS WITH NO LIFEGUARD
Elevated Chair 1,000 through 2,999 sq. ft., 92.9 through 278.61 sq. meters, of surface area	1	None
Each additional 2,000 sq. ft., 185.8 sq. meters, of surface area or fraction	1 additional	None
Backboard	1 per facility	None
Room for Emergency Care	1 per facility	None
Ring Buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet, 3.05 meters	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction
Rescue Tube	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	None
Life Pole or Shepherds Crook	1 per 2,000 sq. ft. 185, sq. meters, of pool area or fraction	1 per 2,000 sq. ft. 185, sq. meters, of pool area or fraction
First Aid Kit	1 per facility	1 per facility

(7) A spa pool is exempt from Section R392-302-22, except for Section R392-302-22(3).

(8) The water temperature in a spa pool may not exceed 105 degrees Fahrenheit.

R392-302-23. Lighting, Ventilation and Electrical Requirements.

(1) A pool constructed after September 16, 1996 may not be used for night swimming in the absence of underwater lighting. The local health officer may grant an exemption to this if it can be demonstrated to him that a 6 inch, 15.24 centimeters, diameter black disk on a white background placed in the deepest part of the pool can be clearly observed from the pool deck during night time hours. The local health department shall keep a record of this exemption on file. The pool operator shall keep a record of this exemption on file at the facility.

(2) Where night swimming is permitted and underwater lighting is used, refer to Table 3 for illumination requirements.

TABLE 3

Underwater Illumination Requirements

Class	Application	Lamp lumens per square foot of pool surface area-Indoor	Lamp lumens per square foot of pool surface area-Outdoor	Illuminance Uniformity: Maximum to Minimum
I	International, Professional, Tournament	100	60	2.0 : 1
II	College and Diving	75	50	2.5 : 1
III	High School Without Diving	50	30	3.0 : 1
IV	Recreational	30	15	4.0 : 1

(3) Where night swimming is permitted and underwater luminaires are used, area lighting must be provided for the deck areas and directed away from the pool surface as practical to reduce glare. The luminance must be at least 5 horizontal foot candles of light per square foot, 929 square centimeters, of deck area, but less than the luminance level for the pool shell.

(4) Electrical wiring must conform with Article 680 of the National Electrical Code, as adopted by the State.

(a) Wiring may not be routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool as provided in Article 680 of the National Electric Code, without the written approval of the department. The department may deny the installation and use of any electrical appliance, device, or fixture, if its power service is routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool, except in the following circumstances;

(i) For underwater lighting,

(ii) electrically powered automatic pool shell covers, and

(iii) competitive judging, timing, and recording apparatus.

(5) Buildings containing indoor pools, bathhouses, dressing rooms, shower rooms, and toilet spaces must be ventilated in accordance with American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 62.1-2004, which is incorporated and adopted by reference.

R392-302-24. Dressing Rooms.

(1) All areas and fixtures within dressing rooms must be maintained in a clean and sanitary condition. Dressing rooms must be equipped with minimum fixtures as required in Subsection R392-302-25(1). The local health department may exempt any bathers from the total number of bathers used to calculate the fixtures required in Subsection R392-302-25(1) who have private use fixtures available within 150 feet, 45.7 meters of the pool.

(2) A separate dressing room must be provided for each sex. The entrances and exits must be designed to break the line of sight into the dressing areas from other locations.

(3) Dressing rooms must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.

(4) Floors must slope to a drain and be constructed to prevent accumulation of water.

(5) Carpeting may not be installed on dressing room floors.

(6) Junctions between walls and floors must be coved.

(7) Partitions between dressing cubicles must be raised at least 10 inches, 25.4 centimeters, above the floor or must be placed on continuous raised masonry or concrete bases at least 4 inches, 10.16 centimeters, high.

(8) Lockers must be set either on solid masonry bases 4 inches, 10.16 centimeters, high or on legs elevating the bottom locker at least 10 inches, 25.4 centimeters, above the floor.

(a) Lockers must have louvers for ventilation.

(9) A dressing room must exit to the shallowest area of the pool. The dressing room exit door and the pool deck must be separated by at least 10 feet, 3.05 meters, and be connected by an easily cleanable walkway.

R392-302-25. Toilets and Showers.

(1) The minimum number of toilets and showers for dressing room fixtures must be based upon the designed maximum bather load. Required numbers of fixtures must be based upon 50 percent of the total number of bathers being male and 50 percent being female, except where the facility is used exclusively by one sex. The minimum number of sanitary fixtures must be in accordance with Table 4.

TABLE 4

Sanitary Fixture Minimum Requirements

Water Closets

Male	Female
1:1 to 25	1:1 to 25
2:26 to 75	2:26 to 75
3:76 to 125	3:76 to 125
4:126 to 200	4:126 to 200
5:201 to 300	5:201 to 300
6:301 to 400	6:301 to 400

Over 400, add one fixture for each additional 200 males or 150 females.
Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases may not be reduced to less than one half of the minimum specified.

(2) Lavatories must be provided on the basis of one for each water closet up to four, then one for each two additional water closets.

(3) One shower head for each sex must be provided for each 50 bathers or fraction thereof.

(4) Potable water must be provided at all shower heads. Water heaters and thermostatically controlled mixing valves must be inaccessible to bathers and must be capable of providing 2 gallons per minute, 7.57 liters per minute, of 90 degree F. water to each shower head for each bather.

(5) Soap must be dispensed at all lavatories. Soap dispensers must be constructed of metal or plastic. Use of bar soap is prohibited.

(6) Fixtures must be designed so that they may be readily cleaned. Fixtures must withstand frequent cleaning and disinfecting.

(7) At least one covered waste can must be provided in each restroom.

R392-302-26. Visitor and Spectator Areas.

(1) When a 4 foot, 1.22 meters, fence is not present as described in Subsection R392-302-14(3), then visitors, spectators, or animals may not be allowed within 10 feet, 3.05 meters, of the pool or 5 feet, 1.53 meters, of the pool deck. Animals assisting handicapped individuals are exempt from this requirement.

(2) Food or drink is prohibited within ten feet, 3.05 meters, of the pool. Beverages must be served in non-breakable containers.

(3) Trash containers must be provided in visitor and spectator areas. The entire area must be kept free of litter and maintained in a clean, sanitary condition.

R392-302-27. Disinfection and Quality of Water.

(1) A public pool must be continuously disinfected by a process which meets all of the following requirements:

(a) Is registered with the United States Environmental Protection Agency as a disinfecting process or disinfectant product for water.

(b) Imparts a disinfectant residual which may be easily and accurately measured by a field test procedure appropriate to the disinfectant in use.

(c) Is compatible for use with other chemicals normally used in pool water treatment.

(d) Does not create harmful or deleterious physiological effects on bathers if used according to manufacturer's specifications.

(e) Does not create an undue safety hazard if handled, stored and used according to manufacturer's specifications.

(2) If the active disinfecting agent is chlorine, the unstabilized free chlorine residual, as measured by the diethyl-p-phenylene diamine, leuco crystal violet test or other test method approved by the department, must meet the concentration levels listed in Table 6 for all circumstances, bather loads, and the pH level of the water.

(3) If cyanuric acid is used to stabilize the free residual chlorine, or if one of the chlorinated isocyanurate compounds is used as the disinfecting chemical, the concentration of cyanuric acid in the water must be at least ten parts per million, but may not exceed 100 parts per million and the free residual chlorine, as measured by the diethyl-p-phenylene diamine, leuco crystal violet test or other test method approved by the department, must meet concentrations levels shown in Table 6, depending upon the pH of the water.

(4) If disinfection of the pool water is accomplished by bromine or iodine, the disinfectant must be within the ranges specified in Table 6.

(5) An easy to operate, pool side disinfectant testing kit, compatible with the disinfectant in use and accurate to within 0.2 parts per million, must be provided at each public pool. If stabilized chlorine is used, a testing kit for cyanuric acid, accurate to within 10.0 parts per million must be provided.

(a) Test kit reagents may not be used if they have exceeded their expiration dates.

(6) Circulation equipment must be operated 24 hours continuously during the operating seasons.

(7) The water must have sufficient clarity at all times so that a black disc, 6 inches, 15.24 centimeters, in diameter, is readily visible if placed on a white field at the deepest point of the pool. The facility must be closed immediately if this requirement is not met.

(8) In a public pool, the difference between the total chlorine and the free chlorine must not be greater than 0.5 parts per million as determined by the diethyl-p-phenylene diamine, leuco crystal violet tests or other test method approved by the department.

(a) If the concentration of combined residual chlorine is greater than 0.5 parts per million the pool water must be breakpoint chlorinated to oxidize and reduce the concentration of combined chlorines.

(9) A water sample must be collected from a pool at least once per month or as otherwise directed by the local health department, while it is in use, and must be submitted to a laboratory approved by the department to perform Safe Drinking Water Program testing.

(a) The laboratory shall subject the sample to the standard 35 degree Celsius heterotrophic plate count and test for coliform organisms utilizing either a membrane filter test, a multiple tube fermentation test, or a Colilert test.

(b) The testing laboratory must promptly report the results of such analysis to the local health department having jurisdiction and to the facility operator. When requested, the lab or local health department shall mail the results of such analysis to the Utah Department of Health.

(c) When less than two samples per month are collected and submitted for bacteriological analysis, the local health department shall conduct a follow-up inspection for each failing sample to identify the causes for the sample failure. The local health department shall conduct a follow-up within three working days following the reporting of the sample failure to the local health department.

(10) Not more than 15 percent of the samples covering a four month period of time may fail bacteriological quality standards. A seasonal or other pool in operation less than four months may only fail bacteriological quality standards with an initial pre-opening sample prior to the opening of the operating season. If a seasonal or other pool in operation less than four months in a year is sampled on a once per month basis, then failure of any bacteriological water quality sample shall require submission of a second sample within one working day after the sample report has been received.

(a) A pool water sample fails bacteriological quality standards if it:

(i) contains more than 200 bacteria per milliliter, as determined by the standard 35 degrees Celsius heterotrophic plate count;

(ii) shows positive test, confirmed test, for coliform organisms in any of the five 10-milliliter portions of a sample; or

(iii) contains more than 1.0 coliform organisms per 50 ml if the membrane filter test is used; or

(iv) indicates a positive MMO-MUG type test approved by the EPA.

(11) Pool water temperatures, excluding spas and special purpose pools, must meet the following requirements:

(a) Pool water temperatures for general use must be within the range of 82 degrees Fahrenheit, 27.8 degrees Celsius, to 86 degrees Fahrenheit, 30.0 degrees Celsius.

(b) The water in a pool dedicated primarily for swim training and high exertion activities must be within the temperature range of 78 degrees Fahrenheit, 25.6 degrees Celsius, to 82 degrees Fahrenheit, 27.8 degrees Celsius to reduce safety hazards associated with hyperthermia.

(c) The minimum water temperature for a pool is 78 degrees Fahrenheit, 25.6 degrees Celsius.

(d) The local health department may grant an exemption to the pool water temperature requirements for a special purpose pool including a cold plunge pool, but may not exempt maximum hot water temperatures for a spa pool.

(12) Total dissolved solids in a public pool may not exceed 2,500 parts per million.

(13) Total alkalinity must be with the range from 100-125 parts per million for plaster pools, 80-150 parts per million for a spa pool, and 125-150 parts per million for a painted or

fiberglass pool.

(14) A calcium hardness of at least 200 parts per million must be maintained.

(15) The saturation index value of the pool water must be within the range of positive 0.3 and minus 0.3. The saturation index shall be calculated in accordance with Table 5.

TABLE 5

CHEMICAL VALUES AND FORMULA FOR CALCULATING SATURATION INDEX

Formula for Calculating the Saturation Index: SI = pH + TF + CF + AF - 12.1 where SI means saturation index, TF means temperature factor, CF means calcium factor, ppm means parts per million, deg F means degrees Fahrenheit, and AF means alkalinity factor.

Temperature		Calcium Hardness		Total Alkalinity	
deg. F	TF	ppm	CF	ppm	AF
32	0.0	5	0.3	5	0.7
37	0.1	25	1.0	25	1.4
46	0.2	50	1.3	50	1.7
53	0.3	75	1.5	75	1.9
60	0.4	100	1.6	100	2.0
66	0.5	150	1.8	150	2.2
76	0.6	200	1.9	200	2.3
84	0.7	300	2.1	300	2.5
94	0.8	400	2.2	400	2.6
105	0.9	800	2.5	800	2.9
128	1.0	1,000	2.6	1,000	3.0

If the SATURATION INDEX is 0, the water is chemically in balance.
If the INDEX is a minus value, corrosive tendencies are indicated.
If the INDEX is a positive value, scale-forming tendencies are indicated.
EXAMPLE: Assume the following factors:
pH 7.5, Temperature 80 degrees F, 19 degrees C, CalciumHardness 235
Total Alkalinity 100
1- pH - 7.5
2- TF - 0.7
3- CF - 1.9
4- AF - 2.0
TOTAL: 12.1 - 12.1 = 0.0
This water is balanced.

TABLE 6

DISINFECTANT LEVELS AND CHEMICAL PARAMETERS

	POOLS	SPAS	SPECIAL PURPOSE
Stabilized Chlorine (parts per million)			
pH 7.2 to 7.6	2.0(1)	3.0(1)	2.0(1)
pH 7.7 to 8.0	3.0(1)	5.0(1)	3.0(1)
Non-Stabilized Chlorine (parts per million)			
pH 7.2 to 7.6	1.0(1)	2.0(1)	2.0(1)
pH 7.7 to 8.0	2.0(1)	3.0(1)	3.0(1)
Bromine (parts per million)	4.0(1)	4.0(1)	4.0(1)
Iodine (parts per million)	1.0(1)	1.0(1)	1.0(1)
Ultraviolet and Hydrogen Peroxide (parts per million hydrogen peroxide)	40.0(1)	40.0(1)	40.0(1)
pH	7.2 to 7.8	7.2 to 7.8	7.2 to 7.8
Total Dissolved Solids (parts per million)	2,500	2,500	2,500
Cyanuric Acid (parts per million)	10 to 100	10 to 100	10 to 100
Maximum Temperature degrees Fahrenheit)	105	105	105
Calcium Hardness (parts per million)	200(1)	200(1)	200(1)
Total Alkalinity (parts per million)			
Plaster Pools	100 to 125	80 to 150	100 to 125
Painted or Fiberglass Pools	125 to 150	80 to 150	125 to 150
Saturation Index (see Table 5)	Plus or Minus 0.3	Plus or Minus 0.3	Plus or Minus 0.3
Chloramines (combined chlorine residual, parts per million)	0.5	0.5	0.5

Note (1): Minimum Value

R392-302-28. Cleaning Pools.

(1) Visible dirt on the bottom of the pool must be removed at least once every 24 hours or more frequently as needed to keep the pool free of visible dirt.

(2) The pool water surface must be cleaned as often as needed to keep the pool free of visible scum or floating matter.

(3) Pool shell surfaces, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms, must be kept clean, sanitary, and in good repair.

R392-302-29. Supervision of Pools.

(1) Each public pool must be operated by at least one qualified operator as evidenced by a current National Swimming Pool Foundation Certified Pool Operator, CPO, certification; a National Recreation and Parks Association Aquatic Facility Operator, AFO, certification;or an equivalent certification approved by the department.

(a) Approved certifications are valid under this rule for no more than five years from the date of issue.

(b) A local health department may deny recognition of the certification of a pool operator for cause, including failure to comply with the requirements of this rule, or creating or allowing undue health or safety hazards. The local health department shall notify the department of any denials. A denial of recognition of certification is effective in the entire state. The operator may overcome the denial by obtaining a new certification from a certifying authority.

(2) The pool operator must keep written records of all information pertinent to the operation, maintenance and sanitation of each pool facility. Records must be available at the facility and be readily accessible. The pool operator must make records available to the department or the local health department having jurisdiction upon their request. These records must include disinfectant residual in the pool water, pH and temperature of the pool water, pool circulation rate, quantities of chemicals and filter aid used, filter head loss, filter washing schedule, cleaning and disinfecting schedule for pool decks and dressing rooms, bather load, and other information required by the local health department. The pool operator must keep the records at the facility, for at least two operating seasons.

(3) The public pool owner, in consultation with the qualified operator designated in accordance with 392-302-29(1), shall develop an operation, maintenance and sanitation plan for the pool that will assure that the pool water meets the sanitation and quality standards set forth in this rule. The plan shall be in writing and available for inspection by the local health department. At a minimum the plan shall include the frequency of measurements of pool disinfectant residuals, pH and pool water temperature that will be taken. The plan shall also specify who is responsible to take and record the measurements.

(4) If the public pool water samples required in Section R392-302-27(9) fail bacteriological quality standards as defined in Section R392-302-27(10), the local health department shall require the public pool owner and qualified operator to develop an acceptable plan to correct the problem. The local health department may require more frequent water samples, additional training for the qualified operator and also may require that:

(a) The pool operator shall measure and record the level of disinfectant residuals, pH, and pool water temperature at least

four times a day. If oxidation reduction potential technology is used in accordance with this rule, the pool operator may reduce water testing to once per day minimum.

(b) The pool operator shall read flow rate gauges and record the pool circulation rate at least four times a day.

(3) Bather load must be limited if necessary to insure the safety of bathers and pool water quality as required in Section R392-302-27.

(4) A sign must be posted in the immediate vicinity of the pool stating the location of the nearest telephone and emergency telephone numbers which shall include:

(a) Name and phone number of nearest police, fire and rescue unit;

(b) Name and phone number of nearest ambulance service;

(c) Name and phone number of nearest hospital.

(5) If a telephone is not available at poolside, emergency telephone numbers must be provided in a form that can be taken to a telephone.

R392-302-30. Supervision of Bathers.

(1) Access to the pool must be prohibited when the facility is not open for use.

(2) Lifeguard service must be provided at a public pool or a private pool if direct fees are charged, public funds support the operation of the pool, or if the pool is used for public uses including swimming lessons, scuba diving instruction, and aquatic competitions. If a pool is normally exempt from the requirement to provide lifeguard services, but is used for some public uses, then lifeguard services are required during the period of public use. For other pools, lifeguard service must be provided, or signs must be clearly posted indicating that lifeguard service is not provided.

(3) A lifeguard must meet each of the following:

(a) Be trained and certified by the American Red Cross, or an equivalent program as approved by the department in Standard Level First Aid, C.P.R. for professional rescuers, and Life Guarding.

(b) Be on duty at all times when the pool is open to use by bathers, except as provided in Subsection R392-302-30(2).

(c) Have full authority to enforce all rules of safety and sanitation.

(4) A lifeguard may not have any other duties to perform other than the supervision and safety of bathers while he or she is assigned lifeguarding duties.

(5) Where lifeguard service is required, the number of lifeguards must be sufficient to allow for continuous supervision of all bathers, and surveillance over total pool floor areas.

(6) Lifeguards must be relieved in the rotation of lifeguarding responsibilities at least every 15 minutes with a work break of at least 10 minutes every hour to maintain mental alertness and to prevent mental and physical fatigue.

(7) The facility operator and staff are responsible for the enforcement of the following personal hygiene and behavior rules:

(a) A bather using the facility must take a cleansing shower before entering the pool enclosure. A bather leaving the pool to use the toilet must take a second cleansing shower before returning to the pool enclosure.

(b) A person having a communicable disease transmissible by water must be excluded from public pools. A person having any exposed sub-epidermal tissue, including open blisters, cuts, or other lesions may not use a public pool.

(c) Running, boisterous or rough play, except supervised water sports, is prohibited.

(d) Easily readable placards embodying the above rules of personal hygiene and behavior must be conspicuously posted in the pool enclosure and in the dressing rooms and offices.

(8) A spa pool must have an easily readable caution sign mounted adjacent to the entrance to the spa or hot tub which contains the following information:

(a) The word "caution" centered at the top of the sign in large, bold letters at least two inches in height.

(b) Elderly persons and those suffering from heart disease, diabetes or high blood pressure should consult a physician before using the spa pool.

(c) Persons suffering from a communicable disease transmissible via water may not use the spa pool. Persons using prescription medications should consult a physician before using the spa.

(d) Individuals under the influence of alcohol or other impairing chemical substances should not use the spa pool.

(e) Bathers should not use the spa pool alone.

(f) Pregnant women should not use the spa pool without consulting their physicians.

(g) Persons should not spend more than 15 minutes in the spa in any one session.

(h) Children under the age of 14 must be accompanied and supervised by at least one responsible adult over the age of 18 years, when lifeguards are not on duty.

(i) Children under the age of five years are prohibited from bathing in a spa or hot tub.

(j) Running or engaging in unsafe activities or horseplay in or around the spa pool is prohibited.

(9) Water jets and air induction ports on spa pools must be controlled by an automatic timer which limits the duration of their use to 15 minutes per each cycle of operation. The operator shall mount the timer switch in a location which requires the bather to exit the spa before the timer can be reset for another 15 minute cycle or part thereof.

R392-302-31. Special Purpose Pools.

(1) Special purpose pools must meet the requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of special purpose pools.

(2) Slide flumes must meet the following requirements for design, materials, construction, and maintenance:

(a) The flumes within enclosed slides must be designed to prevent accumulation of hazardous concentrations of toxic chemical fumes.

(b) All curves, turns, and tunnels within the path of a slide flume must be designed so that body contact with the flume or tunnel does not present an injury hazard. The slide flume must be banked to keep the slider's body safely inside the flume.

(c) The flume must be free of hazards including joints and mechanical attachments separations, splinters, holes, cracks, or abrasive characteristics.

(d) Wall thickness of flumes must be thick enough so that the continuous and combined action of hydrostatic, dynamic, and static loads and normal environmental deterioration will not cause structural failures which could result in injury. The facility operator or owner shall insure that repairs or patchwork maintains original designed levels of safety and structural integrity. The facility operator or owner shall insure that repairs or patchwork is performed in accordance with manufacturer's guidelines.

(e) Multiple-flume slides must have parallel exits or be constructed, so that the projected path of their centerlines do not intersect within a distance of less than 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(f) A slide flume exit must provide safe entry into the splash pool. Design features for safe entry include a water backup, and a deceleration distance adequate to reduce the slider's exit velocity to a safe speed. Other methods may be acceptable if safe exiting from the slide flume is demonstrated to the department.

(3) The design of water slides or vehicle slides must

incorporate the following clearances from the flumes:

(a) A distance between the side of a slide flume exit and a splash pool side wall of at least 4 feet, 1.22 meters.

(b) A distance between nearest sides of adjacent slide flume exits must be at least 6 feet, 1.83 meters.

(c) A distance between a slide flume exit and the opposite end of the splash pool, excluding steps, must be at least 20 feet, 6.10 meters.

(d) A vehicle slide must maintain the following clearances:

(e) A distance between the side of the flume exit and the pool side wall of at least 6 feet, 1.83 meters.

(f) A distance between nearest sides of adjacent vehicle slide flume exits of at least 8 feet, 2.44 meters.

(g) A distance between the flume exit and the opposite end of the splash pool, excluding steps, must be long enough to provide clear, unobstructed travel for at least 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(4) Vehicles, including toboggans, sleds, inflatable tubes, and mats must be designed and manufactured of materials which will safeguard the safety of riders.

(5) splash pools must meet the following depth requirements:

(a) The depth of a water slide splash pool at the end of a horizontally oriented slide flume exit must be at least 3 feet, 9.14 centimeters, but may be required to be deeper if the pool design incorporates special features that may increase risks to bathers as determined by the department.

(b) The depth must be maintained in front of the flume for a distance of at least 20 feet, 6.10 meters, from which point the splash pool floor may have a constant slope upward. Slopes may not be designed or constructed steeper than a 1 to 10 ratio.

(c) The operating water depth of a vehicle slide splash pool, at the flume exit, must be a minimum of 3 feet 6 inches, 1.07 meters. This depth must be maintained to the point at which forward travel of the vehicle ends. From the point at which forward travel ends, the floor may have a constant upward slope to the pool exit at a ratio not to exceed 1 to 10.

(d) The department may waive minimum depth and distance requirements for a splash pool and approve a special exit system if the designer can demonstrate to the department that safe exit from the flume into the splash pool can be assured.

(6) Pump reservoir areas must be accessible for cleaning and maintenance by a 3 foot, 91.44 centimeters, minimum width walkway.

(7) A travel path with a minimum width of 4 feet, 1.22 meters, must be provided between the splash pool deck and the top of the flume.

(8) Stairways serving a slide may not retain standing water. Stairways must have non-slip surfaces and shall conform to the requirements of applicable building codes.

(9) Splash pool overflow reservoirs must have sufficient volume to contain at least two minutes of flow from the splash pool overflow. Splash pool overflow reservoirs must have enough water to insure that the splash pool will maintain a constant water depth.

(10) The circulation and filtration equipment of a special purpose pool must be sized to turn over the entire system's water at least once every hour.

(11) Splash pool overflow reservoirs must circulate water through the water treatment system and return when flume supply service pumps are turned off.

(12) Flume pumps and motors must be sized, as specified by the flume manufacturer, and must meet all National Sanitation Foundation, NSF/ANSI 50-2004, Section 6. Centrifugal Pumps, standards for pool pumps.

(13) Flume supply service pumps must have check valves on all suction lines.

(14) The splash pool and the splash pool overflow reservoir must be designed to prohibit bather entrapment as water flows from the splash pool to the overflow reservoir.

(15) Perimeter overflow gutter systems must meet the requirements of Section R392-302-19, except that gutters are not required directly under slide flumes or along the weirs which separate splash pools and splash pool overflow reservoirs.

(16) A caution sign must be mounted adjacent to the entrance to a water slide that states at least the following warnings:

(a) The word caution centered at the top of the sign in large bold letters at least two inches in height.

(b) No running, standing, kneeling, tumbling, or stopping on flumes or in tunnels.

(c) No head first sliding at any time.

(d) The use of a slide while under the influence of alcohol or impairing drugs is prohibited.

(e) Only one person at a time may travel the slide.

(f) Obey instructions of lifeguards and other staff at all times.

(g) Keep all parts of the body within the flume.

(h) Leave the splash pool promptly after exiting from the slide.

R392-302-32. Hydrotherapy Pools.

(1) Unless the pool is drained, cleaned and sanitized after each individual use, a hydrotherapy pool shall at all times comply with R392-302-27-Disinfection and Quality of Water, R392-302-28-Cleaning of Pools and R392-302-29-Supervision of Pools.

(2) A hydrotherapy pool is exempt from all other requirements of R392-302, only if use of the hydrotherapy pool is restricted to therapeutic uses and is under the continuous and direct supervision of licensed medical or physiotherapy personnel.

(3) Local health departments may enter and examine the use of hydrotherapy pools to respond to complaints, to assure that use of the pool is being properly supervised, to examine records of testing and sampling, and to take samples to assure that water quality and cleanliness are maintained.

(4) A local health officer may grant an exception to section R392-302-32(1) if the operator of the hydrotherapy pool can demonstrate that the exception will not compromise pool sanitation or the health or safety of users.

R392-302-33. Advisory Committee.

(1) An advisory committee to the Department regarding regulation of public pools is hereby authorized.

(2) The advisory committee shall be appointed by the Executive Director. Representatives from local health departments, pool engineering, construction or maintenance companies and pool owners may be represented on the committee.

(3) Consistent with R380-1, the Executive Director may seek the advice of the advisory committee regarding interpretation of this rule, the granting of exemptions and related matters.

KEY: pools, spas, water slides
May 31, 2007 **26-15-2**
Notice of Continuation March 22, 2007

R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-400. Temporary Mass Gatherings Sanitation.
R392-400-1. Authority.

This rule is authorized under Utah Code Section 26-15-2.

R392-400-2. Purpose.

It is the purpose of this rule:

(1) to protect, preserve and promote the physical health of the public;

(2) to prevent and control the incidence of communicable diseases;

(3) to reduce hazards to health and environment;

(4) to maintain adequate sanitation and public health;

(5) to protect the safety of the public; and

(6) to promote the general welfare.

R392-400-3. Definitions.

(1) "Department" means the Utah Department of Health (UDOH).

(2) "Director" means the executive director of the Utah Department of Health or the executive director's designee.

(3) "Drinking Water Station" means a location where a person may obtain safe drinking water free of charge.

(4) "First Aid Station" means a temporary or permanent enclosed space or structure where a person can receive first aid and emergency medical care.

(5) "Health Officer" means the director of the local health department having jurisdiction or the health officer's designee.

(6) "Operator" means a person, group, corporation, partnership, governing body, association, or other public or private organization legally responsible for the overall operation of a temporary mass gathering.

(7) "Owner" means any person who alone, jointly, or severally with others:

(a) has legal title to any premises, with or without accompanying actual possession thereof or;

(b) has charge, care, or control of any premises, as legal or equitable owner, agent of the owner, or lessee.

(8) "Permit" means a written form of authorization written in accordance with this rule.

(9) "Person" means any individual, public or private corporation and its officers, partnership, association, firm, trustee, executor of an estate, the State or its departments, institution, bureau, agency, county, city, political subdivision, or any legal entity recognized by law.

(10) "Safe Drinking Water" means potable water meeting State safe drinking water rules or bottled water as regulated by the Utah Department of Agriculture and Food.

(11) "Safe Drinking Water System" means a system for delivering safe drinking water that is approved by the local health officer.

(12) "Solid Waste" means garbage, refuse, trash, rubbish, hazardous waste, dead animals, sludge, liquid or semi liquid waste, other spent, useless, worthless, or discarded materials or materials stored or accumulated for the purpose of discarding, materials that have served their original intended purpose.

(13) "Staff' means any person who:

(a) works for or provides services for or on behalf of the operator or a vendor, or

(b) is a vendor at a gathering.

(14) "Temporary Mass Gathering" or "Gathering" means an actual or reasonably anticipated assembly of 500 or more people, which continues or can reasonably be expected to continue for two or more hours per day, at a site for a purpose different from the designed use and usual type of occupancy. A temporary mass gathering does not include an assembly of people at a location with permanent facilities designed for that specific assembly, unless the designed occupancy levels are exceeded.

(15) "Vendor" means any person who sells or offers food for public consumption.

(16) "Wastewater" means used water or water carried wastes produced by man, animal, or fowl.

R392-400-4. Permit To Operate Required.

(1) A person may not operate a temporary mass gathering without a valid written permit issued by the health officer.

(2) The health officer may exempt a parade from the permit requirement if the operator submits an application as required in Section R392-400-6 and the health officer determines that the availability of existing public sanitary facilities, drinking water and trash containers is sufficient to protect public health.

(3) A temporary mass gathering may not exceed 30 days unless otherwise approved by the health officer.

R392-400-5. Gathering Operator Required On Site.

(1) The operator shall establish a headquarters at the gathering site.

(2) The operator or the operator's designee shall be present at the gathering at all times during operating hours.

R392-400-6. Permit Application Required.

(1) The health officer shall prescribe the application process, and shall require the applicant to submit an application at least 15 days prior to the first advertisement of the gathering and at least 30 days prior to the first day of the gathering. The health officer may grant an exception to this requirement on a case by case basis because of the nature of the event, scarcity of problems associated with the event in the past or other public health related criteria.

(2) An application for a permit shall be in writing to the health officer and include the following information:

(a) name, address, telephone number, and fax number (if applicable) of the operator;

(b) number of people expected to attend the gathering;

(c) a description of the type of gathering to be held with the date(s) and times the gathering will be held;

(d) estimated length of stay of attendees;

(e) name, address, telephone number, and fax number (if applicable) of property owner;

(f) location of the gathering and a site plan delineating the area where the gathering is to be held including the following:

(i) the parking area available for patrons;

(ii) location of entrance, exit, and interior roadways and walks;

(iii) location, type, and provider of restroom facilities;

(iv) location and description of water stations;

(v) location and number of food stands, and the types of food to be served if known;

(vi) location, number, type, and provider of solid waste containers;

(vii) location of operator's headquarters at the gathering;

(viii) a plan to provide lighting adequate to ensure the comfort and safety of attendees and staff;

(ix) location of all parking areas designated for the gathering and under the operator's control.

(g) the name of the solid and liquid waste haulers with whom the operator has contracted, unless exempted by this rule;

(h) a site clean up plan after the gathering;

(i) total number, and qualifications of first aid station personnel;

(j) plan for directional and exit signs;

(k) a plan developed by the operator to address nuisances or health hazards associated with animals present at the gathering;

(l) plans to address hazardous conditions as required in

Section R392-400-13;

(m) emergency medical services operational plan approved by the local licensed emergency medical services agency director, including the location of all first aid stations and emergency medical resources;

(n) any other information specifically requested by the health officer as necessary to protect public health.

(3) The health officer shall require a separate application for each temporary mass gathering.

(4) The health officer shall consider the proximity and risk of known health hazards when determining the acceptability of a proposed gathering site.

R392-400-7. Permit.

(1) The health officer may attach conditions or grant waivers to a permit, in accordance with this rule, in order to meet specific public health and safety concerns.

(2) The health officer may deny a permit for any of the following reasons:

(a) failure of the applicant to show that the gathering will be held or operated in accordance with the requirements and standards of this rule;

(b) submission of incorrect, incomplete, or false information in the application ;

(c) the gathering will be in violation of law.

(3) The health officer shall return a denied permit application to the applicant within 5 working days of submission, specifying the basis for denial in writing.

(4) The applicant may appeal a denied permit in accordance with the procedures established by the local Board of Health.

R392-400-8. Inspections.

(1) The director and health officer may conduct inspections before, during, and after a gathering to ensure compliance with R392-400 and approved plans.

(2) The operator shall provide the director and health officer with access to all areas of the gathering that the director and health officer deem necessary and the number of access credentials they request.

(3) The operator shall effectively communicate the director's and health officer's access privileges to staff.

R392-400-9. Notice Of Violation Or Closing.

(1) The health officer may issue a notice of violation to the owner, operator or the operator's designee if the gathering fails to meet the requirements of this rule or the conditions of the permit.

(2) The health officer shall, in accordance with R392-100 Food Service Sanitation, direct the disposition of any food items, including ice and water, that have been adulterated or are otherwise unfit for human consumption.

(3) The health officer may issue a notice of closure of the gathering or part thereof to the owner, operator or the operator's designee if the health officer determines that conditions at the gathering constitute a serious or imminent health hazard.

(4) No gathering site or part thereof that has been closed may be used for a gathering until the department or health officer determines that the conditions causing the closure have been abated and written approval is received from the department or health officer. The director or health officer shall remove the posted notice whenever the violation(s) upon which closing, and posting were based has been remedied.

(5) No unauthorized person may deface or remove a posted notice from any gathering site that has been closed by the director or local health officer.

(6) The operator may appeal a notice or closure in accordance with the procedures established by the local Board of Health or the Utah Administrative Procedures Act, whichever is applicable.

R392-400-10. Solid Waste Management.

(1) The operator shall contract with a solid waste hauler approved by health officer. The operator is exempt from this requirement if the operator is approved by the health officer as a solid waste hauler and is identified as the solid waste hauler for the gathering. The health officer shall establish written criteria for approving a solid waste hauler.

(2) The operator shall provide and strategically locate a sufficient number of covered waste containers approved by the health officer to effectively accommodate the solid waste generated at the gathering.

(3) The operator shall ensure that the waste containers are emptied as often as necessary to prevent overflowing, littering, or insect or rodent infestation.

(4) The operator shall ensure that solid waste and litter are cleaned from the property periodically during the gathering and that, within 24 hours following the gathering, the property is free of solid waste and is clean. On a case by case basis, the health officer may allow for more than 24 hours to clean up the site because of the time of year, nature of the event or other extenuating circumstances if the health officer is satisfied that the extension will not adversely affect the public health

(5) The operator shall ensure that litter is prevented from being blown from the gathering site onto adjacent properties.

(6) The operator shall ensure that all solid waste is collected and disposed of at a solid waste disposal or recycling facility meeting State and local solid waste disposal facility requirements.

(7) The operator, staff, participants, and spectators shall comply with all applicable State and local requirements for solid waste management.

R392-400-11. Site Maintenance.

(1) All buildings or structures provided for the gathering shall be maintained in a safe, clean condition, in good repair, and in compliance with all applicable laws.

(2) A gathering that provides overnight parking for occupied recreational vehicles in connection with the gathering, shall comply with R392-301 Recreational Vehicle Park Sanitation and local recreational vehicle parks regulations.

(3) The operator shall eliminate any infestation of vermin within any part of a structure intended for occupancy, food storage, or restroom facilities prior to, during, and immediately following a gathering.

(4) The operator is responsible for the maintenance and sanitary condition of the gathering site and facilities. The operator shall prevent the occurrence of any nuisance and immediately take steps to cause the abatement of any nuisance or insanitary condition that may develop.

(5) A gathering site shall be constructed to provide surface drainage adequate to prevent flooding of the gathering site and to prevent water related nuisances on adjacent properties.

(6) Sufficient signs shall identify and show the location of first aid, restroom and drinking water facilities so spectators and participants can readily find them from any place on the gathering site.

(7) The operator shall provide lighting adequate to ensure the comfort and safety of attendees.

(8) All parking areas used for the gathering and under the control of the gathering operator must meet the requirements of this rule.

R392-400-12. Emergency Medical Care Requirements.

(1) The operator shall ensure that the gathering has at least one first aid station. The health officer or local licensed emergency medical services agency director(s) may require more than one first aid station as they deem necessary because

of the nature of the event, time of year, risk of injuries or other public health and safety needs.

(2) First aid stations shall contain the following minimum equipment and maintain the minimum levels over the duration of the gathering:

(a) 1 Bag mask ventilation unit with adult, child, and infant mask sizes

(b) 3 Oropharyngeal airways, adult, child, and infant sizes

(c) 1 Pocket mask

(d) 1 portable oxygen apparatus (tank, regulator, case)

(e) 1 Oxygen extension tubing

(f) 2 adult and 1 child nasal cannula

(g) 2 adult and 1 child non-rebreather mask

(h) 1 adult and 1 child blood pressure cuff

(i) 1 stethoscope

(j) 2 pillows

(k) 2 emesis basins

(l) 4 blankets

(m) 4 sheets

(n) 12 towels

(o) six 5x9 or 8x10 trauma dressings

(p) thirty 4x4 gauze dressings

(q) 12 kerlix or other roller bandage

(r) 3 roles of adhesive tape

(s) 3 cervical collars, 1 regular, 1 no-neck, one pediatric

(t) 1 back board with straps

(u) 6 non-traction extremity splints (e.g.,cardboard, ladder, SAM splints, air splints)

(v) 10 triangular bandages

(w) 2 pair of shears

(x) 1 obstetrical kit

(y) 2 pen lights

(z) 100 assorted bandaids

(aa) 1 traction splint

(bb) 2 tubes of oral glucose

(cc) 1 box of exam gloves

(dd) 4 biohazard bags

(ee) 1 portable suction device

(ff) 1 basic life support jump kit for every 2 gathering medical providers

(gg) 1 automatic external defibrillator

(hh) 1 examination table, cot or bed.

(3) First aid stations shall afford privacy to a person receiving care or treatment.

(4) First aid stations shall be of sufficient size to accommodate the number of care givers required, and the predicted number of sick or injured persons.

(5) First aid stations shall be strategically located to provide expedient medical care for those attending or participating in the gathering.

(6) First aid stations shall be easily accessible by emergency vehicles. The operator shall provide the local licensed emergency medical services director(s) a map of the gathering site which includes location of first aid stations, emergency vehicle ingress and egress routes, landing zones (if applicable) and rendezvous locations.

(7) A first aid station shall be clearly marked and identifiable as a first aid station.

(8) At least two state-licensed or certified medical providers, such as an emergency medical technician, paramedic, nurse, physician's assistant or medical doctor shall be present to staff each first aid station. A gathering having more than 2,500 attendees shall have at least two additional emergency medical providers for each additional 5,000 attendees or fraction thereof. The health officer or local licensed emergency medical services agency director(s) may require additional emergency medical services personnel as deemed necessary because of the nature of the event, time of year, risk of injuries or other public health and safety needs.

(9) First aid stations shall be staffed by individuals meeting the following minimum requirements:

(a) is at least 18 years of age;

(b) has a current state license or certification showing competency to be an emergency medical technician, paramedic, nurse, physician's assistant or physician.

(10) The operator shall ensure that the medical staff have access to telephones or radios to contact outside emergency medical. The operator shall provide the local licensed emergency medical services director(s) the telephone numbers and radio frequencies for accessing the gathering medical providers.

(11) The local health officer or local licensed emergency medical services agency director may require the operator to provide dedicated stand-by ambulances and personnel at the gathering. The operator will be financially responsible for the costs of funding dedicated stand-by ambulances and personnel, but not for the costs of providing transportation services to individual patients.

(12) The operator shall ensure that the staff person in charge of the first aid station keeps accurate records of patients and treatment, and that the health officer is notified of all cases involving a serious injury or communicable disease in accordance with R386-702 Communicable Disease Rule and R386-703 Injury Reporting Rule.

(13) The operator shall ensure that the staff person in charge of the first aid station completes a Department approved pre-hospital care form showing all assistance given each person attended and that these forms are submitted to the Department within 72 hours following the gathering.

R392-400-13. Hazardous Conditions.

The operator shall develop contingency plans for dangerous conditions during the gathering. The plans may include evacuation, cancellation or delay of the gathering and provision for support facilities.

R392-400-14. Food Protection.

(1) The operator and vendors shall comply with R392-100 Food Service Sanitation.

(2) The operator shall assure that food vendors obtain required food service operating permits from the health officer.

R392-400-15. Safe Drinking Water Supply Requirements.

(1) The operator shall ensure that all drinking water is from a state-approved safe drinking water supply or bottled water approved by the Utah Department of Agriculture and Food.

(2) Safe drinking water hauled to the gathering shall be hauled and dispensed in a manner that protects public health as determined by the health officer.

(3) The operator shall provide and strategically locate drinking water stations to effectively meet the drinking water needs of attendees and staff. At least four drinking water stations are required. An additional drinking water station is required for each additional 150 attendees or fraction thereof, above 500 persons. The health officer may reduce the number of additional drinking water stations or require more than one drinking water station for each additional 150 attendees or fraction thereof above 500 persons because of the time of year, heat index, nature of the event or other public health related criteria. If containers are needed to drink the water at the required drinking water stations, the operator must provide single use containers.

R392-400-16. Wastewater Disposal Requirements.

(1) All wastewater shall discharge to a public wastewater treatment system unless no such system is available or practical for use as determined by the health officer.

(2) Where a public sewer is not available or practical for connection, wastewater shall discharge into a wastewater treatment system approved in accordance with State and local wastewater rules.

(3) The health officer may allow portable restroom facilities and wastewater holding tanks only where an approved sewer system is not available or practical for connection.

(4) The number of toilets and facilities shall be provided in accordance with the following Table.

TABLE

Minimum Numbers of Toilets Required

Peak Crowd	Average Time at Gathering (hours)				
	1	2	3	4	5
500	2	4	4	5	6
1000	4	6	8	8	9
2000	5	6	9	12	14
3000	6	9	12	16	20
4000	8	13	16	22	25
5000	12	15	20	25	31
6000	12	15	23	30	38
7000	12	18	26	35	44
8000	12	20	30	40	50
10000	15	25	38	50	63
12500	18	31	47	63	78
15000	20	38	56	75	94
17500	22	44	66	88	109
20000	25	50	75	100	125
25000	38	69	99	130	160
30000	46	82	119	156	192
35000	53	96	139	181	224
40000	61	109	158	207	256
45000	68	123	178	233	288
50000	76	137	198	259	320
55000	83	150	217	285	352
60000	91	164	237	311	384
65000	98	177	257	336	416
each additional 10,000	15	25	38	50	63

(table continued for 6-10 hours)

Peak Crowd	6	7	8	9	10
500	7	9	9	10	12
1000	9	11	12	13	13
2000	16	18	20	23	25
3000	24	26	30	34	38
4000	30	35	40	45	50
5000	38	44	50	56	63
6000	45	53	60	68	75
7000	53	61	70	79	88
8000	60	70	80	90	100
10000	75	88	100	113	125
12500	94	109	125	141	156
15000	113	131	150	169	188
17500	131	153	175	197	219
20000	150	175	200	225	250
25000	191	221	252	282	313
30000	229	266	302	339	376
35000	267	310	352	395	438
40000	305	354	403	452	501
45000	343	398	453	508	563
50000	381	442	503	564	626
55000	419	486	554	621	688
60000	457	531	604	677	751
65000	495	575	654	734	813
each additional 10,000	75	88	100	113	125

(a) If alcoholic beverages are consumed at the gathering, the operator shall increase the number of required toilets by 40%.

(b) For one year following the effective date of this rule the health officer may allow portable multi-urinal stations to substitute for up to 1/3 of the estimated men's portion of the required toilets.

(c) The operator shall provide a minimum of one toilet that is accessible by handicapped persons and at a rate of 5% of total toilets.

(d) Toilet facilities for men and women located in the same building and adjacent to each other shall be separated by an opaque, sound resistant wall. Direct line of sight from outside a toilet facility to the toilets and urinals shall be effectively obstructed.

(e) The operator shall locate portable toilets a minimum of 100 feet from any food service operation and not more than 300 feet from grand stand or spectator or from other areas of activity which pertain to the gathering, as outlined in the permit application. Where site conditions limit the placement of portable toilets, the health officer may allow exemptions to these distances.

(f) The operator shall provide working hand wash stations at a minimum rate of one per 10 portable toilets or portion thereof. The operator shall provide soap, water and single use towels at each hand wash station. Where conditions make the use of soap and water impractical, the health officer may allow sanitizing gel in place of soap and water. Sanitizing gel may not be used in place of soap and water at hand wash stations used by food service workers.

(g) The operator shall provide a minimum of one covered trash container for every 10 portable toilets or portion thereof.

(h) The operator or coordinator shall ensure that all portable toilets are of sound construction (such as non-absorbent polyethylene), easily cleanable, and durable.

(i) The tank capacity of each portable toilet shall not be less than 60 gallons. Chemicals used for sanitizing agents in portable toilets must be acceptable for use by the treatment facility accepting the sewage.

(j) Each portable toilet must be secured against vandalism and adverse weather conditions by tie downs, anchors or similar effective means.

(k) The operator shall contract with a liquid waste hauler that meets local health department requirements. The operator is exempt from this requirement if the operator is approved by the health officer as a liquid waste hauler and is identified as the liquid waste hauler for the gathering.

(i) the operator shall require in the contract with the liquid waste hauler that the hauler shall meet the requirements of this Subsection.

(ii) the liquid waste hauler shall have a written contract with a wastewater treatment facility indicating that the wastewater treatment facility will accept the wastewater.

(iii) the liquid waste hauler must manifest all disposal of liquid waste materials. The liquid waste hauler shall present the manifest to the health officer for the health officer's review upon request.

(l) The operator shall ensure that all wastewater is removed from each portable toilet at least once every 24 hours. On a case by case basis, the health officer may change this frequency because of the time of year, weather conditions, nature of the event or other public health related criteria. All wastewater removed shall be disposed of at a wastewater treatment facility in accordance with State and local wastewater disposal laws.

(m) Each portable toilet must be serviced and sanitized at time intervals that will maintain sanitary conditions of each toilet.

(n) At the conclusion of the gathering, each portable restroom unit must be serviced and removed within 48 hours. The health officer may extend or shorten this time because of the time of year, weather conditions, the nature of the event or to meet other public health needs.

R392-400-17. Penalty.

(1) Any person who violates any provision of this rule may

be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Subsection 26-23-6.

(2) Each day such violation is committed or permitted to continue shall constitute a separate violation.

(3) In addition to other penalties imposed, any person who violates any requirement of this rule shall be liable for all expenses incurred by the department and local health department in removing or abating any nuisance, source of filth, cause of sickness or infection, health hazard, or sanitation violation.

R392-400-18. Severability.

If a provision, clause, sentence, or paragraph of this rule or the application thereof to any person or circumstances shall be ruled invalid, such ruling shall not affect the other provisions or applications of this rule, and to this end the provisions of this rule are severable.

KEY: public health, temporary mass gatherings, special events
April 11, 2002 26-15-2
Notice of Continuation May 8, 2007

R396. Health, Community and Family Health Services, Immunization.
R396-100. Immunization Rule for Students.
R396-100-1. Purpose and Authority.

(1) This rule implements the immunization requirements of Title 53A, Chapter 11, Part 3. It establishes minimum immunization requirements for attendance at a public, private, or parochial kindergarten, elementary, or secondary school through grade 12, nursery school, licensed day care center, child care facility, family home care, or Head Start program in this state. It establishes:

(a) required doses and frequency of vaccine administration;

(b) reporting of statistical data; and

(c) time periods for conditional enrollment.

(2) This rule is required by Section 53A-11-303 and authorized by Section 53A-11-306.

R396-100-2. Definitions.

As used in this rule:

"Department" means the Utah Department of Health.

"Early Childhood Program" means a nursery or preschool, licensed day care center, child care facility, family care home, or Head Start program.

"Exemption" means a relief from the statutory immunization requirements by reason of qualifying under Sections 53A-11-302 and 302.5.

"Parent" means a biological or adoptive parent who has legal custody of a child; a legal guardian, or the student, if of legal age.

"School" means a public, private, or parochial kindergarten, elementary, or secondary school through grade 12.

"School entry" means a student, at any grade, entering a Utah school or an early childhood program for the first time.

"Student" means an individual enrolled or attempting to enroll in a school or early childhood program.

R396-100-3. Required Immunizations.

(1) A student born before July 1, 1993 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, and Rubella.

(2) A student born after July 1, 1993 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, and Hepatitis B.

(3) A student born after July 1, 1993, must also meet the minimum immunization requirements of the ACIP prior to entry into the seventh grade for the following antigens: Tetanus, Diphtheria, Pertussis and Varicella.

(4) A student born after July 1, 1996 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, Hepatitis B, Hepatitis A, and Varicella.

(5) To attend a Utah early childhood program, a student must meet the minimum immunization requirements of the ACIP for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, and Haemophilus Influenza Type b prior to school entry.

(6) The vaccinations must be administered according to the recommendations of the United States Public Health Service's Advisory Committee on Immunization Practices (ACIP) as listed below which are incorporated by reference into this rule:

(a) General Recommendations on Immunization: December 1, 2006/Vol. 55/No. RR-15;

(b) Immunization of Adolescents: November 22, 1996/Vol. 45/No. RR-13;

(c) Combination Vaccines for Childhood Immunization: May 14, 1999/Vol. 48/No.RR-5;

(d) Diphtheria, Tetanus, and Pertussis: Recommendations for Vaccine Use and Other Preventive Measures: August 8, 1991/Vol. 40/No. RR-10;

(e) Pertussis Vaccination: Use of Acellular Pertussis Vaccines Among Infants and Children: March 28, 1997/Vol. 46/No. RR-7;

(f) Use of Diphtheria Toxoid-Tetanus Toxoid-Acellular Pertussis Vaccine as a Five-Dose Series: Supplemental Recommendations of the Advisory Committee on Immunization Practices: November 17, 2000/Vol. 49/No. RR-13;

(g) Preventing Tetanus, Diphtheria, and Pertussis Among Adolescents: Use of Tetanus Toxoid, Reduced Diphtheria Toxoid and Acellular Pertussis Vaccines: March 24, 2006/Vol. 55/No. RR-3;

(h) A Comprehensive Strategy to Eliminate Transmission of Hepatitis B Virus Infection in the United States December 23, 2005/Vol. 54/No. RR-6;

(i) Haemophilus b Conjugate Vaccines for Prevention of Haemophilus influenzae Type b Disease Among Infants and Children Two Months of Age and Older: January 11, 1991/Vol. 40/No. RR-1;

(j) Recommendations for Use of Haemophilus b Conjugate Vaccines and a Combined Diphtheria, Tetanus, and Pertussis, and Haemophilus b Vaccine: September 17, 1993/Vol. 42/No. RR-13;

(k) Measles, Mumps, and Rubella-Vaccine Use and Strategies for Elimination of Measles, Rubella, and Congenital Rubella Syndrome and Control of Mumps: May 22, 1998/Vol. 47/No. RR-8;

(l) Updated Recommendations of the Advisory Committee on Immunization Practices (ACIP for the Control and Elimination of Mumps: June 9, 2006/Vol. 55/No. 22;

(m) Poliomyelitis Prevention in the United States: May 19, 2000/Vol. 49/No. RR-5;

(n) Prevention of Varicella: July 12, 1996/Vol. 45/No. RR-11;

(o) Prevention of Varicella: Updated Recommendations of the Advisory Committee on Immunization Practices: May 28, 1999/Vol. 48/No. RR-6; and

(p) Prevention of Hepatitis A Through Active or Passive Immunization: May 29, 2006/Vol. 55/No. RR-7.

R396-100-4. Official Utah School Immunization Record (USIR).

(1) Schools and early childhood programs shall use the official Utah School Immunization Record (USIR) form as the record of each student's immunizations. The Department shall provide copies of the USIR to schools, early childhood programs, physicians, and local health departments upon each of their requests.

(2) Each school or early childhood program shall accept any immunization record provided by a licensed physician, registered nurse, or public health official as certification of immunization. It shall transfer this information to the USIR with the following information:

(a) name of the student;

(b) student's date of birth;

(c) vaccine administered; and

(d) the month, day, and year each dose of vaccine was administered.

(3) Each school and early childhood program shall maintain a file of the USIR for each student in all grades and an exemption form for each student claiming an exemption.

(a) The school and early childhood programs shall maintain up-to-date records of the immunization status for all students in all grades such that it can quickly exclude all non-immunized students if an outbreak occurs.

(b) If a student withdraws, transfers, is promoted or

otherwise leaves school, the school or early childhood program shall either:

(i) return the USIR and any exemption form to the parent of a student; or

(ii) transfer the USIR and any exemption form with the student's official school record to the new school or early childhood program.

(4) A representative of the Department or the local health department may examine, audit, and verify immunization records maintained by any school or early childhood program.

(5) Schools and early childhood programs may meet the record keeping requirements of this section by keeping its official school immunization records in the Utah Statewide Immunization Information System (USIIS).

R396-100-5. Exemptions.

A parent claiming an exemption to immunization for medical, religious or personal reasons, as allowed by Section 53A-11-302, shall provide to the student's school or early childhood program the required completed forms. The school or early childhood program shall attach the forms to the student's USIR.

R396-100-6. Reporting Requirements.

(1) Each school and early childhood program shall report the following to the Department in the form or format prescribed by the Department:

(a) by November 30 of each year, a statistical report of the immunization status of students enrolled in a licensed day care center, Head Start program, and kindergartens;

(b) by November 30 of each year, a statistical report of the two-dose measles, mumps, and rubella immunization status of all kindergarten through twelfth grade students;

(c) by November 30 of each year, a statistical report of tetanus, diphtheria, pertussis, hepatitis B, varicella, and the two-dose measles, mumps, and rubella immunization status of all seventh grade students; and

(d) by June 15 of each year, a statistical follow-up report of those students not appropriately immunized from the November 30 report in all public schools, kindergarten through twelfth grade.

(2) The information that the Department requires in the reports shall be in accordance with the Centers for Disease Control and Prevention guidelines.

R396-100-7. Conditional Enrollment and Exclusion.

A school or early childhood program may conditionally enroll a student who is not appropriately immunized as required in this rule. To be conditionally enrolled, a student must have received at least one dose of each required vaccine and be on schedule for subsequent immunizations. If subsequent immunizations are one calendar month past due, the school or early childhood program must immediately exclude the student from the school or early childhood program.

(1) A school or early childhood program with conditionally enrolled students shall routinely review every 30 days the immunization status of all conditionally enrolled students until each student has completed the subsequent doses and provided written documentation to the school or early childhood program.

(2) Once the student has met the requirements of this rule, the school or early childhood program shall take the student off conditional status.

R396-100-8. Exclusions of Students Who Are Under Exemption and Conditionally Enrolled Status.

(1) A local or state health department representative may exclude a student who has claimed an exemption to all vaccines or to one vaccine or who is conditionally enrolled from school attendance if there is good cause to believe that the student has a vaccine preventable disease and:

(a) has been exposed to a vaccine-preventable disease; or

(b) will be exposed to a vaccine-preventable disease as a result of school attendance.

(2) An excluded student may not attend school until the local health officer is satisfied that a student is no longer at risk of contracting or transmitting a vaccine-preventable disease.

R396-100-9. Penalties.

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Immunization Rule for Students, are prescribed under Section 26-23-6. A violation is punishable as a class B misdemeanor on the first offense, a class A misdemeanor on the second offense or by civil penalty of up to $5,000 for each violation.

KEY: immunization, rules and procedures
May 7, 2007 53A-11-303
Notice of Continuation April 24, 2003 53A-11-306

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1A. Medicaid Policy for Experimental, Investigational or Unproven Medical Practices.
R414-1A-1. Introduction and Authority.

(1) This rule establishes Medicaid payment policy for experimental, investigational or unproven medical practices.

(2) This rule is authorized by Sections 26-1-5, 26-1-15, and 26-18-6, and by Subsections 26-18-3(2) and 26-18-5(4).

R414-1A-2. Definitions.

(1) The definitions in R414-1 apply to this rule.

(2) In addition:

(a) "Experimental, investigational or unproven medical practice" means any procedure, medication product, or service that is:

(i) not proven to be medically efficacious for a given procedure; or

(ii) performed for or in support of purposes of research, experimentation, or testing of new processes or products; or

(iii) both;

(b) "Medically efficacious" means a medical practice that:

(i) has been determined effective and is widely utilized as a standard medical practice for specific conditions; and

(ii) has been approved as a covered Medicaid service by division staff and physician consultants on the basis of medical necessity, as defined in R414-1-2(17);

(c) "Supporting services" means supplies or laboratory, X-ray, physician, pharmacy, therapy, or transportation services.

R414-1A-3. Medicaid Policy.

(1) Experimental, investigational or unproven medical practices are not covered Medicaid services.

(2) Procedures or services proven to be medically efficacious for specific medical conditions may be provided as covered Medicaid services only for the conditions specified. Procedures or services are not covered Medicaid services for any other conditions or for investigational or experimental trials.

(3) Inpatient or outpatient hospitalization for the purpose of receiving services or procedures that are experimental, investigational or medically unproven, or in support of such services or procedures, is not a covered Medicaid service. If services or procedures are provided during hospitalization for an otherwise medically necessary and appropriate service, experimental, investigational or unproven medical procedures are excluded from reimbursement.

KEY: Medicaid
May 25, 2004 26-1-5
Notice of Continuation May 21, 2007 26-18-3(2)

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-10A. Transplant Services Standards.
R414-10A-1. Introduction and Authority.

(1) This rule establishes standards and criteria for tissue and organ transplantation services.

(2) Section 9507 of the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), codified as section 1903(i)(1) of the Social Security Act, requires states, as part of the Medicaid program, to establish standards for coverage of transplantation services.

(3) Under the ruling issued by the Federal District Court for the District of Utah, Central Division, Civil No. 96405, the Department of Health has absolute discretion to fund transplantation services under Title XIX of the Social Security Act and if transplantation services are covered, there must be no discrimination on the basis of age.

R414-10A-2. Definitions.

For purposes of Rule R414-10A:

(1) "Abstinence" means the documented non-use of any abusable psychoactive substance by the client with random monthly drug screen tests.

(2) "Active infection" means current presumptive evidence of invasion of tissue or body fluids by bacteria, viruses, fungi, rickettsiae, or parasites which is not demonstrated to be effectively controlled by the host, antibiotic or antimicrobial agents.

(3) "Age group" means patients documented in the medical literature with an age at the time of transplantation related to the current age of the client as listed below:

(a) Birth through 12 months;

(b) One through 12 years;

(c) 13 through 20 years;

(d) 21 through 30 years;

(e) 31 through 40 years; or

(f) 41 through 54 years.

(g) Department medical consultants may consider other age groups, documented by the medical literature and the transplant center to have conclusive relevance to the client's survival.

(4) "Active substance abuse" means the current use of any abusable psychoactive substance which is not appropriately prescribed and taken under the direction of a physician or is not medically indicated.

(5) "Allogenic" means having a different genetic constitution but belonging to the same species.

(6) "Autologous" means the products or components of the same individual person.

(7) "Bone marrow transplantation" means transplantation of cells from the bone marrow stem cells, peripheral blood stem cells, or cord blood stem cells to supplant the client bone marrow.

(8) "Client" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider.

(9) "Department" means the Utah Department of Health.

(10) "Donor lymphocyte infusion" means infusion of allogenic lymphocytes into the client.

(11) "Drug screen" means random testing for tobacco, marijuana, alcohol, benzodiazepines, narcotics, methadone, cocaine, amphetamines, and barbiturates.

(12) "Emergency transplantation" means any transplantation which for reasons of medical necessity requires that a transplant be performed less than five days after determination of the need for the procedure.

(13) "Intestine transplantation" means transplantation of both the small bowel and colon.

(14) "Medical literature" means articles and medical information which have been peer reviewed and accepted for publication or published.

(15) "Medically necessary" means a client's medical condition which meets all the criteria and none of the contraindications for the type of transplantation requested.

(16) "Multiple transplantations" means, except for corneas, the transplantation of more than one tissue or organ during the same or different operative procedure.

(17) "Multivisceral transplantation" means the transplantation of liver, pancreas, omentum, stomach, small intestine and colon.

(18) "Patient" means a person who is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

(19) "Remission" means the lack of any evidence of the leukemia on physical examination and hematological evaluation, including normocellular bone marrow with less than five percent blast cells, and peripheral blood counts within normal values, except for clients who are receiving maintenance chemotherapy.

(20) "Services" means the type of medical assistance specified in sections 1905(a)(1) through (24) of the Social Security Act and interpreted in the 42 CFR Section 440, Subpart A, October 1992 edition, which is adopted and incorporated by reference.

(21) "Substance abuse rehabilitation program" means a rehabilitation program developed and conducted by an inpatient facility that, at a minimum, meets the standards of organization and staff of a chemical dependency/substance abuse specialty hospital specified in Sections R432-102-4 and 5.

(22) "Syngeneic" means possessing identical genotypes, as monozygotic or identical twins.

(23) "Transplantation" means the transfer of a human organ or tissue from one person to another or from one site to another in the same individual, except for skin, tendon, and bone.

(24) "Vital end-organs" means organs of the body essential to life, e.g., the heart, the liver, the lungs, and the brain.

R414-10A-3. Client Eligibility Requirements for Coverage for Transplantation Services.

Transplantation services are available to categorically eligible and medically needy individuals who are Title XIX eligible and meet criteria listed in Sections R414-10A-6 through 22 at the time the transplantation service is provided.

R414-10A-4. Program Access Requirements.

(1) Transplantation services may be provided only for those eligible clients who meet the criteria listed in Sections R414-10A-6 through 22 for services covered under the Utah Medicaid program.

(2) Transplantation services for the organ needed by the client may be provided only in a transplant center approved by the United States Department of Health and Human Services as a Medicare designated center or by the Department in accordance with criteria in Section R414-10A-7.

(3) Transplantation services may be provided out-of-state only when the authorized service is not available in an approved facility in the state of Utah.

(4) Criteria listed in Rule R414-10A applicable to transplantation services and transplant centers in the state of Utah also apply to out-of-state transplant services and facilities.

(5) Post transplant authorization for transplantation services provided under emergency circumstances may be given only when:

(a) all Utah Medicaid criteria listed in Sections R414-10A-6 through 22 are met; and

(b) both the transplant center and the board-certified or board-eligible specialist evaluation required by Subsection R414-10A-6(3) are submitted with the recommendation that the

tissue or organ transplantation be authorized.

R414-10A-5. Service Coverage.

(1) Transplantation services are covered by the Utah Medicaid program only when criteria listed in Sections R414-10A-6 through 22 are met.

(2) Transplantations which are experimental or investigational or which are performed on an experimental or investigational basis are not covered.

(3) Multiple transplantation services may be provided only when the criteria for the specific multiple transplantations are met.

(4) Staff shall not consider criteria for single tissue or organ transplantation in reviewing requests for multiple transplantations.

(5) Transplantation of additional tissues or organs, different from prior transplantations, may be provided only when the criteria for multiple transplantations of all provided or scheduled multiple tissue or organ transplantations are met.

(6) The Utah Medicaid program covers repeat transplantations of the same tissues or organs only when the Department approves a new prior authorization under criteria found in Sections R414-10A-6 through 22.

(7) Payment for emergency transplantations may be provided only when the service is provided for a transplantation with criteria approved in Sections R414-10A-6 through 22. Payment will not be made until Department staff has reviewed all of the information required by Sections R414-10A-6 through 22 and determined that the patient and the transplant center met criteria for approval and provision of the service at the time of the transplantation.

(8) The Utah Medicaid program does not cover the following transplantation services:

(a) Beta cells or other pancreas cells not part of a pancreatic organ transplantation.

(b) Cells or tissues transplanted into the coronary arteries, myocardium, central nervous system, or spinal cord.

(c) Stem cells other than hematological stem cells.

(d) Donor lymphocyte infusions for clients who have not had a prior bone marrow transplantation.

(9) The Utah Medicaid program does not cover the following procedures:

(a) Temporary or implanted ventricular assist devices with the exception of intra-aortic balloon assist devices.

(b) Temporary or implanted biventricular assist devices.

(c) Temporary or implanted mechanical heart.

R414-10A-6. Prior Authorization.

(1) Prior authorization is required for all transplantation services except for the following transplants:

(a) cornea transplantation.

(b) kidney, heart and liver transplantation performed in a Utah transplant center, which has been Medicare-approved for the last five or more years.

(2) The prior authorization request for transplantation services must be initiated by the client's referring physician. Failure to submit all required information with the prior authorization request will delay processing of the request for transplantation.

(3) The initial request for prior authorization of any transplantation, except cornea or kidney, must contain all of the following:

(a) A description of the medical condition which necessitates a transplantation.

(b) Transplantation treatment alternatives utilized previous to the transplantation request.

(c) Transplantation treatment alternatives considered and discarded, including discussion of why the alternatives have been discarded.

(d) Comprehensive examination, evaluation and recommendations completed by a board-certified or board-eligible specialist in a field directly related to the client's condition which necessitates the transplantation, such as a nephrologist, gastroenterologist, cardiologist, or hematologist.

(e) Comprehensive psycho-social evaluation of the client must include a comprehensive history regarding substance abuse and compliance with medical treatment.

(f) Psycho-social evaluation of parent(s) or guardian(s) of the client, if the client is less than 18 years of age. The psycho-social evaluation must include a comprehensive history regarding substance abuse, and past and present compliance with medical treatment.

(g) Comprehensive psychiatric evaluation of the client, if the client has a history of mental illness.

(h) Comprehensive psychological or developmental testing, as requested by the Department.

(i) Comprehensive infectious disease evaluation for a client with a recent or current suspected infectious episode.

(j) Documentation by the client's referring physician that a client with a history of substance abuse has successfully completed a substance abuse program or has documented abstinence for a period of at least six months before any transplantation service can be authorized.

(k) At least two negative drug screens within three months of the request date for prior authorization. The Utah Medicaid program requires monthly drug screens until the transplant date or until the transplant is denied if either of the two random drug screens are positive for drug use, past drug screens have been positive for drug use, or the Department requests the monthly screens. If the client has a history of substance abuse that does not include the drugs listed in Subsection R414-10A-2(11), then the drug screens must include the other substance(s) upon drug testing availability.

(l) Hospital and outpatient records for at least the last two years, unless the patient is less than two years of age, in which case all records.

(m) Pretransplant evaluation for a client diagnosed with cancer that includes staging of the cancer, laboratory tests, and imaging studies. A letter documenting that the transplant evaluation has been completed and that all medical records documentation from the evaluation have been transmitted to the Department.

(n) Any other medical evidence needed to evaluate possible contraindications for the type of transplantation being considered. Contraindications are listed in this rule under each organ or transplant type.

(o) The transplant center must document, by a current medical literature review, a one-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. Survival rate must be calculated by the Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan, G., Meier, P. Non-Parametric estimation from incomplete observations. Journal of American Statistical Association 53:457-481, 1958. Cox, D.R., Oakes, D. Analysis of survival data. Chapman and Hill, 1984." adopted and incorporated by reference. At least ten patients in the appropriate age group must be alive at the end of the one or three year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(p) The transplant center must document by a current medical literature review, a one year graft function rate for patients having received pancreas, kidney or small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. Graft function rate must be calculated by the Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan,

G., Meier, P. Non-Parametric estimation from incomplete observations. Journal of American Statistical Association 53:457-481, 1958. Cox, D.R., Oakes, D. Analysis of survival data. Chapman and Hill, 1984." adopted and incorporated by reference. The time to graft failure will be determined by the use of insulin post-pancreas transplantation, by the use of dialysis post-renal transplantation, and the use of total parenteral nutrition post-small bowel transplantation. At least ten patients in the appropriate age group must have documented graft function at the end of the one year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(q) Bone marrow transplantation centers must document, by a current medical literature review, a one-year and a three-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(r) The transplant center must provide written recommendations for each client which support the need for the transplant. The recommendations must reflect use of both the transplant center's own patient selection criteria and the Utah Medicaid program criteria as noted in Sections R414-10A-8 through 22. Agreement of the transplant center to provide the required service must also be established.

(s) The physician must provide, for review by the Department, any additional medical information which could affect the outcome of the specific transplant being requested.

(t) The completed request for authorization, along with all required information and documentation, must be delivered to:

Utah Department of Health
Bureau of Coverage and Reimbursement Policy
Utilization Management Unit
Transplant Coordinator
288 North 1460 West
P.O. Box 143103
Salt Lake City, Utah 84114-3103

(u) If incomplete documentation is received by the Department, the client's case is pended until the requested documentation has been received.

(4) Prior authorization for each donor lymphocyte must contain all of the following:

(a) A description of the medical condition that necessitates a donor lymphocyte infusion.

(b) Comprehensive examination, evaluation and recommendations completed by a board-certified or board-eligible specialist in a field directly related to the client's condition that necessitates the transplantation, such as a nephrologist, gastroenterologist, cardiologist, or hematologist. The evaluation must document that the proposed donor lymphocyte infusion for the client is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b).

(c) Hospital and outpatient records for at least the last six months. If the patient is less than six months of age, the Department requires all case records.

(d) The transplant center must document by a current medical literature review that the donor lymphocyte infusion is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b) for the age group, specific diagnosis(es), condition, and type of transplantation the client has previously received.

R414-10A-7. Criteria for Transplantation Centers or Facilities.

Transplantation services are covered only in a transplant center or facility which demonstrates the following qualifications to the Department:

(1) Compliance with criteria listed in Sections R414-10A-6 through 22.

(2) The transplant center must document cost effectiveness and quality of service. The transplant center must complete, and submit to the Department for evaluation, documentation specific to the surgical experience of the requesting transplant center, showing applicable one and three year survival rates for all patients receiving transplantation in the last three years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Out-of-state transplant centers must meet all of the criteria and requirements listed by the Department in Sections R414-10A-6 through 22.

(4) Transplantation services are covered in out-of-state transplant centers only when the service is not available in an approved facility in Utah, and agreement is reached between the Department and the requesting physician that service out-of-state is essential to the individual case.

(5) Reimbursement to out-of-state transplant centers is provided only when the transplant center and the Department can agree upon arrangements which conform to the Department payment methodology.

(6) Corneal transplant facilities must document:

(a) certification or licensure by the Department as an ambulatory surgical center or an acute care general hospital; and

(b) that the surgeon is board-certified or board-eligible in ophthalmology.

(7) Heart, heart lung, intestine, lung, pancreas, kidney, and liver transplant centers must document all of the following:

(a) Current approval by the U.S. Department of Health and Human Services as a Medicare-approved center for transplantation of the organ(s) requested for the client.

(b) Current full membership in the United Network for Organ Sharing for the specific organ transplantation requested for the client.

(8) Bone marrow transplant centers must document approval by the National Marrow Donor Program as a bone marrow transplantation center.

R414-10A-8. Criteria and Contraindications for Cornea Transplantation.

(1) Cornea transplantation services may be provided to a client of any age.

(2) The following are contraindications for cornea transplantation or penetrating keratoplasty:

(a) Active infection.

(b) The presence of an associated disease, such as macular degeneration or diabetic retinopathy severe enough to prevent visual improvement with a successful corneal transplantation.

R414-10A-9. Criteria and Contraindications for Bone Marrow Transplantation.

(1) Bone marrow transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for bone marrow transplantation must meet requirements of Subsections R414-10A-9(2)(a) or (b).

(a) Allogenic and syngeneic bone marrow transplantations may be approved for payment only when the client has an HLA-matched donor. The donor must be compatible for all or a five-out-of-six match of World Health Organization recognized HLA-A, -B, and -DR antigens as determined by appropriate serologic typing methodology.

(i) The Department authorizes payment for a search of related family members, unrelated persons or both to find a suitable donor.

(ii) The transplant center staff must complete, and submit to the Department for evaluation, a current medical literature

review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate, or by having a greater than or equal to 55 percent three-year survival rate or by meeting the one-year and three-year survival rates for patients receiving bone marrow transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Autologous bone marrow transplantation performed in conjunction with total body radiation or high dose chemotherapy, may be approved for payment only if a current medical literature review, completed by the transplant center staff and sent to the Department for staff review and evaluation, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate, or by having a greater than or equal to 55 percent three-year survival rate or by meeting the one-year and three-year survival rates for patients receiving bone marrow transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) Clients for autologous bone marrow transplantations must have adequate marrow function and no evidence of marrow involvement by the primary malignancy at the time the marrow is harvested.

(3) The client for bone marrow transplantation must meet all of the following requirements:

(a) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(b) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(c) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(d) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(e) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(f) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original bone marrow disease will not recur and limit survival to less than 75% one-year survival rate, or to less than 55% three-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) Any single contraindication listed below precludes approval for Medicaid payment for bone marrow transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome or interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(g) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate, or a greater than or equal to 55 percent three-year survival rate, or by meeting the one-year and three-year survival rates after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(h) Cardiovascular diseases:

(i) Intractable cardiac arrhythmias.

(ii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iii) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(5) Prior to the approval of transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s) of a client who is under 18 years of age, to assure compliance to medication and follow-up care, if an indication of non-compliance documented by any of the behaviors listed in Subsections R414-10A-9(5)(j)(i) through (iv) is demonstrated by the parent(s) or guardian(s) of the client.

(6) The client for donor lymphocyte infusion must produce documentation by current medical literature review and the client's referring physician that the donor lymphocyte infusion is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b).

R414-10A-10. Criteria and Contraindications for Heart Transplantation.

(1) Heart transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for heart transplantation must meet all of the following requirements:

(a) The client must have irreversible, progressive heart disease with a life expectancy of one year or less without transplantation, or documented evidence of progressive pulmonary hypertension and no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of

successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving heart transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) Severe cardiac dysfunction.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(f) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have strong motivation to undergo the procedure, as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original heart disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below precludes approval for Medicaid payment for heart transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more non-cardiac vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(g) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(h) Cardiovascular diseases:

(i) Severe pulmonary hypertension documented in patients 18 years of age and older by a pulmonary vascular resistance greater than eight Wood units, or pulmonary vascular resistance of six or seven Wood units in which a nitroprusside infusion is unable to reduce the pulmonary vascular resistance to less than three Wood units or is unable to reduce the pulmonary artery systolic pressure to below 50 mmHg.

(ii) Severe pulmonary hypertension documented in patients less than 18 years of age and more than six months of age by a pulmonary vascular resistance greater than six pulmonary vascular resistance index units (PVRI), or in which a nitroprusside infusion is unable to reduce the pulmonary vascular resistance to less than six PVRI.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. Non-compliance is demonstrated by documentation of any of the behaviors listed in Subsections R414-10A-10(3)(j)(i) through (iv).

R414-10A-11. Criteria and Contraindications for Intestine Transplantation.

(1) Intestine transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for intestine transplantation must meet all of the following requirements:

(a) The client must have short bowel syndrome or irreversible, progressive small bowel disease that requires daily hyperalimentation with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel graft function rate for patients receiving intestine transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 85 percent one-year survival rate for patients receiving intestine transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(f) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original intestinal disease will not recur and limit graft function survival to less than 75% one-year survival rate.

(j) The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below precludes approval for Medicaid payment for small bowel transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(g) Cancer, unless treated and eradicated for two or more years, or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 85% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(h) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-11(3)(j)(i) through (iv).

R414-10A-12. Criteria and Contraindications for Kidney Transplantation.

(1) Kidney transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) All indications for kidney transplantation listed below must be met by each client.

(a) The client must have irreversible, progressive end-stage renal disease.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year successful renal graft function rate for patients receiving renal transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving renal transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(f) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a

request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original renal disease will not recur and limit graft function to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below shall preclude approval for Medicaid payment for kidney transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more non-renal end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent pulmonary infarction.

(g) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 90% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(h) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-12(3)(j)(i) through (iv).

R414-10A-13. Criteria and Contraindications for Liver Transplantation.

(1) Liver transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) A client for liver transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver transplantation for the age group, specific diagnosis(es), condition, and type of liver transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(c) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(d) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(f) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(g) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original liver disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below precludes approval for Medicaid payment for liver transplantation:

(a) Active infection outside the hepatobiliary system.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more non-hepatic vital end-organs.

(c) Hepatitis B surface antigen positive, except for cases of fulminant hepatitis B.

(d) Stage IV hepatic coma.

(e) Active substance abuse.

(f) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(g) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(h) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(i) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by

the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(j) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria: "Goldman, L. et al. Comparative reproducibility and validity of systems assessing cardiovascular functional class: Advantages of a new specific activity scale. American Heart Association Circulation 64: 1227, 1981.", adopted and incorporated by reference.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(k) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(l) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s) of a client who is under 18 years of age, to assure compliance with medications and follow-up care, if an indication of non-compliance documented by any of the behaviors listed in Subsections R414-10A-13(3)(l)(i) through (iv) is demonstrated by the parent(s) or guardian(s) of the client.

R414-10A-14. Criteria and Contraindications for Lung Transplantation.

(1) Lung transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for lung transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving lung transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(c) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(d) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(f) The client with a history of substance abuse must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(g) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original lung disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below shall preclude approval for payment for lung transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more non-pulmonary vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation for the patient.

(f) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(g) Cardiovascular diseases:

(i) Myocardial infarction within six months;

(ii) Intractable cardiac arrhythmias;

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease;

(vi) Severe generalized arteriosclerosis.

(h) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(i) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-14(3)(i)(i) through (iv).

R414-10A-15. Criteria and Contraindications for Pancreas Transplantation.

(1) Pancreas transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) All indications for pancreas transplantation listed below must be met by each client.

(a) The client must have type I diabetes mellitus.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a pancreas graft function rate greater than or equal to 75 percent at one-year for patients receiving pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that he and his parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required

(f) Psycho-social assessment by a Board certified psychiatrist that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original pancreas disease will not recur and limit graft function rate to less than 75% at one-year. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below precludes approval for Medicaid payment for pancreas transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more end-organs.

(c) Active peptic ulcer.

(d) Active substance abuse.

(e) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(f) Irreversible musculoskeletal disease resulting in progressive weakness or in confinement to bed.

(g) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(h) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predictable).

(iii) Restrictive pulmonary disease (FVC less than 50% of predictable).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent pulmonary infarction.

(i) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 90% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(j) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe general arteriosclerosis.

(k) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(l) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-15(3)(l)(i) through (iv).

R414-10A-16. Criteria and Contraindications for Small Bowel Transplantation.

(1) Small bowel transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for small bowel transplantation must meet all of the following requirements:

(a) The client must have short bowel syndrome or irreversible, progressive small bowel disease that requires daily hyperalimentation with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The transplant center staff must complete, and submit

to the Department for staff review and evaluation, a current medical literature review documenting a probability for successful clinical outcome by having a greater than or equal to 85 percent one-year survival rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(f) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original small bowel disease will not recur and limit small bowel function survival to less than 85% one-year survival rate.

(j) The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below shall preclude approval for Medicaid payment for small bowel transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(g) Cancer, unless treated and eradicated for two or more years, or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(h) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-16(4)(k)(i) through (iv).

R414-10A-17. Criteria and Contraindications for Heart and Lung Transplantation.

(1) Heart-lung transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for heart-lung transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving heart-lung transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The requirements listed in:

(i) Subsections R414-10A-10(3)(b) through (i).

(ii) Subsections R414-10A-10(3)(a) through (g), and (i) through (j).

(iii) Subsection R414-10A-10(4).

R414-10A-18. Criteria and Contraindications for Intestine and Liver Transplantation.

(1) Intestine-liver transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for intestine-liver transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit

to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving intestine-liver transplantation for the age group, specific diagnosis(es), and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-13(2)(b) through (g).

(ii) Subsections R414-10A-13(3)(a) through (l).

(iii) Subsection R414-10A-13(4).

R414-10A-19. Criteria and Contraindications for Kidney-Pancreas Transplantation.

(1) Kidney-pancreas transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for kidney-pancreas transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year kidney and pancreas function rates for patients receiving kidney-pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving kidney-pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 90% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-12(2)(d) through (i).

(ii) Subsections R414-10A-12(3)(a) through (j).

(iii) Subsection R414-10A-12(4).

R414-10A-20. Criteria and Contraindications for Combined Liver-Kidney Transplantation.

(1) Liver-kidney transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for liver-kidney transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver-kidney transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting a renal graft function rate greater than or equal to 75 percent at one year for patients receiving liver-kidney transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-13(2)(b) through (g).

(ii) Subsections R414-10A-13(3)(a) through (l).

(iii) Subsection R414-10A-13(4).

R414-10A-21. Criteria and Contraindications for Multivisceral Transplantation.

(1) Multivisceral transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for multivisceral transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year pancreas and small bowel function rates for patients receiving multivisceral transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving multivisceral transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-

year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-13(2)(b) through (g).

(ii) Subsections R414-10A-13(3)(a) through (l).

(iii) Subsection R414-10A-13(4).

R414-10A-22. Criteria and Contraindications for Liver and Small Bowel Transplantation.

(1) Liver-small bowel transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for liver-small bowel transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver-small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-13(2)(b) through (g).

(ii) Subsections R414-10A-13(3)(a) through (l).

(iii) Subsection R414-10A-13(4).

KEY: Medicaid
May 15, 2007 26-1-5
Notice of Continuation February 2, 2007 26-18-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-60. Medicaid Policy for Pharmacy Copayment Procedures.
R414-60-1. Introduction and Authority.

(1) The Utah Medicaid Pharmacy program reimburses for, covered, prescribed outpatient drugs dispensed to eligible medicaid clients.

(2) This rule is authorized by 42 CFR 447.331, 42 CFR 447.15 and .50, the Utah Pharmacy Practice Act 58-17a-605, Utah health Code 26-18-105, and House Bill 268.

R414-60-2. Client Eligibility Requirements.

(1) Prescribed drugs are covered for Medicaid eligible, categorically and medically needy individuals.

(2) Effective January 1, 2006, outpatient drugs covered under Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries who are defined as individuals who have Medicare and Medicaid benefits, will not be covered under Medicaid in accordance with SSA 1935(a).

(3) Drugs excluded under Medicare-Part D are not covered by Medicaid for dual eligible recipients. Certain limited drugs provided, in accordance with SSA, Section 1927(d)(2), to all Medicaid recipients, and not covered under the Medicare Prescription Drug Benefit-Part D, are payable by Medicaid. These drugs are limited as described in the Pharmacy Provider Manual and include some, but not all (a) agents when used for cough and cold, (b) over-the-counter drugs, and all (c) barbiturates, (d) benzodiazepines.

R414-60-3. Program Access Requirements.

Pharmacy services must be prescribed by a Utah licensed health care provider lawfully permitted to issue the prescription. The pharmacy filling the prescription must be enrolled as a Utah Medicaid provider. The clients receiving the pharmacy services may be living at home, a Long Term Care (LTC) facility, an Extended Care or Skilled facility or a community based group home.

R414-60-4. Program Coverage.

(1) All drugs are covered from manufacturers who have signed rebate agreements with Health Care Financing beginning with the SSA Title XIX and the Obra Law of 1990.

(2) The optional drugs allowed in SSA 1927 (d)(2) are covered as follows, some, but not all (a) agents when used for cough and cold, (b) over-the-counter drugs, and all (c) barbiturates, (d) benzodiazepines.

(3) In accordance with Utah Law 58-17b-606 (4), when a multisource A-rated legend drug is available in the generic form, reimbursement for the generic form of the drug will be made unless the treating physician demonstrates a medical necessity for dispensing the nongeneric, brand-name legend drug.

R414-60-5. Limitations.

(1) Cumulative amounts for 30 day periods may apply to some drug categories.

(2) Limitations may be placed upon drugs the same as imposed by manufacturers and the Food and Drug Administration (FDA).

(3) Duplication of drugs within therapeutic categories is limited.

(4) Step therapy, requiring documentation of therapeutic failure with one drug before reimbursement for another drug in the same category may be used.

(5) Pharmacy reimbursement for some drugs is regulated by prior approval as described in the provider manual.

(6) Some drugs may be supplied through contracted specialty pharmacies.

(7) Medicaid may use the criteria developed by academics and professionally recognized experts to determine product utilization in order to achieve reasonable outcomes for client improvement, elimination of pain, and/or recovery.

(8) Drug Efficacy Study Implementation Project Drugs (DESI Drugs) as determined by the FDA to be less-than-effective are not a benefit.

(9) Other drugs and/or categories of drugs as determined by the Utah State Division of Health Care Financing and listed in the Pharmacy Provider Manual are not a benefit.

(10) The Drug Utilization Review Board (DUR) recommends appropriate drug use for covered drugs. The DUR reviews and approves Medicaid drug use criteria and policy. The board makes determinations on specific cases and requests for therapeutic drug use.

(11) Clients whose prescriptions exceed seven prescriptions per month are subject to a clinical review by the Division.

(12) Drugs provided to clients during inpatient hospital stays are not a benefit and are included in the DRG payment.

R414-60-6. Co-payment Policy.

(1) The Department shall impose a co-payment in the amount of $3 for each prescription filled when a non-co-payment exempt Medicaid client, as designated on his Medicaid card, receives the prescribed medication.

(2) The Department shall deduct $3 from the reimbursement paid to the provider for each prescription, up to a maximum amount of $15 per month for each client.

(3) It is the providers responsibility to collect the copayment amount from the Medicaid client for those prescriptions that require a copayment.

(4) Co-payments do not apply to recipients and services excluded from cost sharing requirements in 42 CFR 447.53 (b).

R414-60-7. Reimbursement.

Pharmaceuticals are reimbursed using the fee schedule as established in the Utah Medicaid State Plan and incorporated by reference in R414-1-5(2).

KEY: Medicaid
January 4, 2006 26-18-3
Notice of Continuation May 21, 2007 26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-61. Home and Community Based Waivers.
R414-61-1. Introduction and Authority.

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

R414-61-2. Incorporation by Reference.

The Department adopts the document entitled "Utah State Plan under Title XIX of the Social Security Act" 1999 edition, and the document entitled "Home and Community Based Waiver Implementation Plan", 1999 edition, which are incorporated by reference within this rule. These documents are available for public inspection during normal working hours, at the State Health Department Building, located at 288 North, 1460 West, Salt Lake City, UT, 84114-3102, at the office of the Division of Health Care Financing. These documents will be used by the Division for the provision of services under the following waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, dated July 1, 2003;

(2) Waiver for Individuals Age 65 and Older, dated July 1, 2004;

(3) Waiver for Individuals with Acquired Brain Injuries, dated July 1, 2004;

(4) Waiver for Individuals with Physical Disabilities, dated July 1, 2003;

(5) Waiver for Individuals with Developmental Disabilities or Mental Retardation, dated July 1, 2003;

(6) New Choices Waiver, Effective April 1, 2007.

KEY: Medicaid
May 15, 2007 26-18-3
Notice of Continuation March 11, 2005

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-100. Medicaid Primary Care Network Services.
R414-100-1. Introduction and Authority.

This rule lists the services under the Medicaid Primary Care Network (PCN). The Primary Care Network is authorized by a waiver of federal Medicaid requirements approved by the federal Center for Medicare and Medicaid Services and allowed under Section 1115 of the Social Security Act effective January 1, 1999. This rule is authorized by Title 26, Chapter18, UCA.

R414-100-2. Definitions.

(1) "Emergency" means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the enrollee's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(2) "Emergency services" means:

(a) attention provided within 24 hours of the onset of symptoms or within 24 hours of diagnosis;

(b) for a condition that requires acute care, and is not chronic;

(c) reimbursed only until the condition is stabilized sufficient that the patient can leave the hospital emergency department; and

(d) is not related to an organ transplant procedure.

(2) "Outpatient" means an enrollee who receives services from a licensed outpatient care facility.

(3) "Primary care" means services to diagnose and treat illness and injury as well as preventive health care services. Primary care promotes early identification and treatment of health problems, which can help to reduce unnecessary complications of illness or injury and maintain or improve overall health status.

R414-100-3. Services Available.

(1) To meet the requirements of 42 CFR 431.107, the department contracts with each provider who furnishes services under the PCN.

(2) By signing a provider agreement with the department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the enrollee agrees that the department's obligation to reimburse for services is governed by contract between the department and the provider.

(4) Medical or hospital services for which providers are reimbursed under the PCN are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(5) The following services in the Medicaid Primary Care Network are available to those adults found eligible under Section 1931 of the federal Social Security Act (Aid to Families of Dependent Children adults and medically needy adults):

(a) emergency services only in a designated hospital emergency department;

(b) primary care physician services provided directly by licensed physicians or osteopaths, or by licensed certified nurse practitioners, or physician assistants under appropriate supervision of the physician or osteopath, but not including pregnancy related or mental health services by any of the listed providers;

(c) services associated with surgery or administration of anesthesia are physician services to be provided by physicians or licensed certified nurse anesthetists;

(d) laboratory and radiology services by licensed and certified providers;

(e) durable medical equipment, supplies and appliances used to assist the patient's medical recovery;

(f) preventive services, immunizations and health education methods and materials to promote wellness, disease prevention and manage illnesses;

(g) pharmacy services by a licensed pharmacy limited to four prescriptions per month, per client with no overrides or exceptions in the number of prescriptions;

(h) dental services are limited to examinations, cleanings, fillings, extractions, treatment of abscesses or infections and to be covered must be provided by a dentist in the office;

(i) transportation services limited to ambulance (ground and air) service for medical emergencies;

(j) interpretive services provided by contracting entities competent to provide medical translation services for people with limited English proficiency and interpretive services for the deaf; and

(k) vision services once every 12 months including an eye examination/refraction by a licensed ophthalmologists or optometrists, but not including the cost of glasses or other refractive device.

R414-100-4. Cost Sharing Provisions.

(1) Emergency department visits require a $30 copayment.

(2) Outpatient office visits require a $5 copayment for physician and physician-related visits. There is no copayment for preventive services, immunizations and health education.

(3) Dental office visits require a $5 copayment.

(4) Laboratory and x-ray services:

(a) laboratory services costing less than $50 require no copayment or co-insurance;

(b) laboratory services costing more than $50 require a co-insurance of 5% of the Medicaid allowed amount;

(c) x-ray services costing less than $100 require no copayment or co-insurance; and

(d) x-ray services costing more than $100 require a co-insurance of 5% of the Medicaid allowed amount.

(5) Pharmacy services require:

(a) a $5 copayment per prescription for generic drugs;

(b) a 25% of the estimated acquisition cost co-insurance for brand name drugs for which there is no generic equivalent; and

(c) a 100% copay for brand name drugs for which there is a generic equivalent.

(6) Durable medical equipment and supplies require a co-insurance of 10% of Medicaid allowed amount.

(7) The out-of-pocket maximum payment for copayments or co-insurance is limited to $1000 per enrollee per enrollment year.

(8) Tribal members utilizing the federal Indian Health Care or tribal health care systems will not pay copayments, co-insurance or deductibles.

(9) Vision services require a $5 copayment per office visit.

KEY: Medicaid, primary care network
July 1, 2002 **26-18**
Notice of Continuation May 24, 2007

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-200. Non-Traditional Medicaid Health Plan Services.
R414-200-1. Introduction and Authority.

This rule lists the services under the Non-Traditional Medicaid Health Plan (NTHP). This plan is authorized by a waiver of federal Medicaid requirements approved by the federal Center for Medicare and Medicaid Services and allowed under Section 1115 of the Social Security Act effective January 1, 1999. This rule is authorized by Title 26, Chapter 18, UCA.

R414-200-2. Definitions.

(1) "Emergency" means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the enrollee's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(2) "Enrollee" means an eligible individual including Section 1931 Temporary Assistance for Needy Families Adults, the Section 1931 related medically needy and those eligible for Transitional Medicaid.

R414-200-3. Services Available.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the NTHP.

(a) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(b) By signing an application for Medicaid coverage, the applicant agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

(2) Medical or hospital services for which providers are reimbursed under the Non-Traditional Medicaid Health Plan are limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(3) The following services, as more fully described and limited in provider contracts and provider manuals; are available to Non-Traditional Medicaid Health Plan enrollees:

(a) inpatient hospital services, provided by bed occupancy for 24 hours or more in an approved acute care general hospital under the care of a physician if the admission meets the established criteria for severity of illness and intensity of service;

(b) outpatient hospital services which are medically necessary diagnostic, therapeutic, preventive, or palliative care provided for less than 24 hours in outpatient departments located in or physically connected to an acute care general hospital;

(c) emergency services in dedicated hospital emergency departments;

(d) physician services provided directly by licensed physicians or osteopaths, or by licensed certified nurse practitioners, licensed certified nurse midwives, or physician assistants under appropriate supervision of the physician or osteopath.

(e) services associated with surgery or administration of anesthesia provided by physicians or licensed certified nurse anesthetists;

(f) vision care services by licensed ophthalmologists or licensed optometrists, within their scope of practice; limited to one annual eye examination or refraction and no eyeglasses.

(g) laboratory and radiology services provided by licensed and certified providers;

(h) physical therapy services provided by a licensed physical therapist if authorized by a physician, limited to ten aggregated physical or occupational therapy visits per calendar year;

(i) dialysis to treat end-stage renal failure provided at a Medicare-certified dialysis facility;

(j) home health services defined as intermittent nursing care or skilled nursing care provided by a Medicare-certified home health agency;

(k) hospice services provided by a Medicare-certified hospice to terminally ill enrollees (six month or less life expectancy) who elect palliative versus aggressive care;

(l) abortion and sterilization services to the extent permitted by federal and state law and meeting the documentation requirement of 42 CFR 440, Subparts E and F;

(m) certain organ transplants;

(n) services provided in freestanding emergency centers, surgical centers and birthing centers;

(o) transportation services, limited to ambulance (ground and air) service for medical emergencies;

(p) preventive services, immunizations and health education activities and materials to promote wellness, prevent disease, and manage illness;

(q) family planning services provided by or authorized by a physician, certified nurse midwife, or nurse practitioner to the extent permitted by federal and state law;

(r) pharmacy services provided by a licensed pharmacy;

(s) inpatient mental health services, limited to 30 days per enrollee per calendar year;

(t) outpatient mental health services, limited to 30 visits per enrollee per calendar year;

(u) outpatient substance abuse services;

(v) dental services are not covered.

(w) interpretive services if they are provided by entities under contract with the Department of Health to provide medical translation services for people with limited English proficiency and interpretive services for the deaf;

(x) occupational therapy, limited to that provided for fine motor development and limited to ten aggregated physical or occupational therapy visits per calendar year; and

(y) chiropractic services, limited to six visits per calendar year.

(4) Emergency services are:

(a) limited to attention provided within 24 hours of the onset of symptoms or within 24 hours of diagnosis;

(b) for a condition that requires acute care and is not chronic;

(c) reimbursed only until the condition is stabilized sufficient that the patient can leave the hospital emergency department; and

(d) not related to an organ transplant procedure.

(5) The vision care benefit is limited to $30 per year.

R414-200-4. Cost Sharing.

(1) An enrollee is responsible to pay to the:

(a) hospital a $220 co-insurance payment for each inpatient hospital admission;

(b) hospital a $6 copayment for each non-emergency use of hospital emergency services;

(c) provider a $3 copayment for outpatient office visits for physician, physician-related, mental health, and physical therapy services; except, no copayment is due for preventive services, immunizations and health education; and

(d) pharmacy a $2 copayment per prescription for prescription drugs.

(2) The out-of-pocket maximum payment for copayments

or co-insurance is limited to $500 per enrollee per calendar year.

KEY: Medicaid, non-traditional, cost sharing
October 11, 2006 26-18
Notice of Continuation May 24, 2007

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-307. Eligibility for Home and Community-Based Services Waivers.
R414-307-1. Introduction and Authority.

Section 26-18-3 authorizes this rule. It establishes general eligibility requirements for home and community based service waivers. It also specifies eligibility criteria that applies to the New Choices Home and the Community-Based Services Waiver.

R414-307-2. Definitions.

The definitions found in R414-301 apply to this rule.

R414-307-3. General Requirements for Home and Community-Based Services Waivers.

(1) To qualify under a home and community based services waiver, an individual must meet:

(a) the medical eligibility criteria defined in the waiver implementation plan adopted in R414-61 applicable to the specific waiver under which the individual is seeking services, as verified by the referring agency case manager;

(b) the eligibility criteria for one of the Medicaid coverage groups selected for coverage in the specific waiver implementation plan under which the individual is seeking services; and

(c) the non-financial Medicaid criteria defined in R414-302.

(2) An individual must apply for and provide required verifications pursuant to R414-308 relating to the application and verification process.

R414-307-4. Special Income Group.

The following requirements apply to individuals who qualify for a Medicaid home and community-based services waiver under the special income group defined in 42 CFR 435.217 because they do not meet community Medicaid rules but would be eligible for Medicaid if they were living in a medical institution:

(1) If the individual's spouse meets the definition of a community spouse, the Department applies the income and resource provisions defined in Section 1924 of the Social Security Act and R414-305-3.

(2) If the individual does not have a spouse, or the individual's spouse does not meet the definition of a community spouse, the Department counts only the individual's resources to determine eligibility. If both members of a married couple who live together apply for waiver services and meet the criteria for the special income group, the Department counts one-half of jointly-held assets as available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The Department counts only income determined under the most closely associated cash assistance program to decide if the individual passes the income eligibility test for the special income group. The Department does not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the Department does not count income and resources of the child's parents to decide if the child passes the income and resource tests for the special income group. The Department counts actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income cannot exceed three times the payment that would be made to an individual with no income under Section 1611(b)(1) of the Social Security Act.

(6) The Department applies the transfer of asset provisions of Section 1917 of the Social Security Act, as amended by Pub. L. 109-171.

(7) The individual's cost-of-care contribution is the income amount remaining after post-eligibility deductions for the applicable waiver. The individual must pay the cost-of-care contribution to the department for Medicaid waiver eligibility.

(8) The Department deducts medical expenses incurred by the individual in accordance with R414-304-9.

(9) The Department determines special income group eligibility for an individual starting the month that waiver services begin. The Department determines eligibility for prior months using the community Medicaid or institutional Medicaid rules applicable to the individual's situation.

R414-307-5. Medically Needy Waiver Group.

The following requirements apply to individuals who meet the eligibility criteria for a medically needy coverage group defined in 42 CFR 435.301 that the Department has selected for coverage under the implementation plan for the specific waiver:

(1) If an individual's spouse meets the definition of a community spouse, the Department applies the income and resource provisions defined in Section 1924 of the Social Security Act and R414-305-3.

(2) If the individual does not have a spouse or the individual's spouse does not meet the definition of a community spouse, the Department counts only the individual's resources to determine eligibility. When both members of a married couple who live together apply for waiver services and meet the criteria for the medically needy waiver group, the Department counts one-half of jointly-held assets available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The Department counts only income determined under the most closely associated cash assistance program to decide if the individual passes the income eligibility test for the special income group. The Department does not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the Department does not count income and resources of the child's parents to decide if the child passes the income and resource tests for the medically needy waiver group. The Department counts actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income must exceed three times the payment that would be made to an individual with no income under Section 1611(b)(1) of the Social Security Act.

(6) The Department applies the income deductions allowed by the non-institutional Medicaid category under which the individual qualifies. The Department compares countable income to the applicable medically needy income limit for a one-person household to determine the individual's spenddown. The individual must pay the spenddown to the Department for Medicaid waiver eligibility.

(7) The Department deducts medical expenses incurred by the individual in accordance with R414-304-9.

(8) The Department determines medically needy group eligibility for an individual starting the month that waiver services begin. The Department determines eligibility for prior months using the community Medicaid or institutional Medicaid rules applicable to the individual's situation.

R414-307-6. New Choices Waiver Eligibility Criteria.

The following eligibility requirements apply to the New Choices Waiver:

(1) An individual must be age 65 or older, or age 21 through age 64 and disabled as defined in Section 1614(a)(3) of the Social Security Act. For the purpose of this waiver, an individual is 21 years of age beginning the first month after the month of the individual's 21st birthday.

(2) Under post-eligibility income rules defined in Section

1924 of the Social Security Act for individuals with a community spouse, and in 42 CFR 435.726 for individuals without a community spouse, the Department deducts the following amounts from the income of an individual who meets the eligibility criteria for the special income group:

(a) A personal needs allowance equal to 100% of the federal poverty guideline for a household of one.

(b) For individuals with earned income, up to $125 of gross-earned income.

(c) Actual monthly shelter costs not to exceed $300. This deduction includes mortgage, insurance, property taxes, rent, and other shelter expenses.

(d) A deduction for monthly utility costs equal to the standard utility allowance Utah uses under Section 5(e) of the Food Stamp Act of 1977. If the waiver client shares utility expenses with others, the allowance is prorated accordingly.

(e) An allowance for a community spouse and dependent family members living with the community spouse, in accordance with the provisions of Section 1924 of the Social Security Act.

(f) In the case of an individual who does not have a community spouse or whose spouse is also eligible for waiver services, an allowance for dependent family members is equal to one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income. If more than one individual contributes income to the dependent family member, the combined income deductions cannot exceed one-third of the difference.

(g) Medical and remedial care expenses incurred by the individual in accordance with R414-304-9.

R414-307-7. Other Provisions.

The following provisions apply to all applicants and recipients of home and community based-services waivers:

(1) Applicants and recipients of home and community-based services waivers receive the same rights and have the same responsibilities as all other medical assistance applicants and recipients.

(2) For individuals claiming a disability, the disability provisions of R414-303 apply.

(3) Except where otherwise stated in this rule, the income provisions of R414-304 apply to waiver applicants and recipients.

(4) Except where otherwise stated in this rule, the resource provisions of R414-305 apply to waiver applicants and recipients.

(5) The benefit provisions of R414-306 apply to waiver applicants and recipients.

(6) The provisions found in R414-308 that apply to eligibility determinations, redeterminations, change reporting, and improper medical assistance also apply to waiver applicants and recipients.

(7) The Department limits the number of individuals covered by a home and community based-services waiver as provided in the adopted waiver implementation plan.

(8) The Department does not pay for waiver services when an individual has home equity that exceeds the limit set forth by Pub. L. 109-171.

(a) The state sets that limit at the minimum level allowed under Pub. L. 109-171.

(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group is not disqualified from receiving Medicaid for services other than home and community-based waiver services.

(c) An individual who has excess home equity and does not qualify for a community Medicaid eligibility group, is ineligible for Medicaid under both the special income group and the medically needy waiver group. This is in accordance with institutional deeming rules found in Section 1924 of the Social Security Act.

KEY: eligibility, waivers, special income group
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26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-310. Medicaid Primary Care Network Demonstration Waiver.
R414-310-1. Authority.

This rule is authorized by Utah Code Sections 26-1-5 and 26-18-3. The Primary Care Network Demonstration is authorized by a waiver of federal Medicaid requirements approved by the federal Center for Medicare and Medicaid Services and allowed under Section 1115 of the Social Security Act. This rule establishes the eligibility requirements for enrollment under the Medicaid Primary Care Network Demonstration.

R414-310-2. Definitions.

The following definitions apply throughout this rule:

(1) "Applicant" means an individual who applies for benefits under the Primary Care Network program, but who is not an enrollee.

(2) "Best estimate" means the Department's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(3) "Co-payment and co-insurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under the Primary Care Network.

(4) "Deeming" or "deemed" means a process of counting income from a spouse or an alien's sponsor to decide what amount of income after certain allowable deductions, if any, must be considered income to an applicant or enrollee.

(5) "Department" means the Utah Department of Health.

(6) "Enrollee" means an individual who has applied for and been found eligible for the Primary Care Network program and has paid the enrollment fee.

(7) "Enrollment fee" means a payment that an applicant or an enrollee must pay to the Department to enroll in and receive coverage under the Primary Care Network program.

(8) "Employer-sponsored health plan" means health insurance that meets the requirements of R414-320-2 (8) (a) (b) (c) (d) and (e).

(9) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.

(10) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(11) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(12) "Local office" means any Bureau of Eligibility Services or Department of Workforce Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(13) "Open enrollment means a time period during which the Department accepts applications for the Primary Care Network program.

(14) "Primary Care Network" or "PCN" means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(15) "Recertification month" means the last month of the eligibility period for an enrollee.

(16) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(17) "Verifications" means the proofs needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

(18) "Student health insurance plan" means a health insurance plan that is offered to students directly through a university or other educational facility or through a private health insurance company that offers coverage plans specifically for students.

(19) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in R414-320.

R414-310-3. Applicant and Enrollee Rights and Responsibilities.

(1) Any person may apply during an open enrollment period who meets the limitations set by the Department. The open enrollment period may be limited to:

(a) individuals with children under age 19 in the home;

(b) individuals without children under age 19 in the home;

(c) those enrolled in the PCN program;

(d) those enrolled in the UPP program;

(e) those enrolled in the General Assistance program;

(f) those that were enrolled in the Medicaid program within the last thirty days prior to the beginning of the open enrollment period; or

(g) such other group designated in advance by the Department consistent with efficient administration of the program.

(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the local office or outreach staff.

(3) Applicants and enrollees must provide requested information and verifications within the time limits given. The Department will allow the client at least 10 calendar days from the date of a request to provide information and may grant additional time to provide information and verifications upon request of the applicant or enrollee.

(4) Applicants and enrollees have a right to be notified about the decision made on an application, or other action taken that affects their eligibility for benefits.

(5) Applicants and enrollees may look at information in their case file that was used to make an eligibility determination.

(6) Anyone may look at the eligibility policy manuals located at any Department local office.

(7) An individual must repay any benefits received under the Primary Care Network program if the Department determines that the individual was not eligible to receive such benefits.

(8) Applicants and enrollees must report certain changes to the local office within ten calendar days of the day the change becomes known. The local office shall notify the applicant at the time of application of the changes that the enrollee must report. Some examples of reportable changes include:

(a) An enrollee in the Primary Care Network program begins to receive coverage under a group health plan or other health insurance coverage.

(b) An enrollee in the Primary Care Network program begins to have access to coverage under a group health plan or other health insurance coverage.

(c) An enrollee in the Primary Care Network program begins to receive coverage under, or begins to have access to student health insurance, Medicare Part A or B, or the Veteran's Administration Health Care System.

(d) An enrollee leaves the household or dies.

(e) An enrollee or the household moves out of state.

(f) Change of address of an enrollee or the household.

(g) An enrollee enters a public institution or an institution for mental diseases.

(9) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in R414-301-5 and R414-301-6.

(10) An enrollee in the Primary Care Network program is responsible for paying any required co-payments or co-insurance amounts to providers for medical services the enrollee receives that are covered under the Primary Care Network program.

R414-310-4. General Eligibility Requirements.

(1) The provisions of R414-302-1, R414-302-2, R414-302-3, R414-302-5, and R414-302-6 apply to applicants and enrollees of the Primary Care Network program.

(2) An individual who is not a U.S. citizen and does not meet the alien status requirements of R414-302-1 is not eligible for any services or benefits under the Primary Care Network program.

(3) Applicants and enrollees are not required to provide Duty of Support information to enroll in the Primary Care Network program. An individual who would be eligible for Medicaid but fails to cooperate with Duty of Support requirements required by the Medicaid program cannot enroll in the Primary Care Network program.

(4) Individuals who must pay a spenddown or premium to receive Medicaid can enroll in the Primary Care Network program if they meet the program eligibility criteria in any month they do not receive Medicaid as long as the Department has not stopped enrollment under the provisions of R414-310-16(2). If the Department has stopped enrollment, the individual must wait for an applicable open enrollment period to enroll in the PCN program.

R414-310-5. Verification and Information Exchange.

(1) The provisions of R414-308-4 apply to applicants and enrollees of the Primary Care Network program.

(2) The Department safeguards information about applicants and enrollees according to the provisions found in R414-301-4.

R414-310-6. Residents of Institutions.

The provisions of R414-302-4(1), (3) and (4) apply to applicants and enrollees of the Primary Care Network program.

R414-310-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b) and 435.610, 2004 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 2004, which are incorporated by reference.

(2) An individual who is covered under a group health plan or other creditable health insurance coverage, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), at the time of application is not eligible for enrollment in the Primary Care Network program. This includes coverage under Medicare Part A or B, student health insurance, and the Veteran's Administration Health Care System. However, an individual who is enrolled in the Utah Health Insurance Pool may enroll in the Primary Care Network program.

(3) Eligibility for the Primary Care Network program for an individual who has access to but has not yet enrolled in health insurance coverage through an employer or a spouse's employer will be determined as follows:

(a) If the cost of the least expensive health insurance plan offered by the employer does not exceed 15% of the household's gross income, the individual is not eligible for the Primary Care Network program.

(b) If the cost of the least expensive health insurance plan offered by the employer exceeds 15% of the household's gross income, and the employer offers a health plan that meets the requirements of R414-320-2 (8) (a) (b) (c) (d) and (e), the individual may choose to enroll in either the Primary Care Network program or the UPP program unless enrollment for one of these programs has been stopped under the provisions of R414-310-16(2).

(c) If the cost of the least expensive health insurance plan offered by the employer exceeds 15% of the household's gross income, but the employer does not offer a health plan that meets the requirements in R414-320-2 (8) (a) (b) (c) (d) and (e), the individual may only enroll in the PCN program.

(d) The individual is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(4) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment in the Primary Care Network program, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(5) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment in the Primary Care Network program. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the Primary Care Network program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the Primary Care Network program ends once the individual becomes enrolled in the VA Health Care System.

(6) Individuals who are full-time students and who can enroll in student health insurance coverage are not eligible to enroll in the Primary Care Network program.

(7) The Department shall deny eligibility if the applicant or spouse has voluntarily terminated health insurance coverage within the six months immediately prior to the application date for enrollment under the Primary Care Network program. An applicant or an applicant's spouse can be eligible for the Primary Care Network if their prior insurance ended more than six months before the application date. An applicant or applicant's spouse who voluntarily discontinues health insurance coverage under a COBRA plan or under the state Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for the Primary Care Network program without a six month waiting period.

(8) Notwithstanding the limitations in this section, an individual with creditable health coverage operated or financed by the Indian Health Services may enroll in the Primary Care Network program.

(9) Individuals must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, a student health insurance plan, Medicare Part A or B, or the VA Health Care System.

(10) The Department shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual the household seeks to enroll or recertify in the program.

R414-310-8. Household Composition.

(1) The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for the Primary Care Network Program:

(a) the individual;

(b) the individual's spouse living with the individual;

(c) any children of the individual or the individual's spouse who are under age 19 and living with the individual; and

(d) an unborn child if the individual is pregnant, or if the applicant's legal spouse who lives in the home is pregnant.

(2) A household member who is temporarily absent for schooling, training, employment, medical treatment or military

service, or who will return home to live within 30 days from the date of application is considered part of the household.

R414-310-9. Age Requirement.

(1) An individual must be at least 19 and not yet 65 years of age to enroll in the Primary Care Network program.

(2) The month in which an individual's 19th birthday occurs is the first month the person can be eligible for enrollment in the Primary Care Network program.

(a) If the individual could qualify for Medicaid in that month without paying a spenddown or premium, the individual cannot enroll in the Primary Care Network program until the following month.

(b) the individual could enroll in the Children's Health Insurance Program and it is an open enrollment period for CHIP for that month, the individual cannot enroll in the Primary Care Network program until the following month.

(3) The benefit effective date for the Primary Care Network program cannot be earlier than the date of the 19th birthday.

(4) The individual's 65th birthday month is the last month the person can be eligible for enrollment in the Primary Care Network program.

R414-310-10. Income Provisions.

(1) To be eligible to enroll in the Primary Care Network program, a household's countable gross income must be equal to or less than 150% of the federal non-farm poverty guideline for a household of the same size. An individual with income above 150% of the federal poverty guideline is not allowed to spend down income to be eligible under the Primary Care Network program. All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 are countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(6) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the certification period.

(7) Needs-based Veteran's pensions are counted as income. Only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(8) Child support payments received for a dependent child living in the home are counted as that child's income.

(9) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or which is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service, or did not work to receive, is not counted as income.

(10) Supplemental Security Income and State Supplemental payments are countable income.

(11) Income, unearned and earned, shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public assistance.

(12) Income that is defined in 20 CFR 416 Subpart K, Appendix, 2004 edition, which is incorporated by reference, is not countable.

(13) Payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs are not countable.

(14) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(15) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(16) Child Care Assistance under Title XX is not countable income.

(17) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the State Department of Health are not countable income.

(18) Earned and unearned income of a child who is under age 19 is not counted if the child is not the head of a household.

(19) Educational income, such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(20) Reimbursements for employee work expenses incurred by an individual are not countable income.

(21) The value of food stamp assistance is not countable income.

R414-310-11. Budgeting.

This section describes methods that the Department uses to determine the household's countable monthly or annual income.

(1) The gross income of all household members is counted in determining the eligibility of the applicant or enrollee, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department determines monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department multiplies the weekly amount by 4.3 to obtain a monthly amount. The Department multiplies income paid biweekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine an individual's eligibility prospectively for the upcoming certification period at the time of application and at each recertification for continuing eligibility. The Department 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. The Department prorates income that is received less often than monthly over the certification period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a

household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the certification period, or an annual amount that is prorated over the certification period. The Department may use different methods for different types of income received in the same household.

(5) The Department determines farm and self-employment income by using the individual's most recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department may request income information from the most recent time period during which the individual had farm or self-employment income. The Department deducts 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department may exclude more than 40% if the individual can demonstrate that the actual expenses were greater than 40%. The Department deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and specifically for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The Department may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R414-310-12. Assets.

There is no asset test for eligibility in the Primary Care Network program.

R414-310-13. Application Procedure.

(1) The Department adopts 42 CFR 435.907 and 435.908, 2004 ed., which are incorporated by reference. The Department shall maintain case records as defined in R414-308-8.

(2) The applicant must complete and sign a written application or complete an application on-line via the Internet to enroll in the Primary Care Network program.

(a) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for the Primary Care Network program. The local office eligibility worker may require the applicant to provide additional information that was not asked for on the form the applicant completed, and may require the applicant to sign a signature page from a hardcopy medical application form.

(b) If an applicant cannot write, he must make his mark on the application form and have at least one witness to the signature. A legal guardian or a person with power of attorney may sign the application form for the applicant.

(c) An authorized representative may apply for the applicant if unusual circumstances prevent the individual from completing the application process himself. The applicant must sign the application form if possible.

(3) The application date is the date the agency receives a signed application form at a local office by 5:00 p.m. on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after 5:00 p.m. on a business day, the date of application is the next business day.

(4) The application date for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the date of application is the date the outreach staff receives the application.

(b) If the application is delivered at a time when the outreach office is closed, including being closed for weekends or holidays, the date of application is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(5) The due date for verifications needed to complete an application and determine eligibility is 5:00 p.m. on the last day of the application period.

(6) If an applicant has a legal guardian, a person with a power of attorney, or an authorized representative, the local office shall send decision notices, requests for information, and forms that must be completed to both the individual and the individual's representative, or to just the representative if requested or if determined appropriate.

(7) The Department shall reinstate a medical case without requiring a new application if the case was closed in error.

(8) The Department shall continue enrollment without requiring a new application if the case was closed for failure to complete a recertification or comply with a request for information or verification:

(a) if the enrollee complies before the effective date of the case closure or by the end of the month immediately following the month the case was closed; and

(b) the individual continues to meet all eligibility requirements.

(9) An applicant may withdraw an application for the Primary Care Network program any time before the Department completes an eligibility decision on the application.

(10) The applicant shall pay an annual enrollment fee to enroll in the Primary Care Network Program once the local office has determined that the individual meets the eligibility criteria for enrollment.

(a) Coverage does not begin until the Department receives the enrollment fee.

(b) The enrollment fee covers both the individual and the individual's spouse if the spouse is also eligible for enrollment in the Primary Care Network Program.

(c) The enrollment fee is required at application and at each recertification.

(d) The enrollment fee must be paid to the local office in cash, or by check or money order made out to the Department of Health or to the Department of Workforce Services.

(e) The enrollment fee for an individual or married couple receiving General Assistance from the Department of Workforce Services is $15. The enrollment fee for an individual or couple who does not receive General Assistance but whose countable income is less that 50 percent of the federal poverty guideline applicable their household size is $25. The enrollment fee for any other individual or married couple is $50.

(f) The Department may refund the enrollment fee if it decides the person was ineligible for the program; however, the Department may retain the enrollment fee to the extent that the individual owes any overpayment of benefits that were paid in error on behalf of the individual by the Department.

(11) If an eligible household requests enrollment for a spouse, the application date for the spouse is the date of the request. A new application form is not required; however, the household shall provide the information necessary to determine eligibility for the spouse, including information about access to creditable health insurance, including Medicare Part A or B, student health insurance, and the VA Health Care System.

(a) Coverage or benefits for the spouse will be allowed from the date of request or the date an application is received through the end of the current certification period.

(b) A new enrollment fee is not required to add a spouse during the current certification period.

(c) A new income test is not required to add the spouse for the months remaining in the current certification period.

(d) A spouse may be added only if the Department has not stopped enrollment under section R414-310-16.

(e) Income of the spouse will be considered and payment of the enrollment fee will be required at the next scheduled recertification.

R414-310-14. Eligibility Decisions and Recertification.

(1) The Department adopts 42 CFR 435.911 and 435.912, 2004 ed., which are incorporated by reference.

(2) When an individual applies for PCN, the local office shall determine if the individual is eligible for Medicaid. An individual who qualifies for Medicaid without paying a spenddown or a premium cannot enroll in the Primary Care Network program. If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(a) If the individual must pay a spenddown or premium to qualify for Medicaid, the individual may choose to enroll in the PCN program if it is an open enrollment period, and the individual meets all the applicable criteria for eligibility. If the PCN program is not in an enrollment period, the individual must wait for an open enrollment period.

(b) At recertification for PCN, the local office shall first review eligibility for Medicaid. If the individual qualifies for Medicaid without a spenddown or premium, the individual cannot be reenrolled in the PCN program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(3) To enroll, the individual must meet the eligibility criteria for enrollment in the Primary Care Network program, pay the enrollment fee, and it must be a time when the Department has not stopped enrollment under section R414-310-16.

(4) The local office shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdraws the application and the local office sends a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant cannot be located; or

(d) the applicant has not responded to requests for information within the 45 day application period or by the date the eligibility worker asked the information or verifications to be returned, if that date is later.

(5) The enrollee must recertify eligibility at least every 12 months.

(6) The local office eligibility worker may require the applicant, the applicant's spouse, or the applicant's authorized representative to attend an interview as part of the application and recertification process. Interviews may be conducted in person or over the telephone, at the local office eligibility worker's discretion.

(7) The enrollee must complete the recertification process and provide the required verifications by the end of the recertification month.

(a) If the enrollee completes the recertification, continues to meet all eligibility criteria and pays the enrollment fee, coverage will be continued without interruption.

(b) The case will be closed at the end of the recertification month if the enrollee does not complete the recertification process and provide required verifications by the end of the recertification month.

(c) If an enrollee does not complete the recertification by the end of the recertification month, but completes the process and provides required verifications by the end of the month immediately following the recertification month, coverage will be reinstated as of the first of that month if the individual continues to be eligible and pays the enrollment fee.

(8) The eligibility worker may extend the recertification due date if the enrollee demonstrates that a medical emergency, death of an immediate family member, natural disaster or other similar cause prevented the enrollee from completing the recertification process on time.

R414-310-15. Effective Date of Enrollment and Enrollment Period.

(1) The effective date of enrollment in the Primary Care Network program is the day that a completed and signed application is received by the local office as defined in R414-310-13(3) and R414-310-13(4)(a) and (b) and the applicant meets all eligibility criteria, including payment of the enrollment fee. The Department shall not provide any benefits or pay for any services received before the effective enrollment date.

(2) The effective date of re-enrollment for a recertification in the Primary Care Network program is the first day of the month after the recertification month, if the recertification is completed as described in R414-310-14(7).

(3) If the enrollee does not complete the recertification as described in R414-310-14(7), and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.

(4) An individual found eligible for the Primary Care Network program shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months. If the enrollee completes the recertification process in accordance with R414-310-14(7) and continues to be eligible, the recertification period will be for an additional 12 months beginning the month following the recertification month. Eligibility could end before the end of a 12-month certification period for any of the following reasons:

(a) the individual turns age 65;

(b) the individual becomes entitled to receive student health insurance, Medicare, or becomes covered by Veterans Administration Health Insurance;

(c) the individual dies;

(d) the individual moves out of state or cannot be located;

(e) the individual enters a public institution or an Institute for Mental Disease.

(5) An individual enrolled in the Primary Care Network program loses eligibility when the individual enrolls in any type of group health plan or other creditable health insurance coverage including an employer-sponsored health plan, except under the following circumstances:

(a) An individual who gains access to or enrolls in an employer-sponsored health plan may switch to the UPP program if the individual notifies the local office before the coverage in the employer-sponsored health plan begins, and if the requirements defined in R414-310-7(3)(b) are met.

(b) An individual who enrolls in the Utah Health Insurance Pool (H.I.P.) does not lose eligibility in the Primary Care Network.

(6) If a Primary Care Network case closes for any reason, other than to become covered by another Medicaid program, and remains closed for one or more calendar months, the individual must submit a new application to the local office during an enrollment period to reapply. The individual must meet all the requirements of a new applicant including paying a new enrollment fee.

(7) If a Primary Care Network case closes because the enrollee is eligible for another Medicaid program, the individual

may reenroll in the Primary Care Network program if there is no break in coverage between the programs, even if the State has stopped enrollment under R414-310-16(2).

(a) If the individual's 12-month certification period has not ended, the individual may reenroll for the remainder of that certification period. The individual is not required to complete a new application or have a new income eligibility determination. The individual must continue to meet the criteria defined in R414-310-7. The individual is not required to pay a new enrollment fee for the months remaining in the current certification period.

(b) If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll in the Primary Care Network program. However, the individual must complete a new application, meet eligibility and income guidelines, and pay a new enrollment fee for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period for the Primary Care Network program.

R414-310-16. Enrollment Limitation.

(1) The Department shall limit enrollment in the Primary Care Network program.

(2) The Department may stop enrollment of new individuals at any time based on availability of funds.

(3) The Department and local offices shall not accept applications nor maintain waiting lists during a time period that enrollment of new individuals is stopped.

(4) If enrollment has not been stopped, individuals may apply for the Primary Care Network program.

(5) An individual who becomes ineligible for Medicaid, or who must pay a spenddown or premium for Medicaid, but who was not previously enrolled in the Primary Care Network program, may apply to enroll in the Primary Care Network program if the State has not stopped enrollment under R414-310-16(2). If enrollment has been stopped, the individual must wait for an open enrollment period to apply.

R414-310-17. Notice and Termination.

(1) The department adopts 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, 435.919, 2004 ed., which are incorporated by reference.

(2) The local office shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(3) The local office shall terminate an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

(4) The local office shall terminate an individual's enrollment if the individual fails to complete the recertification process on time.

R414-310-18. Improper Medical Coverage.

(1) An individual who receives benefits under the Primary Care Network program for which he is not eligible is responsible to repay the Department for the cost of the benefits received.

(2) An alien and the alien's sponsor are jointly liable for benefits received for which the individual was not eligible.

(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 time period that the enrollee was not actually eligible to receive such benefits.

KEY: Medicaid, primary care, covered-at-work, demonstration

May 23, 2007 **26-18-1**
26-1-5
26-18-3

R432. Health, Health Systems Improvement, Licensing.
R432-2. General Licensing Provisions.
R432-2-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-2-2. Purpose.

The purpose of this rule is to define the standards that health care facilities and agencies must follow in order to obtain a license. No person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a health facility in this state without first obtaining a license from the Department. Section 26-21-8.

R432-2-3. Exempt Facilities.

The provisions of Section 26-21-7 apply for exempt facilities.

R432-2-4. Distinct Part.

Licensed health care facilities that wish to offer services outside the scope of their license or services regulated by another licensing rule, with the exception of federally recognized Swing Bed Units, shall submit for Department review a program narrative defining the levels of service to be offered and the specific patient population to be served. If the program is determined to require a license, the facility must meet the definition of a distinct part entity and all applicable codes and standards and obtain a separate license.

R432-2-5. Requirements for a Satellite Service Operation.

(1) A "satellite operation" is a health care treatment service that:

(a) is administered by a parent facility within the scope of the parent facility's current license,

(b) is in a location not contiguous with the parent facility,

(c) does not qualify for licensing under Section 26-21-2, and

(d) is approved by the Department for inclusion under the parent facility's license and identified as a remote service.

(2) A licensed health care facility that wishes to offer a satellite operation shall submit for Department review a program narrative and one set of construction drawings. The program narrative shall define at least the following:

(a) location of the remote facility (street address);

(b) capacity of the remote facility;

(c) license category of the parent facility;

(d) service to be provided at the remote facility (must be a service authorized under the parent facility license);

(e) ancillary administrative and support services to be provided at the remote facility; and

(f) Uniform Building Code occupancy classification of the remote facility physical structure.

(3) Upon receipt of the satellite service program narrative and construction drawings, the Department shall make a determination of the applicable licensing requirements including the need for licensing the service. The Department shall verify at least the following items:

(a) There is only a single health care treatment service provided at the remote site and that it falls within the scope of the parent facility license;

(b) The remote facility physical structure complies with all construction codes appropriate for the service provided;

(c) All necessary administrative and support services for the specified treatment service are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.

(4) If a facility qualifies as a single satellite service treatment center the Department shall issue a separate license identifying the facility as a "satellite service" of the licensed parent facility. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

(5) A parent facility that wishes to offer more than one health care service at the same remote site shall either obtain a satellite service license for each service offered as described above or obtain a license for the remote complex as a free-standing health care facility.

(6) A satellite facility is not permitted within the confines of another licensed health care facility.

R432-2-6. Application.

(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) A satisfactory Food Services Sanitation Clearance report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) The applicant shall submit the following:

(a) a list of all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and

(c) a list, of all persons, of all health care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest;

(4) The applicant shall provide the following written assurances on all individuals listed in R432-2-6(3):

(a) None of the persons has been convicted of a felony;

(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

(5) An applicant or licensee shall submit a feasibility study as part of its application for a license for a new facility or agency or for a new license for an increase in capacity at a health care facility or expansion of the areas served by an agency.

(a) The feasibility study shall be a written narrative and provide at a minimum:

(i) the purpose and proposed license category for the proposed newly licensed capacity;

(ii) a detailed description of the services to be offered;

(iii) identification of the operating entity or management company;

(iv) a listing of affiliated health care facilities and agencies in Utah and any other state;

(v) identification of funding source(s) and an estimate of the total project capital cost;

(vi) an estimate of total operating costs, revenues and utilization statistics for the twelve month period immediately following the licensing of the new capacity;

(vii) identification of all components of the proposed newly licensed capacity which ensures that residents of the surrounding area will have access to the proposed facility or service;

(viii) identification of the impact of the newly licensed capacity on existing health care providers; and

(ix) a list of the type of personnel required to staff the newly licensed capacity and identification of the sources from which the facility or agency intends to recruit the required personnel.

(b) The applicant or licensee shall submit the feasibility study no later than the time construction plans are submitted. If new construction is not anticipated, the applicant or licensee shall submit the study at least 60-days prior to beginning the new service. The applicant shall provide a statement with the feasibility study indicating whether it claims business confidentiality on any portion of the information submitted and, if it does claim business confidentiality, provide a statement meeting the requirements of Utah Code section 63-2-308.

(c) The Department shall publish public notice, at the applicant's expense, in a newspaper in general circulation for the location where the newly licensed capacity will be located that the feasibility study has been completed. The Department shall accept public comment for 30 days from initial publication. The Department shall retain the feasibility study and make it available to the public.

(d) The Department shall review the feasibility study, summarize the public comment, review demographics of the geographic area involved and prepare a written evaluation to the applicant regarding the viability of the proposed program.

(6) The licensee may apply to designate any number of beds within the facility's licensed capacity as banked beds on a form provided by the Department.

(a) The licensee may apply to designate beds as banked no later than December 1st of each year or upon application for license renewal.

(b) The Department shall thereafter show the facility as having an operational bed capacity equal to the licensed capacity minus any beds banked by the facility.

(c) Banking beds shall not alter the licensed capacity of a facility.

(7) The licensee may apply to return any number of banked beds to operational bed capacity on a form provided by the Department.

(a) The licensee may apply to return banked beds to operational capacity no later than December 1 of each year or upon application for license renewal.

(b) The Department shall thereafter show the facility as having an operational bed capacity equal to the licensed capacity minus any beds still banked by the facility.

(c) Beds previously banked that have been returned to operational capacity must meet the construction and life safety codes that were applicable to the facility at the time the beds were last banked.

(8) The requirements contained in Utah Code Section 26-21-23(5)(a) shall be met if a nursing care facility filed a notice of intent or application with the Department and paid a fee relating to a proposed nursing care facility prior to March 1, 2007.

(9) The requirements contained in Utah Code Section 26-21-23(5)(b) shall be met if a nursing care facility complies with the requirements of R432-4-14(4) and R432-4-16 on or before July 1, 2008.

R432-2-7. License Fee.

In accordance with Subsection 26-21-5(1)(c), the applicant shall submit a license fee with the completed application form. A current fee schedule is available from the Bureau of Health Facility Licensing upon request. Any late fees is assessed according to the fee schedule.

R432-2-8. Additional Information.

The Department may require additional information or review other documents to determine compliance with licensing rules. These include:

(1) architectural plans and a description of the functional program.

(2) policies and procedures manuals.

(3) verification of individual licenses, registrations or certification required by the Utah Department of Commerce.

(4) data reports including the submission of the annual report at the Departments request.

(5) documentation that sufficient assets are available to provide services: staff, utilities, food supplies, and laundry for at least a two month period of time.

R432-2-9. Initial License Issuance or Denial.

(1) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application packet or within six months of the date the first component of an application packet is received; provided, in either case, a minimum of 45 days is allowed for the initial policy and procedure manual review.

(2) Upon verification of compliance with licensing requirements the Department shall issue a provisional license.

(3) The Department shall issue a written notice of agency decision under the procedures for adjudicative proceedings (R432-30) denying a license if the facility is not in compliance with the applicable laws, rules, or regulations. The notice shall state the reasons for denial.

(4) An applicant who is denied licensing may reapply for initial licensing as a new applicant and shall be required to initiate a new request for agency action as described in R432-2-6.

(5) The Department shall assess an administrative fee on all denied license applications. This fee shall be subtracted from any fees submitted as part of the application packet and a refund for the balance returned to the applicant.

R432-2-10. License Contents and Provisions.

(1) The license shall document the following:

(a) the name of the health facility,

(b) licensee,

(c) type of facility,

(d) approved licensed capacity including identification of operational and banked beds,

(e) street address of the facility,

(f) issue and expiration date of license,

(g) variance information, and

(h) license number.

(2) The license is not assignable or transferable.

(3) Each license is the property of the Department. The licensee shall return the license within five days following closure of a health care facility or upon the request of the Department.

(4) The licensee shall post the license on the licensed

premises in a place readily visible and accessible to the public.

R432-2-11. Expiration and Renewal.

(1) Each standard license shall expire at midnight on the day designated on the license as the expiration date, unless the license is revoked or extended under subsection (2) or (4) by the Department.

(2) If a facility is operating under a conditional license for a period extending beyond the expiration date of the current license, the Department shall establish a new expiration date.

(3) The licensee shall submit a Request for Agency Action/License Application form, applicable fees, clearances, and the annual report for the previous calendar year (if required by the Department under R432-2-8) 15 days before the current license expires.

(4) A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the Department.

(5) The Department shall renew a standard license upon verification that the licensee and facility are in compliance with all applicable license rules.

(6) Facilities no longer providing patient care or client services may not have their license renewed.

R432-2-12. New License Required.

(1) A prospective licensee shall submit a Request for Agency Action/License Application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:

(a) occupancy of a new or replacement facility.

(b) change of ownership.

(2) Before the Department may issue a new license, the prospective licensee shall provide documentation that:

(a) all patient care records, personnel records, staffing schedules, quality assurance committee minutes, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee.

(b) the existing policy and procedures manual or a new manual has been approved by the Department and adopted by the facility governing body before change of ownership occurs.

(c) new contracts for professional or other services not provided directly by the facility have been secured.

(d) new transfer agreements have been drafted and signed.

(e) written documentation exists of clear ownership or lease of the facility by the new owner.

(3) Upon sale or other transfer of ownership, the licensee shall provide the new owner with a written accounting, prepared by an independent certified public accountant, of all patient funds being transferred, and obtain a written receipt for those funds from the new owner.

(4) A prospective licensee is responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless a revised plan of correction, approved by the Department, is submitted by the prospective licensee before the change of ownership becomes effective.

(5) If a license is issued to the new owner the previous licensee shall return his license to the Department within five days of the new owners receipt of the license.

(6) Upon verification that the facility is in compliance with all applicable licensing rules, the Department shall issue a new license effective the date compliance is determined as required by R432-2-9.

R432-2-13. Change in Licensing Status.

(1) A licensee shall submit a Request for Agency Action/License Application to amend or modify the license status at least 30 days before any of the following proposed or anticipated changes:

(a) increase or decrease of licensed capacity.

(b) change in name of facility.

(c) change in license category.

(d) change of license classification.

(e) change in administrator.

(2) An increase of licensed capacity may incur an additional license fee if the increase exceeds the maximum number of units in the fee category division of the existing license. This fee shall be the difference in license fee for the existing and proposed capacity according to the license fee schedule.

(3) Upon verification that the licensee and facility are in compliance with all applicable licensing rules, the Department shall issue an amended or modified license effective the date that the Department determines that the licensee is in compliance.

R432-2-14. Facility Ceases Operation.

(1) A licensee that voluntarily ceases operation shall complete the following:

(a) notify the Department and the patients or their next of kin at least 30 days before the effective date of closure.

(b) make provision for the safe keeping of records.

(c) return all patients' monies and valuables at the time of discharge.

(d) The licensee must return the license to the Department within five days after the facility ceases operation.

(2) If the Department revokes a facility's license or if it issues an emergency closure order, the licensee shall document for Department review the following:

(a) the location and date of discharge for all residents,

(b) the date that notice was provided to all residents and responsible parties to ensure an orderly discharge and assistance with placement; and

(c) the date and time that the facility complied with the closure order.

R432-2-15. Provisional License.

(1) A provisional license is an initial license issued to an applicant for a probationary period of six months.

(a) In granting a provisional license, the Department shall determine that the facility has the potential to provide services and be in full compliance with licensing rules during the six month period.

(b) A provisional license is nonrenewable. The Department may issue a provisional license for no longer than six months. It may issue no more than one provisional license to any health facility in any 12-month period.

(2) If the licensee fails to meet terms and conditions of licensing before the expiration date of the provisional license, the license shall automatically expire.

R432-2-16. Conditional License.

(1) A conditional license is a remedial license issued to a licensee if there is a determination of substandard quality of care, immediate jeopardy or a pattern of violations which would result in a ban on admissions at the facility or if the licensee is found to have:

(a) a Class I violation or a Class II violation that remains uncorrected after the specified time for correction;

(b) more than three cited repeat Class I or II violations from the previous year; or

(c) fails to fully comply with administrative requirements for licensing.

(2) A standard license is revoked by the issuance of a conditional license.

(3) The Department may not issue a conditional license after the expiration of a provisional license.

(4) In granting a conditional license, the Department shall be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(5) The Department shall establish the period of time for the conditional license based on an assessment of the nature of the existing violations and facts available at the time of the decision.

(6) The Department shall set conditions whereby the licensee must comply with an accepted plan of correction.

(7) If the licensee fails to meet the conditions before the expiration date of the conditional license, the license shall automatically expire.

R432-2-17. Standard License.

A standard license is a license issued to a licensee if:

(1) the licensee meets the conditions attached to a provisional or conditional license;

(2) the licensee corrects the identified rule violations; or

(3) when the facility assures the Department that it complies with R432-2-11 to R432-2-12.

R432-2-18. Variances.

(1) A health facility may submit a request for agency action to obtain a variance from state rules at any time.

(a) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah Department of Health on forms furnished by the Department.

(b) The Department may require additional information from the facility before acting on the request.

(c) The Department shall act upon each request for variance in writing within 60 days of receipt of a completed request.

(2) If the Department grants a variance, it shall amend the license in writing to indicate that the facility has been granted a variance. The variance may be renewable or non-renewable. The licensee shall maintain a copy of the approved variance on file in the facility and make the copy available to all interested parties upon request.

(a) The Department shall file the request and variance with the license application.

(b) The terms of a requested variance may be modified upon agreement between the Department and the facility.

(c) The Department may impose conditions on the granting of a variance as it determines necessary to protect the health and safety of the residents or patients.

(d) The Department may limit the duration of any variance.

(3) The Department shall issue a written notice of agency decision denying a variance upon determination that the variance is not justified.

(4) The Department may revoke a variance if:

(a) The variance adversely affects the health, safety, or welfare of the residents.

(b) The facility fails to comply with the conditions of the variance as granted.

(c) The licensee notifies the Department in writing that it wishes to relinquish the variance and be subject to the rule previously varied.

(d) There is a change in the statute, regulations or rules.

R432-2-19. Change In Ownership.

(1) As used in this section, an "owner" is any person or entity:

(a) ultimately responsible for operating a health care facility; or

(b) legally responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.

(2) The owner of the health care facility does not need to own the real property or building where the facility operates.

(3) A property owner is also an owner of the facility if he:

(a) retains the right or participates in the operation or business decisions of the enterprise;

(b) has engaged the services of a management company to operate the facility; or

(c) takes over the operation of the facility.

(4) A licensed provider whose ownership or controlling ownership interest has changed must submit a Request for Agency Action/License Application and fees to the department 30 days prior to the proposed change

(5) Changes in ownership that require action under subsection (4) include any arrangement that:

(a) transfers the business enterprise or assets to another person or firm, with or without the transfer of any real property rights;

(b) removes, adds, or substitutes an owner or part owner; or

(c) in the case of an incorporated owner:

(i) is a merger with another corporation if the board of directors of the surviving corporation differs by 20 percent or more from the board of the original licensee; or

(ii) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 20 percent or more from the board of the original licensee.

(6) A person or entity that contracts with an owner to manage the enterprise, subject to the owner's general approval of operating decisions it makes is not an owner, unless the parties have agreed that the managing entity is also an owner.

(7) A transfer between departments of government agencies for management of a government-owned health care facility is not a change of ownership under this section.

KEY: health care facilities

May 29, 2007	**26-21-9**
Notice of Continuation January 5, 2004	**26-21-11**
	26-21-12
	26-21-13

R438. Health, Epidemiology and Laboratory Services, Laboratory Services.
R438-12. Rules for the Authorization of Individuals Other Than Physicians, Registered Nurses, or Practical Nurses to Withdraw Blood for Alcoholic or Drug Determinations When Requested by a Peace Officer, and for Issuance of Permits to Such Individuals.
R438-12-1. Definitions.

(1) "Director" means the Executive Director of the Department of Health.

(2) "Department" means the Department of Health.

R438-12-2. Authorized Individual - Qualifications.

Pursuant to section 26-1-30(2)(s), individuals other than physicians, registered nurses, or practical nurses shall meet one of the following requirements as a prerequisite for authorization to withdraw blood for the purpose of determining its alcoholic or drug content when requested to do so by a peace officer:

(1) training in blood withdrawal procedures obtained as a defined part of a successfully completed college or university course taken for credit, or

(2) training in blood withdrawal procedures obtained as a defined part of a successfully completed training course which prepares individuals to function in routine clinical or emergency medical situations under the guidance of a physician, or

(3) training of no less than three weeks duration in blood withdrawal procedures under the guidance of a licensed physician.

R438-12-3. Permits for Authorized Individuals.

(1) Pursuant to section 26-1-30(2)(s), the Department shall issue permits to withdraw blood for the purpose of determining the alcoholic or drug content therein, when requested by a peace officer, to qualified applicants, as determined by the Department. The permit shall be of a size suitable for framing and a wallet-sized permit card shall be issued with the permit.

(2) Application to obtain a permit shall be made to the Director, Division of Epidemiology and Laboratory Services on forms provided by the Department.

(3) The permit shall be prominently displayed in the facility where the permit holder is employed. When the permit holder is requested to withdraw blood for the above stated purpose at a location other than the facility indicated above, he must have a valid permit card on his person.

(4) The effective date of a permit shall be the date the application is approved by the Department, which date shall appear on the permit and on the wallet-sized permit card. Permits shall be valid for a three year period on a calendar year basis. The date the permit expires shall appear on the permit and on the wallet-sized permit card. Permits shall be subject to termination or revocation pursuant to R438-12-4.

(5) Application to renew permits shall be made to the Director, Division of Epidemiology and Laboratory Services before the end of each three year permit period. Such application shall be made on forms provided by the Department. The permit holder shall either certify that he has been engaged in performing blood withdrawal procedures during the current permit period or submit a certificate signed by a physician attesting to his competence to perform blood withdrawal procedures.

(6) Permit holders must notify the Director, Division of Epidemiology and Laboratory Services within 15 days of a change in name or mailing address. Permits or permit cards that are destroyed or lost may be replaced upon written request from the permit holder.

R438-12-4. Cause for Permit Termination or Revocation.

Violation of this rule violates Section 26-23-6 and is cause to cancel any permit issued under this rule.

Permits shall be subject to termination or revocation under any one of the following:

1. The permit holder has made any misrepresentation of a material fact in his application, or any other communication to the Department or its representatives, which misrepresentation was material to the eligibility of the permit holder.

2. The permit holder is not qualified under R438-12-2 to hold a permit.

3. The permit holder after having received a permit has been convicted of a felony or of a misdemeanor which misdemeanor involves moral turpitude.

4. The permit holder does not comply with the display or possession requirements stated in R438-12-3.C.

R438-12-5. Published List of Authorized Individuals.

The Department shall publish annually, a list of individuals authorized to withdraw blood for determination of its alcoholic or drug content, when requested to do so by a peace officer. This list shall include the individual's name, mailing address, and permit number. The list shall be made available to all state and local law enforcement agencies, all local health departments, and any other person or agency requesting the information. The Department may publish amended lists when deemed necessary.

KEY: sobriety tests

1992	**41-6-44.10(5)**
Notice of Continuation May 8, 2007	**26-1-30(2)(s)**

R477. Human Resource Management, Administration.
R477-11. Discipline.
R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, nonfeasance or failure to advance the good of the public service;

(f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;

(g) no longer meets the requirements of the position.

(2) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):

(a) The agency representative notifies the employee in writing of the proposed discipline and the underlying reasons supporting the intended action.

(b) The employee's reply must be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to respond or does not reply within the time frame established by the agency representative or within five days, whichever is longer, discipline may be imposed in accordance with these rules.

(3) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following:

(a) written reprimand;

(b) suspension without pay up to 30 calendar days per incident requiring discipline;

(c) demotion of any employee through one of the following methods:

(i) An employee may be moved from a position in one job to a position in another job having a lower maximum salary range and shall receive a reduction in the current actual wage.

(ii) A demotion within the employee's current salary range may be accomplished by lowering the employee's current actual wage, as determined by the agency head or designee.

(d) dismissal.

An agency head shall dismiss or demote a career service employee only in accordance with the provisions of Subsection 67-19-18(5) and Section R477-11-2.

(4) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, as provided by Subsection 67-19-18(4), pending an investigation and determination of facts:

(a) paid administrative leave; or

(b) temporary reassignment to another position or work location at the same current actual wage.

(5) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(6) Disciplinary actions are subject to the grievance and appeals procedure as provided by law for career service employees only. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause as explained under Sections R477-10-2 and R477-11-1, and through the process outlined in this rule.

(1) An agency head or appointing officer may dismiss or demote a probationary employee or career service exempt employee without right of appeal. Such dismissal or demotion may be for any reason or for no reason.

(2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in Section R137-1-13 and Title 67, Chapter 19a, and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee must reply within five working days for the agency head or designee to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. The hearing before the department head or designee shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the hearing the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the hearing. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Title 63, Chapter 2, the Governmental Access and Records Management Act.

(d) Following the hearing, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. Specific reasons shall be provided if the decision is a demotion or dismissal.

(3) Agency management may place an employee on paid administrative leave pending the administrative appeal to the agency head.

R477-11-3. Discretionary Factors.

(1) When deciding the specific type and severity of discipline, the agency head or representative may consider the following factors:

(a) consistent application of rules and standards;

(b) prior knowledge of rules and standards;

(c) the severity of the infraction;

(d) the repeated nature of violations;

(e) prior disciplinary/corrective actions;

(f) previous oral warnings, written warnings and discussions;

(g) the employee's past work record;

(h) the effect on agency operations;

(i) the potential of the violations for causing damage to persons or property.

KEY: discipline of employees, dismissal of employees, grievances, government hearings
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Notice of Continuation June 11, 2002 67-19-18

63-2

R477. Human Resource Management, Administration.
R477-13. Volunteer Programs.
R477-13-1. Volunteer Programs.

Agency management shall approve all work programs for volunteers before volunteers serve the state or any agency or subdivisions of the state. A volunteer is considered a government employee for purposes of workers compensation, operation of motor vehicles or equipment, and liability protection and indemnification.

(1) Agency management may establish a program for people to volunteer their services to the agency consistent with the following rules. The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with Subsection R477-2-2(1).

(2) When implementing a volunteer program, agency management shall:

(a) orient the volunteer to the conditions of state service and their specific job assignments;

(b) provide adequate supervision of the volunteer staff;

(c) designate the type of work for which volunteer services may be allowed to supplement paid staff;

(d) document the approval of, numbers of, and hours worked by its volunteers, based on standards established DHRM;

(e) collect data on the number of volunteers and the number of volunteer hours; and

(f) evaluate and assign volunteers in accordance with standards set by DHRM.

R477-13-2. Volunteer Experience Credit.

(1) Agency management shall apply approved and documented related volunteer experience to satisfy the job requirements for career service positions.

(a) Volunteer experience shall not substitute for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.

(b) Court ordered community service experience will not be considered volunteer work for purposes of meeting job requirements.

(2) Participants in state or other volunteer programs shall receive credit for volunteer experience for the purposes of career service employment when:

(a) The volunteer experience is related to the identified duties and responsibilities of the designated career service position as determined by agency management.

(b) The volunteer experience is documented in accordance with standards established by DHRM.

(3) Credit for documented and job related volunteer experience shall be given in the same manner as similar paid employment.

KEY: personnel management, administrative rules, rules and procedures, definitions
July 5, 2000 67-19-6
Notice of Continuation June 11, 2002 67-20-8

R477. Human Resource Management, Administration.
R477-14. Substance Abuse and Drug-Free Workplace.
R477-14-1. Rules Governing a Drug-Free Workplace.

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportational Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effect of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute or use any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty except where legally permissible.

(a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of $25,000 or more.

(3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

(4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(6) Employees in non safety sensitive positions are subject to one or more of the following drug or alcohol tests:

(a) reasonable suspicion;
(b) critical incident;
(c) post accident;
(d) return to duty;
(e) follow up.

(7) For employees in non safety sensitive positions, the State of Utah will use the same cut off levels for positive drug tests as the federal government. This rule incorporates by reference the requirements of 49 CFR 40.40, Sections 85 to 87 (2002), Laboratory Analysis Procedures.

(8) For employees in non safety sensitive positions, the State of Utah will use a blood alcohol concentration level of .08 as the cut off for a positive alcohol test.

(9) Employees who hold safety sensitive positions, are final candidates for, are transferred to, or are assigned the duties of a safety sensitive position, and final applicants for safety sensitive positions are subject to one or more of the following drug or alcohol tests:

(a) reasonable suspicion;
(b) critical incident;
(c) post accident;
(d) return to duty;
(e) follow up;
(f) preemployment;
(g) random.

(10) For employees in safety sensitive positions, the State of Utah will use the same cutoff levels for positive drug and alcohol tests as the federal government. This rule incorporates by reference the requirements of 49 CFR 40.40, Sections 85 to 87 (2002), Laboratory Analysis Procedures, 49 CFR 382.107 (2002), Definitions, 49 CFR 382.201 (2002), Alcohol Concentration and 49 CFR 382.505 (2002), Other Alcohol Related Conduct.

(11) Employees in safety sensitive positions, as approved by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in safety sensitive positions shall be conducted at the discretion of the employing agency.

(12) Employees in safety sensitive positions whose confirmation test for alcohol results are .02 or greater, when tested before, during, or immediately after performing safety sensitive functions, must be removed from performing safety sensitive duties for 8 hours, or until another test is administered and the result is less than .02.

(13) Employees in safety sensitive positions whose confirmation test for alcohol results are .04 or greater when tested before, during or after performing safety sensitive duties, may be subject to corrective action or discipline.

(14) Agencies with employees in positions requiring a commercial driver license shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current DHRM Drug and Alcohol Testing Manual.

(15) Management may take disciplinary action if:

(a) there is a positive confirmation test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;

(c) management determines an employee is unable to perform his assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

(16) The agency's human resource office or authorized official shall keep a separate, private record of drug or alcohol test results. The employee's official personnel file shall only contain a document making reference to the existence of the drug or alcohol test record.

R477-14-2. Management Action.

(1) Pursuant to Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) Management may take disciplinary action which may include dismissal.

(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal. See Section 67-19-33.

(4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions:

(a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of $25,000.00;

(b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

(6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be required to participate, at his expense, in a rehabilitation program, as provided for in Subsection 67-19-38(3). If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee must sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Title 63, Chapter 2.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in his previously held position, or a position with a comparable or lower salary range.

(7) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.

(8) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.

(9) An employee who is convicted for a violation occurring in the workplace, under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

(i) the judicial system;

(ii) other sources;

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

R477-14-3. Rule Distribution.

The Department of Human Resource Management shall distribute this rule to every state agency for communication to its employees.

R477-14-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

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Notice of Continuation December 6, 2006	**67-19-18**
	67-19-34
	63-19-37
	67-19-38

R477. Human Resource Management, Administration.
R477-15. Unlawful Harassment Policy and Procedure.
R477-15-1. Purpose.

It is the State of Utah's policy to:

(1) provide all employees a working environment that is free from unlawful harassment based on race, religion, national origin, color, sex, age, disability, or protected activity under the anti-discrimination statute; and

(2) comply with state and federal laws regarding discrimination based on unlawful harassment.

R477-15-2. Policy.

(1) Unlawful harassment means discriminatory treatment based on race, religion, national origin, color, sex, age, protected activity or disability. Discrimination based on unlawful harassment will not be tolerated. Violators shall be subject to corrective action or disciplined and may be referred for criminal prosecution. Discipline may include termination of employment.

(2) Unlawful harassment includes the following subtypes:

(a) behavior or conduct in violation of Subsection R477-15-2(1) that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;

(b) behavior or conduct in violation of Subsection R477-15-2(1) that results in a tangible employment action being taken against the harassed employee.

(3) The imposition of corrective action and discipline is governed by Section R477-10-2 and Rule R477-11.

(4) An employee shall be subject to corrective action or discipline for unlawful harassment towards another employee, even if that harassment occurs outside of scheduled work time or work location, provided that the harassment meets the requirements of Subsection R477-15-2(2).

(5) Individuals affected by alleged unlawful harassment may, but shall not be required to, confront the accused harasser before filing a complaint.

(6) Once a complaint has been filed, the accused shall not communicate with the complainant regarding allegations of harassment.

R477-15-3. Retaliation.

(1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this policy, or is otherwise engaged in protected activity.

(2) Any act of retaliation toward the complainant, witnesses or others involved in the investigation shall be subject to corrective action or disciplinary action. Prohibited actions include:

(a) open hostility to complainant, participant or others involved;

(b) exclusion or ostracism of the complainant, participant or others;

(c) creation of or the continued existence of a hostile work environment;

(d) discriminatory remarks about the complainant, participant or others;

(e) special attention to or assignment of the complainant, participant or others to demeaning duties not otherwise performed;

(f) tokenism or patronizing behavior;

(g) discriminatory treatment;

(h) subtle harassment; or

(i) unreasonable supervisory imposed time restrictions on employees in preparing complaints or compiling evidence of unlawful harassment activities or behaviors.

R477-15-4. Complaint Procedure.

Individuals affected by unlawful harassment may file complaints and engage in an administrative process free from bias, collusion, intimidation or retaliation.

(1) Individuals who feel they are being subjected to unlawful harassment should do the following:

(a) document the occurrence;

(b) continue to report to work; and

(c) identify a witness, if applicable.

(2) An employee may file an oral or written complaint of unlawful harassment with their immediate supervisor, any other supervisor within their direct chain of command, the agency human resource office or the Department of Human Resource Management.

(3) Any complaint of unlawful harassment shall be acted upon following receipt of the complaint.

(a) Complaints may be submitted by any individual, witness, volunteer or other employee.

(b) Complaints may be made through either verbal or written notification and shall be handled in compliance with confidentiality guidelines.

(c) Any supervisor who has knowledge of unlawful harassment shall take immediate, appropriate action and document the action.

(4) If an immediate investigation by the agency is not warranted, a meeting shall be held with the complainant, the supervisor or manager of the appropriate division, and others as appropriate to communicate the findings and management's resolution of the complaint.

R477-15-5. Investigative Procedure.

(1) The investigative procedures established by agencies shall allow the complainant to make specific requests relating to the investigation process and about the person or persons who will conduct the investigation. The agency shall attempt to comply with these requests, but may take whatever action necessary and appropriate to resolve the complaint.

(2) Preliminary reviews and investigations must be conducted in accordance with procedures issued by the Department of Human Resource Management.

(3) Results of Investigation

(a) If the investigation reveals that disciplinary action is warranted, the agency head shall take appropriate action as provided in Rule R477-11.

(b) If an investigation reveals evidence of criminal conduct in unlawful harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the Attorney General's Office or County or District Attorney as appropriate.

(c) If an investigation of unlawful harassment reveals that the accusations are unfounded, the findings shall be documented, the investigation terminated, and appropriate parties notified.

(d) Investigations shall be conducted by qualified individuals based on DHRM standards.

R477-15-6. Records.

(1) A separate protected record of all unlawful harassment complaints shall be maintained and stored in the agency's human resource office, DHRM office or in the possession of an authorized official. Removal or disposal of records in the protected file may only be done with the approval of the agency head or Executive Director, DHRM, and only after minimum timelines specified herein have been met. Records shall be kept for: a minimum of three years from the resolution of the complaint or investigative proceeding.

(2) Supervisors shall not keep separate files related to complaints of unlawful harassment.

(3) All information contained in the complaint file shall be

classified as protected pursuant to requirements of Section 63-2-304, Government Records Access and Management Act.

(4) Information contained in the unlawful harassment protected file shall only be released by the agency head or Executive Director, DHRM, when in compliance with the requirements of law.

(5) Participants in any unlawful harassment proceeding shall treat all information as protected.

(6) Final disposition of unlawful harassment cases shall be communicated to appropriate parties.

R477-15-7. Training.

(1) Agencies shall comply with the Unlawful Harassment Prevention Training Standards set by DHRM. As a minimum, these shall contain:

(a) course curriculum standards;

(b) training presentation requirements;

(c) trainer qualifications; and

(d) training records management criteria.

KEY: administrative procedures, hostile work environment
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Governor's Executive Order on Prohibiting Ulawful Harassment, December 13, 2006

R501. Human Services, Administration, Administrative Services, Licensing.
R501-8. Outdoor Youth Programs.
R501-8-1. Outdoor Youth Programs.

(1) The Office of Licensing in the Department of Human Services, shall license outdoor youth programs according to standards and procedures established by this rule.

R501-8-2. Authority and Purpose.

(1) Pursuant to 62A-2-101 et seq., the purpose of this rule is to define standards and procedures by which the Office of Licensing shall license outdoor youth programs. Programs designed to provide rehabilitation services to adjudicated minors shall adhere to these rules as established by the Division of Juvenile Justice Services, in accordance with 62A-7-104-11.

R501-8-3. Definitions.

(1) In addition to terms defined and used in Section 62A-2-101(20), Utah Code:

(a) "Consumer" means the minor being provided the service by the program, not the parent or contracting agent that has enrolled the minor in the program.

(b) "Field Office" means the office where all coordination of field operations take place.

(c) "Administrative Office" means the office where business operations, public relations, and the management procedures take place.

R501-8-4. Administration.

(1) In addition to the following standards and procedures, all outdoor youth programs shall comply with R501-2, Core Standards.

(2) Records of enrollment of all consumers shall be on file at the field office at all times.

(3) Information provided to parents, community, and media shall be accurate and factual.

(4) Programs shall provide an educational component as determined by the Utah State Board of Education for consumers up to 18 years of age who have been removed from their educational opportunities for more than one month. The administrators of the program shall meet and cooperate with the local Board of Education.

(5) Programs which advertise as providing educational credit to consumers shall be approved by the Utah State Board of Education.

(6) The program shall have written procedures for handling any suspected incident of child abuse or Department of Human Services, hereinafter referred to as DHS, Provider Code of Conduct violation, including the following:

(a) a procedure for ensuring that the staff member involved does not work directly with the youth involved or any other youth in the program until the investigation is completed or formal charges filed and adjudicated,

(b) a procedure for ensuring that a director or member of the governing body involved in or suspected of abuse shall be relieved of their responsibility and authority over the policies and activities of the program, or any other youth program, as well as meet the sanctions as described in (a) above, until the investigation is completed or formal charges are filed and adjudicated, and

(c) a procedure for disciplining any staff member or director involved in an incident of child abuse or DHS Provider Code of Conduct violation, including termination of employment if found guilty of felony child abuse, or loss of position, including directorship if found guilty of misdemeanor child abuse.

(7) If any director or person in a management position is involved in or suspected of child abuse or neglect, the program shall submit to an extensive review by DHS or law enforcement officials to determine or establish the continued safe operation or possible termination of the program. The licensing review shall be completed within 72 hours.

(8) Failure to implement and comply with (6)(a) through (c), and (7). above will be grounds for immediate suspension or revocation of program license.

(9) Until charges of abuse, neglect or licensing violations are resolved, no license shall be issued to any program with owners, silent owners, or any staff management personnel that were prior owners or staff management personnel in a program against which the above charges were alleged.

(10) If charges result in a criminal conviction or civil or administrative findings that allegations were true, no license shall be issued to any program with owners, silent owners, or staff management personnel from the prior program.

R501-8-5. Program Requirements.

(1) Programs that operate in Utah and one or more other states shall meet the requirements for licensure as established for each of the states.

(2) There shall be a written plan for expedition groups, developed and approved by the program field director, and by the program executive director, and governing body, which shall not expose consumers to unreasonable risks.

(3) The program shall inventory all consumer personal items and shall return all inventoried items, except contraband, to the consumer following program completion. The consumer shall sign the inventory list at the time of inventory and again when items are returned.

(4) The Office of Licensing shall review and approve the program's training plan governing consequences for consumer conduct.

(5) Each consumer shall have clothing and equipment to protect the consumer from the environment. This equipment shall never be removed, denied, or made unavailable to a consumer. If a consumer refuses or is unable to carry all of his or her equipment, the group shall cease hiking, and reasons for refusal or inability to continue will be established and resolved before hiking continues. Program directors are responsible to train staff regarding this standard and to regularly monitor compliance. There shall never be a deprivation of any equipment as a consequence. Such equipment shall include the following:

(a) sunscreen; the program staff shall ensure appropriate consumer usage,

(b) insect repellent,

(c) with frame or no frame backpack weight to be carried by each consumer shall not exceed 20 percent of the consumer's body weight. If the consumer is required to carry other items, the total of all weight carried shall not exceed 30% of the consumer's body weight,

(d) personal hygiene items,

(e) female hygiene supplies,

(f) sleeping bags rated for the current seasonal conditions when the average nighttime temperature is 40 degrees F. or warmer,

(g) sleeping bags rated for the current seasonal conditions, shelter and ground pad for colder months when the average nighttime temperature is 39 degrees F. or lower, and

(h) basic clothing list to ensure consumer protection against seasonal change in the environment.

(6) The program shall provide consumers with clean clothing at least weekly and shall provide a means for consumers to bathe or otherwise clean their bodies a minimum of twice weekly. Female consumers shall be issued products for hygiene purposes.

(7) Hiking shall not exceed the physical capability of the weakest member of the group. Hiking shall be prohibited at temperatures above 90 degrees F. or at temperatures below 10

degrees F. Field staff shall carry thermometers, which accurately display current temperature. If a consumer cannot or will not hike, the group shall not continue unless eminent danger exists.

(8) The expedition plan including map routes, and anticipated schedules and times shall be carried by the field staff and recorded in the field office.

(9) Field staff shall maintain a signed, daily log or dictate a recorded log to be transcribed and signed immediately following termination of the activity.

(a) The log shall contain the following information; accidents, injuries, medications, medical concerns, behavioral problems, and all unusual occurrences.

(b) All log entries shall be recorded in permanent ink.

(c) These logs shall be available to state staff.

(10) Incoming and outgoing mail to parents, guardians, and attorneys shall not be restricted but shall be delivered in as prompt a manner as the location and circumstances dictate.

(11) Incoming and outgoing U.S. postal mail to parents, guardians, and attorneys shall not be restricted but shall be delivered in as prompt a manner as the location and circumstances dictate.

(12) Incoming mail from parents or guardians shall not be read or censored without written permission from a parent or guardian.

(13) All other mail may be restricted only by parental request in writing.

(14) All incoming mail may be required to be opened in the presence of staff. Contraband shall be confiscated.

(15) All local, state, and federal regulations and professional licensing requirements shall be met.

(16) Each program staff shall be required to carry with them a reliable time piece, which may include a wrist watch or pocket watch for the purpose of accurately reflecting the time of day, and for documentation purposes, such as recording the time of day in log notes and incident reports.

(17) The program shall have policy and procedure for suicide ideation that includes a review of any placement of a suicide watch on a consumer, by the program's clinical professional.

R501-8-6. Staff, Interns, and Volunteers.

(1) All staff, interns, and volunteers shall meet the provisions of R501-14.

(2) Each program shall have a governing body and an executive director who shall have responsibility and authority over the policies and activities of the program. and shall coordinate office and support services, training, etc,. The executive director shall have, at a minimum, the following qualifications:

(a) be at least 25 years of age,

(b) have a BA or BS degree or equal training and experience in a related field,

(c) have a minimum of two years of outdoor youth program administrative experience,

(d) have a minimum of 30 semester or 45 quarter hours education in recreational therapy or related experience or one year Outdoor Youth Program field experience,

(e) demonstrate complete knowledge and understanding of relevant licensing rules, and

(f) have completed an initial staff training, see R501-8-8.

(3) Each program shall have a program or field director who coordinates field operations, manages the field staff, and operates the field office. The program or field director shall meet, at a minimum, the following qualifications:

(a) be at least 25 years of age,

(b) have a BA or BS degree or equal training and experience in a related field,

(c) have minimum of two years of outdoor youth program field experience,

(d) have a minimum of 30 semester or 45 quarter hours education in recreational therapy or related field, or one year Outdoor Youth Program field experience,

(e) demonstrate complete knowledge and understanding of relevant licensing rules,

(f) have primary responsibility for field activities and visit in the field a minimum of two days a week with no more than five days between visits,

(g) prepare reports of each visit, document conditions of consumers, document interactions of consumers and staff, and ensure compliance with rules,

(h) be annually trained and certified in CPR and currently certified in standard first aid, and

(i) have completed an initial staff training, see R501-8-8.

(4) Each program shall have field support staff responsible for delivery of supplies to the field, mail delivery, communications, and first aid support. The field support staff shall meet, at a minimum, the following qualifications:

(a) be at least 21 years of age,

(b) have a high school diploma or equivalency,

(c) be annually trained and certified in CPR and currently certified in standard first aid, and

(d) have completed an initial staff training and field course, see R501-8-8.

(5) Each program group shall have senior field staff working directly with the consumer who shall meet, at a minimum, the following qualifications:

(a) be at least 21 years of age,

(b) have an associate degree or high school diploma with 30 semester or 45 quarter hours education and training or comparable experience and training in a related field,

(c) have six months outdoor youth program field experience or comparable experience which shall be documented in the individual's personnel file,

(d) be annually trained and certified in CPR and currently certified in standard first aid,

(e) have completed an initial staff training, see R501-8-8, and

(6) Each program shall have a field staff working directly with the consumers who shall meet, at a minimum, the following qualifications:

(a) be a minimum of 20 years of age,

(b) have a high school diploma or equivalency,

(c) have forty-eight field days of outdoor youth program experience or comparable experience which shall be documented in the individual's personnel file,

(d) exhibit leadership skill,

(e) be annually trained and certified in CPR and currently certified in standard first aid, and

(f) have completed an initial staff training.

(7) Each program shall have assistant field staff to meet the required consumer to staff ratio. Assistant field staff shall meet, at a minimum, the following qualifications:

(a) be a minimum of 19 years of age,

(b) have a high school diploma or equivalency,

(c) have twenty-four field days of outdoor youth programs experience,

(d) exhibit leadership skill,

(e) be annually trained and certified in CPR and currently certified in standard first aid, and

(f) have completed an initial staff training

(8) Each program shall have a multi-disciplinary team, accessible to consumers which shall include, at a minimum, the following:

(a) a licensed physician or consulting licensed physician,

(b) a treatment professional who may be one of the following:

(i) a licensed psychologist,

(ii) a licensed clinical social worker,
(iii) a licensed professional counselor,
(iv) a licensed marriage and family counselor, or
(v) a licensed school counselor
(c) All clinical and therapeutic personnel shall be licensed or working under a DOPL training program certified by the State of Utah.
(9) Each program may have academic and clinical interns who are learning the program practices while completing educational requirements.
(a) Interns shall be a minimum of 19 years of age.
(b) Initial training program shall be completed by all incoming staff including interns regardless of background experience.
(c) Clinical interns pursuing licensure shall be under the supervision of a licensed therapist.
(d) Academic interns shall be supervised by program staff.
(e) Interns shall not supervise consumers at any time.
(10) Each program may have program volunteers.
(a) Volunteers shall be under direct, constant supervision of program staff.
(b) Volunteers shall not be left in the role of supervising consumers at any time.
(c) Volunteers shall be at least 18 years of age and meet program guidelines.

R501-8-7. Staff to Consumer Ratio.
(1) Each youth group shall be supervised by at least two staff members at all times, one of which must be a senior field staff.
(2) In a mixed gender group, there shall be at least one female staff and one male staff.
(3) Expedition group size, including staff members, cannot exceed sixteen people with a minimum of a one to four staff to consumer ratio.
(4) Volunteers shall be counted as a consumer in figuring staff to consumer ratios.
(5) Expedition group size shall not exceed the number specified by federal, state, or local agencies in whose jurisdiction the program is operated.

R501-8-8. Staff Training.
(1) The program shall provide a minimum of eighty hours initial staff training.
(2) Initial staff training shall not be considered completed until the staff have demonstrated to the field director proficiency in each of the following:
(a) counseling, teaching and supervisory skills,
(b) water, food, and shelter procurement, preparation and conservation,
(c) low impact wilderness expedition and environmental conservation skills and procedures,
(d) consumer management, including containment, control, safety, conflict resolution, and behavior management,
(e) instruction in safety procedures and safe equipment use; fuel, fire, life protection, and related tools,
(f) instruction in emergency procedures; medical, evacuation, weather, signaling, fire, runaway and lost consumers,
(g) sanitation procedures; water, waste, food, etc.,
(h) wilderness medicine, including health issues related to acclimation, exposure to the environment, and environmental elements,
(i) CPR, standard first aid, first aid kit contents and use, and wilderness medicine,
(j) navigation skills, including map and compass use and contour and celestial navigation,
(k) local environmental precautions, including terrain, weather, insects, poisonous plants, response to adverse situations and emergency evacuation,
(l) leadership and judgment,
(m) report writing, including development and maintenance of logs and journals, and
(n) Federal, state, and local regulations, including Department of Human Services, Bureau of Land Management, United States Forest Service, National Parks Service, Utah State Department of Fish and Game.
(3) The completion of the minimum eighty hours initial staff training shall be documented and maintained in each personnel file.
(4) The field director shall document in each personnel file that the staff have demonstrated proficiency in each of the required topic areas as listed in (2). above.
(5) The initial staff training and demonstration of proficiency must be completed and documented before the staff person may count in the staff consumer ratio.
(6) The program shall also provide on-going training to staff in order to improve proficiency in knowledge and skills, and to maintain certifications. This training shall also be documented.

R501-8-9. Staff Health Requirements.
(1) Prior to engaging in any field activity, all staff shall adhere to the following:
(a) All field staff, interns, and volunteers shall have an annual physical examination and health history signed by a licensed medical professional. A recognized physical stress assessment shall be completed as part of the physical examination.
(b) Physical examinations shall be reviewed and maintained by the provider in the staff personnel file.
(c) All program staff, interns, and volunteers shall agree to submit to drug and alcohol screening as provided for by federal and state law.

R501-8-10. Consumer Admission Requirements.
(1) Consumers shall be at least 13 through 17 years of age and have a current health history which includes notation of limitations and prescriptive medications, completed and submitted within 30 days prior to entrance into the field program and verified by a parent or legal guardian.
(2) Admissions screening shall be supervised by a treatment professional before consumer entrance into the field program and shall include the following:
(a) a review of consumer social and psychological history with the parent or legal guardian prior to enrollment,
(b) an interview with the consumer prior to entrance into the field program, and
(c) a review of consumer's health history and physical examination by a licensed medical professional prior to entrance into the field program.
(3) Consumer shall have a physical examination within 15 days prior to entrance to field program. Documentation of the examination, on a form provided by the program and signed by a licensed medical professional, shall be submitted to the program within 15 days prior to entrance to field program.
(4) A physical examination form shall be provided to the licensed medical professional by the program and the form shall clearly state a description of the physical demands and environment of the program, and require the following information:
(a) urinalysis drug screen,
(b) CBC, blood count,
(c) urinalysis for possible infections,
(d) CMP, complete metabolic profile,
(e) pregnancy test for all female consumers,
(f) physical stress assessment,
(g) determination by the physician if detoxification is

indicated for consumer prior to entrance into field program,

(h) and any other tests as deemed to be indicated.

(5) Copies of consumer's medical forms shall be maintained at the field office and another copy carried by staff members in a waterproof container throughout the course.

(6) Prior to placement in the program, psychological evaluations for consumers as indicated, who have a history of chronic psychological disorders.

(7) Upon admission and for a period of no fewer than three days staff shall closely monitor the consumers for any health problems that may be a result of becoming acclimated to the environment.

R501-8-11. Water and Nutritional Requirements.

(1) Six quarts of potable water shall be available per person, per day, minimum, plus one additional quart per person for each five miles hiked. Although it is not required that the entire amount be hand carried, access to water shall be available at all times during hiking.

(2) In temperatures above 90 degrees F., staff shall make sure consumer intake is a minimum of three quarts of water per day, electrolyte replacement shall be available with the expeditionary group at all times.

(3) In temperatures above 80 degrees F., water shall be available for coating consumer's body, and other cooling down techniques shall be available for the purpose of cooling as needed.

(4) Water shall be available at each campsite. Water cache location information shall be verified with field staff before the group leaves camp each day.

(5) Expedition group shall not depend on aerial drops for water supply. Aerial water drops shall be used for emergency situations only.

(6) All water from natural sources shall be treated for sanitation to eliminate health hazards.

(7) Each program shall have a written menu describing food supplied to the consumer which shall provide a minimum of 3000 calories per day. There must be fresh fruit and vegetables at least twice a week. Food shall never be withheld from a consumer for any reason. Food may not be withheld as a punishment. If no fire is available, other food of equal caloric value, which does not require cooking shall be available.

(a) The menu shall adjust to provide 30-100 percent increase in minimum dietary needs as energy expenditure such as exercise increases, or climate conditions such as cold weather dictate.

(b) Food shall be from a balance of the food groups.

(c) Forage items shall not be used toward the determination of caloric intake.

(d) There shall be no program fasting for more than 24 hours per expeditionary cycle.

(e) Multiple vitamin supplements shall be offered daily.

R501-8-12. Health Care.

(1) First aid treatment shall be provided in a prompt manner.

(2) When a consumer has an illness or physical complaint which cannot be treated by standard first aid, the program shall immediately arrange for the consumer to be seen and treated as indicated by a licensed medical professional.

(3) Each consumer shall be assessed at least every 14 days for his physical condition by a qualified professional such as a Utah EMT. Blood pressure, heart rate, allergies, and general physical condition will be checked and documented. Any assessment concerns will be documented, and the consumer will be taken to the appropriate medical professional for treatment. Medical treatment shall be provided by medical personnel and medication provided as needed. There shall be no consequences to a consumer for requesting to see a health care professional or for anything said to a health care professional.

(4) All prescriptive and over the counter medications shall be kept in the secure possession of designated staff and provided to consumers to be used as prescribed.

(5) Prescriptive medication shall be administered as prescribed by a qualified medical practitioner who is licensed. Staff shall be responsible for the following:

(a) supervise the use of all medication,

(b) record medication, including time and dosage, and

(c) record effects of medication, if any.

(d) document any incidents of missed prescriptive medication, and

(e) document any lost or missing prescriptive medication.

(6) A foot check will be conducted at least twice daily and documented.

R501-8-13. Safety.

(1) First aid kits shall include sufficient supplies for the activity, location, and environment and shall be available during all field activities.

(2) Program shall have a support system that meets the following criteria:

(a) Reliable daily two-way radio communications with additional charged battery packs, and a reliable backup system of contact in the event the radio system fails.

(b) The support vehicles and field office shall be equipped with first aid equipment.

(c) The support personnel shall have access to all contacts, i.e., telephone numbers, locations, contact personnel, and procedures for an emergency evacuation or field incident.

(d) A.M. and P.M. contacts between field staff and support staff are to be relayed to the field office. Contact shall be available from field staff to field office on a continuous basis.

R501-8-14. Field Office.

(1) Each program shall maintain a field office.

(2) Communication system to the field office shall be monitored 24-hours a day when consumers are in the field.

(3) Support staff shall respond immediately to any emergency situation.

(4) Support staff on duty shall be within 1 hour of the field.

(5) When staff are not present in the field office a contact telephone number shall be posted on the field office door, and the field director shall designate responsible on-call staff who shall continually monitor communications and will always be within 15 minutes travel time of the field office.

(6) field office staff shall adhere to the following:

(a) maintain current staff and consumer files which include demographics, eligibility criteria, and medical forms as a minimum,

(b) maintain a current list of names of staff and consumers in each field group,

(c) maintain a master map of all activity areas,

(d) maintain copies of each expeditionary route with its schedule and itinerary, of which copies shall be sent to the Office of Licensing and local law enforcement, as requested by these agencies,

(e) maintain a log of communications,

(f) be responsible for training and orientation, management of field personnel, related files, and records,

(g) be responsible for maintaining communications, equipment inspection, and overseeing medical incidents, and

(h) provide all information as requested for review by state staff.

R501-8-15. Environmental Requirements.

(1) All programs shall adhere to land use agencies requirements relative to sanitation and low impact camping.

(2) Consumers shall be instructed daily in the observance of low-impact camping requirements.

(3) Personal hygiene supplies shall be of biodegradable materials.

R501-8-16. Emergencies.

(1) Each program shall have a written plan of action for disaster and casualties to include the following:

(a) designation of authority and staff assignments,

(b) plan for evacuation,

(c) transportation and relocation of consumers when necessary, and

(d) supervision of consumers after evacuation or relocation.

(2) The program shall have a written plan which personnel follow in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.

(3) The program shall have a written agreement for medical emergency evacuation as needed.

(4) Emergency evacuation equipment shall be on stand-by.

(5) The program shall make prior arrangements with local rescue services in preparation for possible emergency evacuation needs, which shall be reviewed every six months.

R501-8-17. Infectious Disease Control.

(1) The program shall have policies and procedures designed to prevent or eliminate the spread of infectious and communicable diseases in the program.

R501-8-18. Transportation Services.

(1) The program shall have policies and procedures which ensures the safe and humane transport of consumers between their homes and the program.

(2) "Escort transportation services" means: The charging of a fee for having a responsible adult accompany the consumer during transportation from the consumers home to the program or back to their home.

(3) Escort transportation services whether provided by the program or by an independent transportation service shall not be a requisite to enrollment in the program, but shall be the choice of the consumer's parent or guardian.

(4) Programs that provide escort transportation services shall provide parents or guardians with the contact information of at least two other escort transportation services to allow them to have an informed decision.

R501-8-19. Transportation.

(1) There shall be written policy and procedures for transporting consumers.

(2) There shall be a means of transportation in case of emergency.

(3) Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.

(4) Each vehicle shall be equipped with an adequately supplied first aid kit.

(5) When transporting any consumer for any reason, there shall be two staff present at all times, one of which shall be of the same sex as the consumer, except in emergencies.

(6) Staff shall adhere to local, state, and federal laws concerning the operation of motor vehicles.

(7) Staff and consumers shall wear seat belts at all times while the vehicle is moving.

R501-8-20. Evaluation.

(1) Following the wilderness experience, each consumer shall receive a debriefing to include a written summary of the consumer's participation and the progress they achieved.

(2) Parents, consumers, and other involved individuals shall be provided the opportunity and encouraged to submit a written evaluation of the wilderness experience, which shall be retained by the program for a period of two years.

R501-8-21. Solo Experiences.

(1) If an Outdoor Youth Program conducts a solo component for consumers as part of the program they shall have and follow written policies and procedures, which shall include the following:

(a) A written description of the solo component to ensure that the consumers are not exposed to unreasonable risks.

(b) Staff shall be familiar with the site chosen to conduct solos.

(c) Plans for supervision shall be in place during the solo.

(d) Solo emergency plans.

R501-8-22. Stationary Camp Sites.

(1) An outdoor youth program that maintains a designated location for the housing of consumers is considered stationary and shall be subject to additional fire, health and safety standards.

(a) A stationary Outdoor Youth Program camp shall be inspected by a state certified fire inspector before being occupied and on an annual basis thereafter. A copy of the inspection shall be maintained at the Outdoor Youth Program camp.

The inspection shall require:

(i) Fire Extinguishers. One (1) 2-A-10BC type fire extinguisher shall at minimum be in each of the following locations as required by the fire inspector:

(A) On each floor in any building that houses consumers;

(B) In any room where cooking or heating takes place;

(C) In a group of tents within a seventy-five (75) foot travel distance; and

(D) Each fire extinguisher shall be inspected annually by a fire extinguisher service agency.

(ii) Smoke Detectors. A smoke detector shall be in buildings where consumers sleep.

(iii) Escape Routes. A minimum of two (2) escape routes from buildings where consumers sleep.

(iv) Flammable Liquids. Flammable liquids shall not be used to start fires, be stored in structures that house consumers, or be stored near ignition sources. If generators are used, they will only be refueled by staff when the generator is not running and cool to the touch.

(v) Electrical. Wiring shall be properly attached and fused to prevent overloads.

(b) A stationary Outdoor Youth Program camp shall be inspected by the Local Health Department before being occupied and on an annual basis thereafter. A copy of the inspection shall be maintained at the site of the camp. The inspection shall require the following:

(i) Food. Food be stored, prepared and served in a manner that is protected from contamination.

(ii) Water Supply. The water supply shall be from a source that is accepted by the local health authority according to UAC R392-300 "Rules for Recreation Camp Sanitation," at the time of application and for annual renewal of such licenses.

(iii) Sewage Disposal. Sewage shall be disposed of through a public system, or in absence of a public system, in a manner approved by the local health authority, according to UAC R392-300 "Rules for Recreation Camp Sanitation".

R501-8-23. Non-Compliance With Rules.

(1) Due to the difficulty of monitoring outdoor programs and the inherent dangers of the wilderness, a single violation of the foregoing life and safety rules may result in immediate revocation of the license and removal of consumers from programs pursuant to General Provisions as found in R501-1.

KEY: licensing, human services, youth
January 17, 2003 62A-2-101 et seq.
Notice of Continuation November 5, 2002

R510. Human Services, Aging and Adult Services.
R510-1. Authority and Purpose.
R510-1-1. Authority.

(1) These rules are promulgated in accordance with the following laws:

(a) Older Americans Act, Pub. L. No. 106-501, 42 USC Section 3001 et seq.

(b) Utah Division of Aging and Adult Services, Section 62A, Chapter 3, Parts 1, 2, and 3.

(c) Workforce Investment Act of 1998, 29 U.S.C. 2801 et seq.

(d) Social Services Block Grant, 45 CFR Parts 16, 74, and 96.

R510-1-2. Purpose.

The purpose of this rule is for clarification of statutory authority and definition problems.

KEY: law, Older Americans Act*
April 17, 2001 62A-3-101 through 62A-3-312
Notice of Continuation June 1, 2007 42 USC 3001

R510. Human Services, Aging and Adult Services.
R510-100. Funding Formulas.
R510-100-1. Older Americans Act.

(1) Compliance with State and Federal Law for Older Americans Act (OAA).

(a) The Division of Aging and Adult Services (Division) shall develop an intrastate funding formula for distribution of OAA, Title III: Grants for State and Community Programs on Aging funds and State general funds for social and nutrition services which complies with 45 CFR, Subchapter C, Part 1321.37 and with Section 62A-3-108.

(b) The formula shall be reviewed whenever a new State Plan on Aging is required to be submitted.

(2) Affected Funding Sources for OAA.

(a) The funding formula shall include:

(i) All federal funds received under Title III of the OAA with the exception of:

(A) Allowable State Division administrative funds, and

(B) Funds allocated to the State-delivered Long-Term Care Ombudsman Program.

(ii) All state funds appropriated for Title III social and nutrition services.

(b) The funding formula shall not include state or federal funds appropriated for:

(i) The Alternatives Program,

(ii) Adult Services under the Division, or

(iii) Funds identified under Section 62A-3-108(2).

(3) Funding Formula Factors for OAA.

(a) The funding formula shall incorporate the following factors:

(i) Base factor divided equally among the twelve Area Agencies on Aging (AAA) in existence on July 1, 1986;

(ii) Population factor comprised of each AAA's proportion of the State's weighted elderly population; and

(iii) Land area factor consisting of each AAA's proportion of the State's total adjusted square miles.

(b) Weighted elderly population shall consist of:

(i) The number of persons age 60 and over who have annual incomes below 125% of the poverty level, plus

(ii) The number of persons age 75 and over weighted two times, plus

(iii) The number of minority persons, as defined by the Governor's Office of Planning and Budget, age 60 and over.

(c) All population figures utilized shall reflect the most recent U.S. census figures adjusted on an annual basis based on available population estimates from the Governor's Office of Planning and Budget.

(4) Base Restrictions for OAA.

(a) If any AAA in existence on July 1, 1986, should in the future sub-divide into two or more AAAs, the base amount allocated to the original AAA shall be divided proportionally among the new AAAs.

(5) Base Factor Funds.

(a) Base factor funds shall consist of those federal Title III and state funds appropriated for Title III social and nutrition services and allocated as base funds in FY 2003.

(6) Funding Distribution for OAA.

(a) Distribution of funds under the formula shall be as follows:

(i) Base factor funds;

(ii) 7.5% of total remaining formula funds allocated to the land area factor; and

(iii) 92.5% of total remaining formula funds allocated to the population factor.

R510-100-2. In-Home Services.

(1) Affected Funding Sources for In-Home Services.

(a) The funding formula shall include all federal and state funds appropriated for use by local area agencies on aging to be used for in-home services with the exception of:

(i) funds allocated under Section R510-100-1 and

(ii) funds identified under Section 62A-3-108(2), and

(iii) Adult Services funded under the Division pursuant to Section 62A-3-301 et seq.

(2) Funding Formula Factors for In-Home Services.

(a) The funding formula shall include the following factors:

(i) Land area factor consisting of each AAA's proportion of the state's total adjusted square miles.

(ii) Population factor comprised of each AAA's proportion of the designated population factors.

(iii) Base amount of $16,000 allocated to each Area Agency on Aging.

(b) Designated population factors shall consist of the following:

(i) The number of minority persons, as defined by the Governor's Office of Planning and Budget, age 60 and over weighted 10%,

(ii) The number of all persons age 18-59 weighted 5%,

(iii) The number of all persons 60 years of age and over weighted 55%, and

(iv) The number of all persons 75 years of age and over weighted 30%.

(c) All population figures utilized shall reflect the most recent U.S. census figures adjusted on an annual basis based on available population estimates from the Governor's Office of Planning and Budget.

(3) Funding Distribution for In-Home Services.

(a) Distribution of funds under the formula will be as follows:

(i) 10% of total formula funds allocated to the land area factor; and

(ii) 90% of total formula funds allocated to the population factor.

(4) Funding Formula Phase-In for In-Home Services.

(a) Funds allocated in fiscal year 1993 shall be held harmless.

(b) New funds above the fiscal year 1993 level shall be allocated by the in-home services funding formula.

(5) The following is the funding formula adjustment phase-in period for In-Home Services:

(a) The Division is authorized to apply an adjustment to the allocation calculated in accord with funding formula contained in paragraph (2) of this section for five fiscal years beginning with FY 2004.

(b) Each adjustment shall be applied to the allocation to all area agencies calculated in accord with the funding formula contained in paragraph (2) of this section and shall represent 20% of the difference between the funds allocated in accord with paragraph (2) of this section and the allocation for FY 2004.

R510-100-3. Long-Term Care Ombudsman Program.

(1) Affected funding sources for the Long-Term Care Ombudsman (LTCO) Program.

(a) All Federal and State funds received for delivery of the LTCO Program with the exception of State Division administrative funds.

(i) Funding Formula for the LTCO Program.

The funding formula for the LTCO Program shall allocate dollars to each designated AAA based on the following factors:

(A) Federal Funds.

Using the base allocation of federal funds available for the LTCO program during State Fiscal Year 1993, each designated AAA will receive an equal share of the dollars available.

Additional funds that may become available above the base allocation will be distributed based on each AAA proportion of long-term care beds in the State as reported by the State

Department of Health and the Division for the preceding year. Long-term care beds shall include licensed nursing facility beds, licensed residential care beds, and approved adult foster care beds.

(B) State General Funds.

A base allocation of $60,000 shall be distributed equally to each designated AAA.

State General funds in excess of this base allocation shall be distributed based on each AAA's proportion of long-term care beds in the State, as reported by the State Department of Health and the Division for the preceding year.

KEY: elderly, funding formula, long-term care ombudsman
September 11, 2003 62A-3-108
Notice of Continuation June 1, 2007

R510. Human Services, Aging and Adult Services.
R510-101. Carryover Policy for Title III: Grants for State and Community Programs on Aging.
R510-101-1. Policy.

In accordance with Federal regulation 45 CFR, Chapter XIII Subchapter C, Part 1321.37, the Division of Aging and Adult Services distributes OAA Title III social and nutrition dollars to AAA according to an established intrastate funding formula. All Title III funds of a specified federal year unspent at the end of that year's state contract period shall be re-contracted to the AAA in the succeeding year's contract. Administration of federal carryover funds must conform with federal laws and regulations. All Title III funds carried over by the AAA from one state fiscal year to the next must be spent according to a written amendment to the Area Plan as approved by the Division.

R510-101-2. Process.

2.1 The amounts of carryover funds in all Title III categories shall be determined at the time of the final state fiscal year financial report as submitted by the AAA and as reviewed and finalized by the Division.

2.2 Upon Division approval of an Area Plan amendment which designates amount and use of carryover funds, the Division will amend the current state year AAA contract to add all Title III carryover funding from the previous year.

2.3 The Division shall spend out the previous year's funds prior to spending current funds.

KEY: elderly, carryover funding*
1987 **62A-3-104**
Notice of Continuation June 1, 2007

R510. Human Services, Aging and Adult Services.
R510-102. Amendments to Area Plan and Management Plan.
R510-102-1. Area Plan Amendments.

A. Area Plan Amendments will be made only with the approval of the Division.

B. The AAA must submit Area Plan amendments in accordance with the uniform area plan format and other instructions issued by the Division.

KEY: elderly, service coordination
1992 62A-3-104
Notice of Continuation June 1, 2007

R510. Human Services, Aging and Adult Services.
R510-103. Use of Senior Centers by Long-Term Care Facility Residents Participating in Activities Outside Their Planning and Service Area.
R510-103-1. Criteria for Use.

(1) Eligibility: Long-term care facility residents shall have access to senior centers and programs operated within which receive financial assistance through the Older Americans Act (OAA), Social Services Block Grant, or any other source of federal funds.

(2) Fees and Contributions:

(a) Facility residents who individually participate and who are age 60 or over are encouraged to donate at the contribution rate as established by the responsible AAA Advisory Council and/or Nutrition Council for all programs. The amount of contribution will be confidential.

(b) Facility residents who are under age 60 shall be subject to the fee for participants under 60 as established by the responsible AAA Advisory Council and/or Nutrition Council.

(c) Long-term care residents who elect to take a special class or participate in an activity where there is a charge will be required to pay the fee in accordance with the senior center's policy. This would include requested transportation costs to and from such activities.

(d) The source of contributions and fees for group participants shall be the long-term care facility's responsibility if the use of senior centers is an activity planned by the long-term care facility.

(e) Contributions and fees shall not originate from the resident's personal needs allowance unless participation in the senior center is totally at the request of an individual or their family or legally responsible person, and participation in senior centers is not a component of the facility's activity plan.

(6) Visiting senior center groups shall be given an opportunity to donate a confidential contribution to the planned group activity.

(3) Supervision: Residents who participate in the senior center programs as part of a long-term care group planned activity and/or who require supervision shall be accompanied by a facility staff member or other responsible parties.

(4) Advance Reservations: As is the standard policy for all senior center participants, activities by long-term care facility residents who participate in senior center activities shall require an advanced reservation.

(5) Complaints Regarding Adherence:

All complaints regarding adherence to this regulation by long-term care facilities should first be reported to the facility administrator. If this action does not resolve the complaint, the concern should be directed to the State Long-Term Care Ombudsman (LTCO) Program where its resolution will be coordinated with the appropriate agencies.

KEY: elderly, senior centers, nursing homes
February 3, 1999 62A-3-104(4)
Notice of Continuation June 1, 200762A-3-107 through 108

R510. Human Services, Aging and Adult Services.
R510-106. Minimum Percentages of Older Americans Act, Title III Part B: State and Supportive Services Funds.
R510-106-1. General Principles.

(1) In accordance with the (OAA), as amended in 2000, the following general principles apply to setting minimum percentages which must be spent for Access, In-Home, and Legal Assistance:

(a) In-Home, Access, and Legal Assistance are priority services.

(b) "The minimum percentage is intended to be a floor, not a ceiling. AAAs are encouraged to devote additional funds to each of these service areas to meet local needs." (Source: House of Representatives Conference Report regarding the 1987 Amendment to the Older Americans Act.)

(c) AAAs should be given flexibility to administer their programs at the local level.

(d) The minimum percentage should be applied to both Title IIIB and State Service Dollars.

(2) The minimum percentages shall be established at: 8% for Access Services, 8% for In-Home Services, and 2% for Legal Assistance.

(3) The minimum percentages will be based upon Title III B dollars and State Service dollars that are distributed by formula to the AAAs.

(4) The minimum percentages will be reviewed on an annual basis.

R510-106-2. Criteria for Approval of Title IIIB Priority Services Waiver.

(1) AAAs which do not plan to fund a Title IIIB priority category of service at the required minimum percentage must request a waiver. In order to be approved, the waiver request must demonstrate to the State that the need for the service is adequately met through other means.

(a) The waiver request must include:

(i) Categories of service to be waived, i.e. access, in-home, or legal.

(ii) Extent of waiver requested, i.e. request to provide zero funding or request to provide some funding, but not at the minimum percentage required.

(iii) Justification that services provided in the planning and service area for the waiver category are sufficient to meet the need. Justification should include: types of services in the category available in the planning and service area, funding sources and amounts available, history of service usage, needs assessment data, sources of information, efforts to publicize services, comments from providers of services, waiting lists, etc.

(iv) Documentation of notice to conduct a timely public hearing, upon request of an individual or service provider from the area to be affected by decision, including:

(A) Copies of publicity to conduct a hearing.

(B) Lists of individuals and agencies notified.

(C) Lists of individuals or service providers who requested a hearing.

(v) If a hearing is requested, documentation of notice to conduct a timely public hearing, upon request of an individual or service provider from the area to be affected by decision, will be needed, including:

(A) copies of publicity for to conduct a hearing;

(B) lists of individuals and agencies notified; and

(C) lists of individuals or service providers who requested a hearing.

(vi) Record of public hearing.

(2) In order for the Area Agency on Aging (AAA) to demonstrate public knowledge about ability to request a hearing, it is recommended that the AAA:

(a) Publicize the hearing in advance so that interested parties can arrange to attend.

(b) Use publicity means that will enable potentially interested parties to be aware of the ability to request a hearing, to have sufficient background to understand the purpose of the hearing, and to be able to testify at the hearing if desired. In addition to a legal notice in the classified section of a newspaper, letters, flyers, larger newspaper articles or other similar announcements are recommended for the purpose of granting a waiver.

(c) Notify interested parties of the ability to request a hearing, such as those individuals or groups specified below:

(i) All Categories of Service: Clients, potential clients, senior advocates, local advisory council members, designated state advisory council member for the area, representatives or relatives of clients, local elected officials, Department of Human Services, agency staff, and State Division of Aging and Adult Services staff, etc.

(ii) Access Services: Information and referral providers, public or private transportation providers, outreach staff.

(iii) In-Home Services: Chore provider agencies, home health agencies, local health departments, homemaker provider agencies, friendly visitor and telephone reassurance agencies or volunteers, homemakers, personal care aides, and home health aides.

(iv) Legal Assistance: Legal Services Developer, Utah Legal Services Corporation, representatives of the Utah Bar Association.

KEY: elderly
June 30, 2003 **62A-3-101 et seq.**
Notice of Continuation June 1, 2007

R510. Human Services, Aging and Adult Services.
R510-107. Title V Senior Community Service Employment Program Standards and Procedures.
R510-107-1. Purpose.

(1) Provide useful part-time community service employment for persons with low incomes who are 55 years old or older and provide useful community services.

R510-107-2. Program Standards and Procedures.

(1) The Division's standards and procedures for this program are incorporated by reference to be 20 CFR Part 641 as published April 9, 2004.

KEY: elderly, employment
August 17, 2004 62A-3-104
Notice of Continuation June 1, 2007

R510. Human Services, Aging and Adult Services.
R510-108. Definition of Rural for Title III: Grants for State and Community Programs on Aging Reporting Under the Older Americans Act.
R510-108-1. Definition.

For the purpose of reporting for Title III of the (OAA), rural shall be defined as any county having a total population of less than 100 persons per square mile. This means that all counties in Utah will be considered rural for Title III reporting except Davis, Salt Lake, Utah, and Weber Counties.

KEY: elderly, rural policy
1988 62A-3-104
Notice of Continuation June 1, 2007

R510. Human Services, Aging and Adult Services.
R510-109. Definition of Significant Population of Older Native Americans.
R510-109-1. Definition.

A Planning and Service Area has a "significant population of older Native Americans" when 50% or more of its 60+ minority population is older Native Americans.

KEY: elderly, native american, population
1989 62A-3-104
Notice of Continuation June 1, 2007

R510. Human Services, Aging and Adult Services.
R510-110. Policy Regarding Contractual Involvements of Area Agencies on Aging for Private Eldercare and Case Management Services.
R510-110-1. Definitions.

A. Eldercare: a service provided by a corporation on behalf of its employees who have caregiver responsibilities for elderly relatives. The service includes information and referral, but may extend to other types of services and programs, as determined by the corporation.

B. Case Management: a service with several components which collectively make up case management. These components include a combination of some or all of the following:

(1) Intake and Screening: an initial contact with the AAA from the company requesting case management services.

(2) Assessment: a face-to-face evaluation utilizing a standardized Division assessment tool. The assessment provides some or all of the following information regarding the individual:

(a) functional level, including ADL and IADL status;
(b) cognitive status;
(c) health status;
(d) current living arrangement; and
(e) use of formal and informal support systems.

(3) Care Planning: a determination of the appropriate and available mix of formal and informal services and support systems required to meet the individual's long-term care needs. A care plan is then developed.

(4) Care Plan Implementation: assessment and coordination of the appropriate services. It also includes assisting the individual to make the necessary financial arrangements as required.

(5) Continued Care Management: monitoring, reassessment, and termination components of case management. More specifically this includes:

(a) monitoring the service delivery, quality of care provided, and status of the individual;

(b) reassessing the individual's cognitive status, health status, and functional level as they relate to the care provided, and making appropriate changes as needed; and

(c) closing the case once an individual no longer requires or is eligible for case management.

C. Entrepreneurial Activities of AAAs include the manufacturing, processing, selling, offering for sale, rental, leasing, delivering, dispersal or advertising of goods or services.

R510-110-2. Purpose.

A. A basic mission of AAAs under the (OAA) is to foster the development of comprehensive and coordinated systems of services for all older persons. Activities such as eldercare and case management and other entrepreneurial endeavors, which are intended to enhance the scope and quality of the system of services available to older persons in a Planning and Service Area (PSA), are consistent with the purpose of an AAA. As a result, the Division encourages the Utah AAAs to engage in appropriate relations with private corporations in the development and implementation of eldercare programs, case management, and related activities. Utah AAAs may engage in these activities provided that those activities conform to the provision of this policy issuance.

B. The Division recognizes that an AAA, in lieu of a direct contract with a corporation, insurance company, or brokering organization may elect to provide the services directly or to join with other AAAs in those contracts. These arrangements are permissible, provided that the provisions of this policy are followed.

R510-110-3. General Provisions.

A. An AAA which engages in corporate eldercare and private case management services:

(1) shall assure that its statutory duties are maintained as prescribed in the OAA, Title III: Grants for State and Community Programs on Aging, as amended, to focus on the needs of older persons in greatest need, with particular attention to low-income minority persons; and to engage only in activities which are consistent with its statutory mission as prescribed in the OAA as amended, related federal rules and regulations, and related state policy;

(2) shall assure that activities specified under the Area plan and subsequent amendments, as approved by the Division, will not be reduced as a result of activities engaged in under this policy;

(3) shall not use Title III, Title XIX, SSBG or state funds to supplement third-party payments made by a corporation under a contract covered by this policy;

(4) shall assure that any third-party payment under a private contract fully covers the cost of services provided, including administrative and overhead costs, unless a public/private partnership is established whereby the state or federal governments or other funding source agrees to subsidize the costs of private case management or older care;

(5) shall account for private corporate contract revenues and expenditures separately from federal and state funds awarded under the Area Plan contract;

(6) shall include in their Area Plan on Aging and amendments thereto an explanation describing their relationships with private corporations and services rendered to older persons as a consequence of those agreements or contracts. These AAAs, as part of their Area Plans, shall also sign a statement of assurance of compliance with the provisions of this policy.

B. The provision of IVA(2), above, does not constrain the AAA from utilizing OAA Title III Part B: Supportive Services and Senior Centers funds to develop new resources and coordinate services to develop corporate eldercare and private case management services systems in its PSA. This complies with the statutory mission of AAAs of fostering the development of comprehensive and coordinated systems of services for all older persons, which includes all types of services and resources, both public and private, which are available to serve older persons.

C. AAA offices may engage in entrepreneurial activities if this is in response to a demonstrated need and the funds raised by these activities are used for the following purposes:

(1) to further extend services and opportunities for senior citizens, or

(2) to initiate services and opportunities for seniors, provided that these services or opportunities are compatible with the AAA functions and goals.

R510-110-4. Requirements for Contracts Between AAAs and Corporations, Insurance Companies, and Related Organizations.

A. General Provisions:

(1) An AAA cannot execute an agreement or contract that demands exclusivity; an AAA must be free to negotiate other similar agreements or contracts with other companies.

(2) An AAA cannot enter into an agreement or contract that obligates it to be identified with or to promote the company or its products or places it in a conflict of interest with its public mission.

(3) A contract must state that the AAA has the right to refuse services to a company or its employees or clients in the event that there is a potential conflict of interest for the AAA, as identified by the AAA or the Division.

(4) A contract must provide that an AAA has the right to reveal its findings, plans, and recommendations to the client,

regardless of the company's final decision regarding client eligibility and services provided.

(5) A contract must provide that all information as to personal facts and circumstances obtained by the AAA shall be treated as privileged communications, shall be held confidential and shall not be divulged without the written consent of the individual receiving the services, his attorney, or his legal guardian, except as is required by the corporation, insurance company, or brokering organization, or as may be required by the Division for the purposes of monitoring for compliance with the provisions of this policy, or as directed by the court. However, nothing prohibits the disclosure of information in summary, statistical, or other form which does not identify particular individuals.

(6) A contract must hold the AAA and the Division, where it is a party to the contract, harmless and defend them in any actions brought against them on the basis of companies' policies or decisions regarding benefits and services.

(7) Provisions of the contract may not require the withholding of information or otherwise limit the ability of the AAA to judge or act in the public interest; or restrict the ability of the Division to exercise appropriate oversight of the AAA in its fulfillment of its public mission and responsibilities.

B. Specific Provisions Regarding Long-Term Care Insurance Case Management Contracts: In contracts covering long-term care insurance case management services, companies must assure that:

(1) they are financially stable, are in good standing, and are in compliance with all statutes and rules governing insurance companies in the state of Utah;

(2) their long-term care insurance policies comply with the Utah insurance laws.

R510-110-5. Monitoring by the State Division of Aging and Adult Services.

the Division through its program monitoring activities, including financial audits, shall periodically assess AAA compliance through the following actions:

A. Review and approval of the AAA Area Plan and amendments, to be done annually and more frequently for modifications as submitted. The Division office will review:

(1) explanation describing AAA relationship with private corporations;

(2) signed statement of assurance of compliance with this policy; and

(3) related data in program and service costs in Area Plan.

B. Annual review of financial audits. The Division will review:

(1) adequacy of AAA financial control system;

(2) adequacy of AAA financial system to maintain separate accounting for different funds, including private contracts; and

(3) adequacy of AAA support documents to justify costs to each funding source.

C. Field visits and assessments of AAA activities: the Division monitoring and assessment will include a review for compliance with policy contained herein, including contract requirements.

D. When a finding shows the AAA to be out of compliance with the provisions of this policy or contract requirements, the Division may impose one or more of the following: 1) corrective actions; 2) special conditions included in the Division/AAA Contract; 3) withhold funds; 4) withhold or deny approval of the Area Plan. Process for appeal of these actions is outlined in Section 63-56-45 to 63-56-64, Utah Procurement Code.

KEY: eldercare
1991 **62A-3-104**
Notice of Continuation June 1, 2007

R510. Human Services, Aging and Adult Services.
R510-111. Policy on Use of State Funding for Travel Expenses to Assist the National Senior Service Corps (NSSC).
R510-111-1. State Funds for NSSC Programs.

(1) Purpose:

(A) The purpose of state funds for National Senior Service Corps (NSSC) programs is to provide NSSC programs with state general funds to help pay volunteer travel expenses.

(B) Definition and Service Scope:

(i) The Corporation for National and Community Service, formerly known as ACTION, a federal agency, monitors the three programs that make up the NSSC. The three programs are the Senior Companion Program, Foster Grandparent Program, and the Retired and Senior Volunteer Program.

(ii) For the purposes of this subsection, a Senior Volunteer is defined as an individual who is 60 years of age or over, or is 55 or over for Retired and Senior Volunteer Program, and is currently participating in one of the NSSC programs.

(iii) Service scope: senior volunteer job placement or site locations are not limited to senior services only. They are determined by the needs of the community and may include elementary schools, hospitals, and parks, to enhance intergenerational interaction and society's awareness of the contributions seniors make in their communities.

(C) The Division's Responsibilities:

(i) The Division will allocate state general funds, through legislative appropriation, to the local NSSC programs designated by the Corporation for National and Community Service and the Division.

(ii) The Division will be held accountable for state NSSC funds and will monitor contractors to insure that those funds are being expended in compliance with state legislative intent.

(iii) State funds for NSSC programs will be used for volunteer travel expenses support.

(A) "Volunteer travel expenses support" is defined as a payment made to retired and senior volunteers for mileage reimbursement, not to exceed the state's current rate by more than $0.05; excess auto insurance; gasoline, maintenance and insurance for service vehicles utilized for volunteer activities; van or bus drivers' salaries; contracts with transportation companies, bus fare, cab fare or passes, or other related direct NSSC volunteer travel cost.

(B) If state funds for NSSC programs are used as federal match by local volunteer programs, Corporation for National and Community Service travel reimbursement rules apply. Under these rules, volunteer programs are limited to reimbursing volunteers for the cost of traveling from their home to their volunteer station and back. Funds used as federal match can not be used to reimburse volunteers for transportation costs incurred while performing their volunteer assignments. Volunteer stations are responsible for reimbursing these costs.

(D) Contractor Responsibilities:

(i) Contractor will be held accountable for the distribution of state funds to appropriate NSSC programs. Contractor will monitor expenditures to ensure compliance with state legislative intent, as is provided in sub-section 1(C)(ii) above.

KEY: aging, travel funds, volunteer, National Senior Service Corps*
1994 **62A-3-104**
Notice of Continuation June 1, 2007

R510. Human Services, Aging and Adult Services.
R510-200. Long-Term Care Ombudsman Program Policy.
R510-200-1. Purpose.

A. The Long-term Care Ombudsman (LTCO) Program is created for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by elderly residents of long-term care facilities within the State.

B. Operation of the LTCO Program is a joint responsibility of the Division and local AAAs. Authority to administer the LTCO Program is derived from the Older Americans Act (OAA) Title VII: Allotments for Vulnerable Elder Rights Protection Activities and Section 62a-3-201 et seq.

C. The Division will establish a State Office of LTCO.

D. The State LTCO is responsible for:

(1) oversight of the statewide LTCO program;

(2) providing training to local LTCO staff and volunteers;

(3) provision of public information regarding the LTCO program;

(4) working with federal agencies, the State Legislature, other units of state government and other agencies to obtain funding and other resources;

(5) developing cooperative relationships among agencies involved in long-term care;

(6) resolving conflicts among agencies regarding long-term care;

(7) assuring consistent, statewide reporting of LTCO program activities:

(8) monitoring local LTCO programs;

(9) providing technical assistance to local LTCO programs;

(10) maintaining close communication and cooperation in the LTCO statewide network;

(11) recommending rules governing implementation of the LTCO program; and

(12) providing overall leadership for the Utah LTCO program.

E. The Division may employ Regional Ombudsmen to assist the State LTCO in meeting his or her responsibilities. In addition to assisting the State LTCO, Regional Ombudsmen are responsible to:

(1) Spend a majority of their time providing ombudsman services, including but not limited to, investigating and resolving complaints when local ombudsmen transfer a case, providing services to assist elderly residents of long-term care facilities, informing and educating elderly residents about their rights, providing administrative and technical assistance to local ombudsmen and volunteers, providing systemic advocacy, providing training to long-term care facilities, and assisting in the development of family and resident councils;

(2) Provide monitoring, oversight, assistance and leadership to local ombudsmen and volunteers in their region;

(3) Ensure that all ombudsmen in their region adhere to established policy and procedure; and

(4) Improve consistency and quality of Ombudsmen services in their region.

F. AAAs are responsible for daily operation of the program, either directly or by contract, as defined in these rules.

G. The Division, State LTCO and AAAs must work together to protect elderly residents, promote quality care in long term care facilities, and promote the LTCO program.

R510-200-2. Definitions.

A. "AAA" means area agency on aging as designated by the Division of Aging and Adult Services.

B. "APS" means adult protective services.

C. The Division means the Division of Aging and Adult Services within the Utah Department of Human Services.

D. "Elderly resident" means an adult 60 years of age or older who resides in a long-term care facility.

E. Long-term ombudsman is a person, operating within the guidelines of the Older American Act and the policies of the Division, who advocates for elderly residents of long-term care facilities to ensure the quality and adequacy of care received.

F. "Local LTCO" means the local program and personnel designated by the Division, through each AAA, to implement the (LTCO) Program within a defined geographic area.

G. "Responsible Agency" means the agency responsible to investigate or provide services on a particular case.

H. "State LTCO" means long-term care ombudsman personnel within the Division.

I. "Long-Term Care Facility" means any skilled nursing facility, intermediate care facility, nursing home, assisted living facility, adult foster care home, or any living arrangement in the community through which room and personal care services are provided for elderly residents.

R510-200-3. Local LTCO Program Administrative Standards.

A. AAAs shall operate the LTCO Program in accordance with the following standards:

(1) Supervision: All local LTCO shall have an identified supervisor. The person supervising the ombudsman shall meet all requirements for a supervisor as specified by the AAA and shall have at least a general knowledge of long-term care facilities.

B. Staffing: Each AAA shall recommend for certification one or more paid or volunteer staff members to serve as local LTCO.

(a) Persons assigned this responsibility shall have either education or experience in one or more of the following areas: gerontology, long-term care, health care, legal or human service programs, advocacy, complaint and dispute resolution, mediation or investigating.

(b) Assigned individuals shall be certified by the State LTCO within six months after assuming a local LTCO role.

B. The AAA shall have primary responsibility to provide for certified back-up to the local LTCO. AAAs may enter into cooperative agreements with other AAAs to provide for LTCO back-up. In emergency situations, AAAs may request back-up support from the State LTCO.

C. Local ombudsmen shall have no conflict of interest which would interfere with performing the function of this position, including:

(1) direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(2) ownership or investment interest, represented by equity, debt, or other financial relationship in a long-term care facility or a long-term care service;

(3) employment by, or participation in the management of, a long-term care facility;

(4) receiving, or having the right to receive, directly or indirectly, remuneration in cash or in kind under a compensation arrangement with an owner or operator of a long-term care facility.

D. AAAs shall establish, and specify in writing, mechanisms to identify and remove conflicts of interest and to identify and eliminate relationships described in paragraph 3 including mechanisms such as:

(1) methods by which the AAA will examine individuals and immediate family members to identify conflicts; and

(2) actions the AAA will require individuals and family members to take in order to remove those conflicts.

E. Local LTCO shall have the ability to act in the best interests of residents of long-term care facilities, including taking public positions on policies or actions which affect residents. Local LTCO shall not be constrained by the local

AAA or governing body from taking a stand in good-faith performance of their job.

(1) AAAs shall have on file a written description outlining the working relationship between the AAA and the ombudsman which spells out arrangements for assuring this ability.

(2) Grievance Procedure

(a) AAAs shall establish a grievance procedure to accept and hear complaints regarding an ombudsman's actions. The procedure shall allow for a final appeal to the Utah State Department of Human Services Office of Administrative Hearings.

(3) Records System

(a) AAAs shall maintain a records classification and retention program in accordance with Sections 63-2-301 and 63-2-901 and PL 89-73 42 USC 300-1 et seq.

R510-200-4. Local LTCO Classifications and Duties.

A. Ombudsman

An Ombudsman, who may be either a paid staff member or volunteer, may perform the following duties:

(1) investigate complaints and develop an action plan to resolve the complaint;

(2) provide supervision over the implementation of the action plan and any follow-up determined necessary;

(3) review complaints to set complaint response priorities;

(4) assign complaints to staff and volunteers;

(5) provide case consultation to long-term care facility staff; and

(6) perform duties of an assistant ombudsman.

B. Assistant Ombudsman

(1) An Assistant Ombudsman, who may be either a paid staff member or volunteer, may:

(a) provide outreach to residents, families, facilities, and other entities concerned about long-term care;

(b) observe actions and quality of care in long-term care facilities;

(c) perform complaint intake;

(d) provide residents, families, and the general public with information about the LTCO program and resident rights;

(e) provide public presentations;

(f) assist with resolution and follow-up on complaints while under the supervision of a Certified Ombudsman; and

(g) provide technical assistance to the general public and long-term care facility staff.

C. Ombudsman Program Director

(1) An Ombudsman Program Director, who may be the AAA director or his designee, may perform the duties of an Ombudsman, if certified as such, and shall:

(a) provide overall administration of the local ombudsman program;

(b) provide overall supervision of LTCO paid and volunteer staff;

(c) conduct quality assurance and complaint case record reviews;

(d) oversee the screening, hiring, and dismissal of LTCO staff and volunteers; and

(e) assess the need for regulatory changes to improve the quality of care and life for long-term care facility residents and advocate for the passage of those changes.

D. Non-certified Staff or Volunteers

Non-certified staff or volunteers may perform the following functions:

(a) complaint intake;

(b) provide public information and presentations regarding the LTCO program, long-term care in general, and other topics on which they may have expertise, as determined by the AAA;

(c) provide outreach to residents, families, facilities, and other entities concerned about long-term care;

(d) visit long-term care facilities and residents; and

(e) any other activity which does not expressly require certification and for which the AAA has determined the individual competent to engage in on behalf of the AAA or LTCO program.

R510-200-5. Certification Curriculum and Training Hours.

A. Assistant Ombudsman: Prior to applying for certification as an Assistant Ombudsman, an individual shall complete a minimum of 18 hours of required initial training and pass the post-test with a minimum score of 70%. This training shall cover the following areas:

(1) An introduction to the LTCO Program, including a discussion of the scope of work of the LTCO.

(2) An overview of the long-term care system, including a discussion of:

(a) the types of long-term care facilities and providers, their organization and operations;

(b) federal and state regulations applicable to long-term care facilities and providers, with an emphasis on resident rights;

(c) long-term care resident profiles and methods of payment for long-term care services;

(d) the aging process and attitudes of aging; and

(e) the Aging Network and the relationship between the AAAs, the State LTCO, and various regulatory agencies.

(3) Ombudsman skills, including:

(a) interpersonal communication, observation, and interviewing;

(b) building working relationships with providers; and

(c) complaint handling, with an emphasis on intake.

(4) An overview of complaint resolution skills, with an emphasis on advocacy, negotiating, empowering residents, and follow-up activities.

(5) LTCO Program policies and procedures, including:

(a) confidentiality;

(b) access to facilities and residents;

(c) complaint investigation and resolution;

(d) reporting; and

(e) ethics.

(6) Case record documentation.

(7) Mediation and negotiation between residents.

(8) Any additional topics deemed appropriate by the State LTCO in consultation with the Division, AAAs, long-term care regulatory agencies and local LTCO Program Directors.

B. Ombudsman: Prior to applying for certification as a local Ombudsman, an individual shall complete a minimum of 30 hours of required initial training and pass the post-test with a minimum score of 70%. This training shall include all training described in Section A plus an additional 12 hours of training covering the following areas:

(1) a more in-depth review of the content areas covered for candidates for certification as ombudsman representatives, including written exercises, case studies, role plays, research exercises, and analysis of systemic issues;

(2) development of a complaint resolution action plan;

(3) legal, administrative, and other remedies;

(4) actions regarding public disclosure of actions or inactions which affect residents of long-term care facilities, including appropriateness, confidentiality of certain information, and how to work with the media;

(5) review of client records;

(6) alternative dispute resolution options for use in complaint handling; and

(7) advocacy skills.

C. Post-tests: The post-tests referred to in Sections A and B shall be developed by the State LTCO and shall be structured in sections to correspond to major training topics. If an applicant does not receive a score of at least 70% on a post-test they shall be eligible to retake the test one time within 30 days.

If they do not receive a minimum score of at least 70% on the retake test, they will need to complete the training pertaining to the test sections on which they did not receive a passing score. Upon completion, they will be allowed to take the test one additional time. If a passing score is not obtained, the applicant will be deemed by the State LTCO to not be appropriate for certification as an Assistant Ombudsman or Ombudsman.

D. Ongoing Training: To maintain certification, an assistant ombudsman must complete a minimum of 12 hours of training annually; an ombudsman must complete a minimum of 24 hours of training annually.

(1) The State LTCO will provide for at least 48 hours of LTCO specific training per year. Training shall be scheduled at various times throughout the year and in various locations throughout the State.

(2) During the first year in which a person functions as an assistant ombudsman or ombudsman the required initial training will count toward the annual training requirement;

(3) Relevant training offered in the community can serve to meet annual training requirements in lieu of state-sponsored LTCO training on an hour-for-hour basis. Documentation of attendance at a training, including a copy of the training agenda, shall be submitted to the State LTCO for approval.

R510-200-6. Registration and Certification of Ombudsmen and Assistant Ombudsmen.

A. Central Registry

(1) The State LTCO shall maintain a central registry of all local ombudsmen and assistant ombudsmen. The registry shall retain the following information on each:

(a) the ombudsman's or assistant ombudsman's name, address, and telephone number;

(b) a summary of the ombudsman's or assistant ombudsman's qualifications;

(c) the ombudsman's or assistant ombudsman's classification;

(d) the AAA with which the ombudsman or assistant ombudsman is associated;

(e) the most recent date of certification;

(f) a position description which contains any prohibitions applicable to the ombudsman or assistant ombudsman. Prohibitions may include limitation on the duties that may be performed, limitations on the providers the ombudsman or assistant ombudsman may investigate or attempt complaint resolution with, or any limitations due to a conflict of interest; and

(g) information pertaining to any decertification actions and the results of those actions.

(2) Local ombudsman and assistant ombudsman shall register with the State LTCO through the AAA within 30 days of accepting assignment as a local ombudsman or assistant ombudsman.

R510-200-7. Decertification of Ombudsmen and Assistant Ombudsmen.

Decertification of an ombudsman or assistant ombudsman may occur through voluntary resignation or decertification by the State LTCO or AAA or sponsoring agency which employs him. A person who has been decertified may not be assigned to ombudsman duties.

A. Involuntary Decertification With Cause:

(1) No ombudsman or assistant ombudsman shall be recommended for involuntary decertification without cause. Cause may include:

(a) failure to follow policies and procedures that conform to the LTCO statute and rules;

(b) performing a function not recognized or sanctioned by the LTCO Program;

(c) failure to meet the required qualifications for certification;

(d) failure to meet continuing education requirements;

(e) intentional failure to reveal a conflict of interest; or

(f) misrepresentation of the ombudsman's or assistant ombudsman's category of certification or the duties he is certified to perform.

(2) The State LTCO and AAAs shall establish, for their respective programs, policies and procedures for recommending decertification. Those policies and procedures shall require that the State LTCO or AAA attempt to help the LTCO or Assistant LTCO attain satisfactory job performance through professional development, supervision, or other remedial actions prior to recommending decertification.

(3) AAAs recommending decertification shall state their reasons in writing and shall provide any relevant documentation to support the recommendation to the State LTCO. Notice of the recommendation for decertification and the basis for the recommendation shall be provided to the local ombudsman or assistant ombudsman at the same time that information is submitted to the State LTCO.

(4) The State LTCO shall review the recommendation and provide written notification of his decision to the AAA and the local ombudsman or assistant ombudsman within ten working days. The AAA or local ombudsman or assistant ombudsman may appeal the State LTCO's decision in accordance with the Department of Human Services Rule R497-100.

(5) When the State LTCO initiates a decertification action against a local ombudsman or assistant ombudsman, the State LTCO shall provide written notification to the AAA and the local ombudsman or assistant ombudsman. The AAA or the local ombudsman or assistant ombudsman may appeal the decision in accordance with the Department of Human Services Rule R497-100.

(6) Upon completion of the decertification actions, the State LTCO shall record the actions and results in the central registry.

B. Voluntary Decertification Without Cause:

When a local ombudsman or assistant ombudsman voluntarily resigns due to personal reasons which would not otherwise affect certification, they shall surrender their LTCO identification card to the AAA. The AAA shall notify the State LTCO of the voluntary decertification. The State LTCO shall record the date of voluntary decertification in the central registry.

C. Voluntary Decertification With Cause:

When a local ombudsman or assistant ombudsman voluntarily resigns for reasons which would otherwise warrant involuntary decertification, they shall surrender their LTCO identification card to the AAA within seven days. The AAA shall notify the State LTCO of the voluntary decertification with cause and shall notify the local ombudsman or assistant ombudsman of the right to a hearing. The State LTCO shall record the date of voluntary decertification in the central registry.

D. Recertification:

(1) A certified local ombudsman or assistant ombudsman who voluntarily requests decertification may apply to have his certification reinstated when he becomes reemployed or accepted as a LTCO staff or volunteer. Any person seeking recertification shall apply in writing, through the AAA, to the State LTCO. The application shall include the date of the most recent decertification action and a summary of any professional development in or experience with ombudsman skills, long-term care services, problem resolution skills or any related skills the applicant may have received since his decertification.

(2) The State LTCO shall review the application and may require the applicant to receive additional professional development, and take an appropriate examination based upon the length of time since the applicant's most recent certification,

and the experience or professional development the applicant has accumulated in the interim. The State LTCO shall make notify both the AAA and the applicant of the decision within ten working days.

R510-200-8. Operation of the Long-Term Care Ombudsman Program.

A. Intake: The local LTCO Program shall accept and screen referrals from residents, family, facility staff, agency staff and the general community. Ombudsmen and assistant ombudsmen may also serve as the complainant for situations they have personally observed.

(1) If the information indicates that the referral relates to abuse, neglect, or exploitation of a resident, the local LTCO shall refer the complaint to either the local Adult Protective Services (APS) office or local law enforcement. The local LTCO and the APS worker should collaborate on investigating and resolving the complaint whenever possible.

(2) If the information indicates that the referral relates to facilities or operations licensed or certified by the Department of Health Bureau of Medicare/Medicaid Program Certification and Resident Assessment, and the nature of the complaint is other than alleged abuse, neglect or exploitation of a resident, the LTCO shall refer the complaint to the Department of Health. The local LTCO and Department of Health staff should collaborate on investigating and resolving the complaint whenever possible.

(3) Referrals to other agencies shall be made immediately if the situation appears life threatening or, in other situations, within two working days. If a referral is made to another agency, the local LTCO shall complete the intake form, indicating the referral date and entity, and maintain the form as part of the record. The local LTCO shall follow up to see that action was taken by the referral agency.

(4) If the referral involves a resident who is under the age of 60, and the nature of the complaint is limited to impact only on that resident, the local LTCO shall refer the complaint as specified in paragraph (1) or (2) of this section and take no further action. If the referral involves a resident who is under the age of 60 who resides in a facility that has other residents over the age of 60 and the nature of the complaint is such that it impacts those residents, the local LTCO shall refer the complaint as specified in paragraph (1) or (2) of this section as applicable and initiate an investigation.

(5) If the complaint involves residents rights or other issues within the jurisdiction of the LTCO, an investigation shall be initiated to determine if the complaint is valid. Issues within the purview of the LTCO include issues of privacy, confidentiality of information, and other issues relating to the action, inaction, or decisions by providers or representatives of providers of long-term care services, public agencies, or health and human service agencies that may adversely affect the health, safety, welfare, or rights of residents.

B. Investigations:

(1) LTCO investigations shall be initiated within three working days. If the available information indicates serious threat to a resident's life, health or property, the response shall be immediate.

(2) The investigation may involve phone or in-person contacts with the resident and complainant, collateral agency or individual contacts or an on-site investigation. The local LTCO shall:

(a) do a preliminary screening to gather facts and details of the complaint;

(b) categorize the complaint, i.e. resident rights, education, abuse, neglect, technical assistance, etc.;

(c) identify all parties to the complaint;

(d) identify relevant agencies, as required by state and federal statutes;

(e) identify steps already taken by the complainant;

(f) identify information gaps that may require additional research;

(g) determine if an on-site investigation is needed. If it is determined that an on-site investigation is not necessary, the LTCO shall document the reasons in the case file;

(h) determine if the situation is an emergency; and

(i) make verbal or written follow-up with the complainant.

(3) The method and extent of the investigation depends on the circumstances reported. The local LTCO shall complete an intake form on each referral. A complaint consists of the initial referral or any additional contacts regarding the initial referral received during the period that the case is opened. A referral regarding a different matter made during the period the case is opened is considered a new complaint. A referral received after a case is closed is considered a new complaint.

(4) When an on-site investigation is determined to be necessary the local LTCO does not have to give prior notice to the agency or facility in question. The local LTCO may choose to give notice if deemed appropriate. In either case, the ombudsman shall:

(a) upon arrival at the facility or agency, present official identification to the administration or designated person in charge;

(b) identify any factors that may interfere with the investigation;

(c) start the investigatory process to establish as clearly as possible what has happened, why it has happened, who or what is responsible for resolving the complaint, and possible solutions to the problem;

(d) interview the resident, as well as other residents, staff, family, friends and physician as deemed necessary;

(e) make phone calls, on-site observation, review resident records, and make collateral contacts with other agencies and professionals; and

(f) take any other appropriate investigatory actions within the purview of the LTCO Program.

(g) During the course of the investigation, the local LTCO shall look for credible evidence which supports or refutes the complaint. Evidence may be directly observed by the LTCO or indirectly gathered from statements from reliable sources. The State LTCO shall provide consultation and technical assistance regarding the methods used in investigating complaints as requested by the local LTCO.

(h) Ombudsmen shall be provided privacy by the facility or agency during all aspects of the investigative process.

(5) Determining Validity of Complaint

(a) The local LTCO, having gathered evidence regarding the complaint, shall review the evidence to determine whether that evidence supports the allegations made in the complaint. If the local LTCO is uncertain as to whether the complaint is valid, he shall discuss the situation with his supervisor. If further consultation is necessary, contact should be made with the State LTCO, who may suggest additional activities or approaches to the problem. The local LTCO shall gather further evidence from interviews, collateral contacts, and records review, until the body of evidence enables the local LTCO to make a supportable decision regarding validity of the complaint.

(b) Upon determination of the validity of the complaint, the local LTCO shall document the determination and reasons for it in the case file.

(6) Resolution of Complaints

(a) Having determined that the complaint is valid, the local LTCO shall take appropriate steps to resolve the complaint, including:

(i) determining the scope of the problem. Does the problem affect just the residents mentioned in the complaint, or does it affect other residents?

(ii) determining what options exist to resolve the

complaint. For example, can the complaint be resolved immediately, will the resolution require negotiation with the facility management, or has the facility already moved to resolve the situation.

(iii) discussing with the resident which of the options are acceptable to resolve the complaint. Determining an acceptable resolution may require negotiation between the parties to achieve an acceptable resolution to the situation.

(iv) developing with the resident and facility a plan to achieve the agreed-upon resolution. The plan may be very simple or may have several steps and involve other agencies. Once the plan is agreed upon, the local LTCO, facility, resident, and other parties shall take action to implement the plan.

(v) making referrals to other agencies if a referrals are required by the plan.

(a) If during the investigation process the local LTCO determines that the incident or activities should be referred to APS, Health Facility Licensure, or Health Facility Review, the LTCO shall immediately make the referral and involve all appropriate agencies.

(b) The local LTCO who has referred the complaint to another agency shall follow up to obtain final results and record the outcome of the other agency's investigation. If the other agency does not respond or if the response is inadequate, the local LTCO may:

(1) contact the agency; or

(2) contact the State LTCO for technical assistance or help in resolving the problem with the other agency; or

(3) collaborate with another advocacy agency, such as the Legal Center for People with Disabilities, the Senior Citizens Law Center, or the local office of Utah Legal Services to resolve the issue and clarify substantive legal rights of elderly residents; or

(4) track on-going problems with an agency or facility to build a body of credible evidence on which to base further action; or

(5) take any other appropriate action within the LTCO scope of authority, including filing legal action against the other agency if the AAA has the legal resources to bring legal action.

(6) compiling documentation of the validity of the complaint, of the agreed-upon outcome, and the steps taken to carry out the plan. The documentation may be summary in nature, but should clearly indicate the situation and its resolution.

(7) determining at what point the case is appropriately closed.

(8) notifying the complainant, verbally or in writing, that the investigation has been completed and the case is closed.

(7) Records

(a) The local LTCO shall maintain a set of records by resident, containing all required forms and relevant documentation, including:

(i) a completed intake form;

(ii) case recording consisting of: the nature of the complaint; validity of complaint and reasons for the determination; plan for resolution; implementation and outcome of plan; and dates and names of any collateral contacts.

(iii) consent forms; and

(iv) copies of any correspondence or written documents pertaining to the complaint, the investigation, the resolution plan, or implementation of the resolution plan.

(b) The local LTCO shall also maintain information by facility relating to all referrals.

(c) All actions, findings, conclusions, recommendations and follow-up shall be documented on the required state forms.

(8) Consent Forms

(a) In order to access resident files maintained in a facility, the local LTCO must attempt to obtain a signed release from the resident or the resident's legal representative. Signed releases shall be maintained in the case file and a copy shall be given to the facility or agency for inclusion in the residents record.

(b) If the local LTCO is unable to obtain written permission, he may get verbal approval from the resident or the resident's legal representative. The date and method of obtaining the verbal approval, e.g. phone contact with guardian, shall be documented in the case file. LTCO shall attempt to have a third-party witness the verbal consent and document it in the record.

(c) If a request for written or verbal consent is denied by the resident or their legal representative, the local LTCO shall not access the records.

(d) If the request for written or verbal consent is unsuccessful for any reason other than specific denial by the resident or legal representative, the local LTCO may proceed to access the records. The reasons for not obtaining consent shall be documented in the case file.

(9) Access to LTCO Records

(a) Records maintained by the local LTCO shall be available to the LTCO, their supervisor, the LTCO Program Director, the State LTCO, and any duly authorized agent of the AAA or the Division with program oversight responsibility. No other staff shall have access to these records.

(b) Residents have the right to read their LTCO records; however, the name of any complainants shall be withheld.

(c) LTCO records shall be released to other persons if the resident provides written consent. The consent form must be filed in the resident's file.

(d) State and federal auditors may have access to LTCO records as required for administration of the program.

(d) Statistical information and other data regarding the LTCO program which does not identify specific residents or complainants is available for public dissemination.

(10) Reporting Requirements to State LTCO

Local LTCO programs shall report to the State LTCO on the operation of the LTCO program. Reports shall include the data required to complete the State's report to the U.S. Department of Health and Human Services, Administration on Aging. Reports shall be submitted within time frames and in a format which shall be mutually agreed upon by the Division and AAAs.

(11) Legal Issues

(a) Legal representation: The Division is responsible for assuring that adequate legal representation is available for local LTCO Programs. AAAs and their governing authorities shall have the option to provide legal representation for their local LTCO Program. If an AAA, through their governing authority, opts not to provide this representation, the Division shall arrange for the representation through the attorney general or through contract. All AAA requests for legal consultation or representation shall be directed to the State LTCO for action. The Division is responsible to assure that no conflict of interest is present in the provision of legal representation to local LTCO Programs.

(b) Liability: The local LTCO must operate within the scope of the ombudsman job description and this policy. Actions such as transporting a client, acting as a guardian or payee, signing consent forms for survey, medication, restraints, etc., signing medical directives, receiving a client power of attorney, and similar actions are outside the scope of the LTCO responsibilities. In doubtful situations the ombudsman should consult with supervisors, legal counsel or the State LTCO.

(c) Guardianship:If a resident has a legal guardian, the local LTCO must work with the guardian. If the local LTCO identifies problems in the guardianship, they will discuss the situation with the local adult protective services staff to determine the advisability of investigating for abuse, neglect, or exploitation. They may also consult legal counsel or present issues to the court which oversees the guardianship.

(12) Volunteers

Local LTCO programs which use volunteers shall follow AAA policy with respect to applications, screening and approval, reference checks, personnel records, reimbursement, supervision, liability and all other relevant aspects of the volunteer program. In addition, volunteers must meet specific training and certification requirements contained in these rules if they are serving in the capacity of local ombudsman or assistant ombudsman.

(13) Public Education

In addition to receiving and investigating complaints, local LTCO Programs are mandated by federal and state statute to provide public education regarding long-term care issues. This may include activities such as frequent presence in facilities, community advocacy, attendance at family or resident councils, technical assistance and in service to long-term care facilities, community organizations, and public information presentations.

R510-200-9. Determination of the Responsible Agency for Investigating Particular Cases in Long-Term Care Facilities.

A. Pursuant to Utah Code Section 62A-3-106.5, to avoid duplication in responding to a report of alleged abuse, neglect, or financial exploitation in a long-term care facility, the Division hereby establishes procedures to determine whether Adult Protective Services or the Long-Term Care Ombudsman Program will be responsible to investigate or provide services in a particular case and determine whether, and under what circumstances, the agency that is not the responsible agency will provide assistance to the responsible agency in a particular case.

B. The Long-Term Care Ombudsman Program will be the responsible agency in responding to a report of alleged abuse, neglect, or exploitation of an elderly adult who resides in a long-term care facility in the following cases:

(1) When an allegation of abuse, neglect or exploitation occurs, the Long-Term Care Ombudsman will be the responsible agency in cases other than cases that allege sexual abuse or sexual exploitation;

(2) When an elderly resident of a long-term care facility has allegedly abused, neglected, or financially exploited another resident;

(3) When an employee of a long-term care facility has allegedly abused, neglected, or financially exploited an elderly resident and the facility has terminated the employee;

(4) When the police or local law enforcement have initiated an investigation of alleged abuse, neglect, or financial exploitation.

C. Adult Protective Services will be the responsible agency in responding to a report of alleged abuse, neglect, or exploitation of a vulnerable adult who resides in a long-term care facility in the following cases:

(1) When an allegation of sexual abuse or sexual exploitation of a vulnerable adult is received.

D. The agency that is not the responsible agency will provide assistance to the responsible agency in the following circumstances:

(1) When the responsible agency requests the assistance of the non-responsible agency; or

(2) When the responsible agency is the LTCO and there is evidence that the resident's protective need has not been met.

KEY: elderly, ombudsman, LTCO
October 23, 2006 62A-3-201 to 8
Notice of Continuation June 1, 2007 62A-3-104

R510. Human Services, Aging and Adult Services.
R510-302. Adult Protective Services.
R510-302-1. Authority and Purpose.

(1) This rule is promulgated in accordance with the provisions of Section 62A-3-301, et seq. This purpose is to define services provided by the Adult Protective Services Unit in the Division of Aging and Adult Services, which may be provided to eligible clients.

(2) Definitions:

(a) "Abuse", "neglect" or "exploitation" as defined in Section 62A-3-301, et seq.

(b) "Adult Day Care" means providing daily care and supervision designed to meet the needs of functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a protective setting which allows for the maximum functioning of vulnerable adults.

(c) "Adult Foster Care" means the provision of family-based care for vulnerable adults who are unable to live independently.

(d) "Family Support" means the provision of services or payments to increase the capabilities of families to care for vulnerable adults in the natural home setting.

(e) "Adult Protective Services" means the unit within the Division of Aging and Adult Services within the Department of Human Services responsible to investigate abuse, neglect and exploitation of vulnerable adults and provide appropriate protective services.

(f) "Protective Payee" means a person who is eligible for adult protective services, is having difficulty managing their own funds, and voluntarily requests assistance in managing those funds.

(g) "Protective Supervision" means the provision of services to assist a vulnerable adult to remain in a safe community setting through coordination with concerned agencies, families, or individuals, and may include such services as short-term counseling, assistance in money management, and crisis intervention.

h. "Short-Term Services" means limited protective services provided with the permission of the affected vulnerable adult or the guardian of the vulnerable adult, as outlined in a service agreement for the purpose of resolving a protective need found during an APS investigation. Services provided under Short-Term Services may include protective supervision, adult day care, adult foster care, or family support.

i. "Vulnerable Adult" as defined in 62A-3-301.

(3) Procedure, Services and Assistance:

(a) Pursuant to Section 62A-3-301, et seq., this rule establishes the procedure by which the Division of Aging and Adult Services will operate the Adult Protective Services Program as authorized by law.

(b) Adult Protective Services shall receive calls from any person who has reason to believe that a vulnerable adult has been the subject of abuse, neglect or exploitation.

(c) Adult Protective Services' aid and assistance is available, on a voluntary basis, to all eligible vulnerable adults who are being or have been abused, neglected, or exploited, but shall be limited to the availability of budgetary resources being sufficiently allocated to Adult Protective Services. Vulnerable adults whose income and assets exceed the Adult Protective Services income guidelines, may be assessed a fee by the Division for services based on the Adult Protective Services Payment Schedule established by the Division, pursuant to Section 62A-3-316(1).

(d) Adult Protective Services shall, throughits intake system via telephone communication, receive calls which are intended to enlist Adult Protective Services to provide a vulnerable adult with protection from abuse, neglect, or exploitation. Adult Protective Services may be accessed for and in behalf of any eligible citizen of the State.

(e) In order for Adult Protective Services to take action, persons who make appropriate referrals shall include the following information:

(i) The approximate age of the vulnerable adult. Note: a vulnerable adult must be 18 years of age, or older, to be eligible.

(ii) A description of the mental and/or physical impairment which substantially affects the person's ability to do one or more of the following: provide personal protection or necessities, obtain services, carry out activities of daily living, manage one's own resources, or comprehend the nature and consequences of remaining in a situation of abuse, neglect or exploitation. (62A-3-301(26)).

(iii) A statement of a specific allegation of abuse, neglect or exploitation being perpetrated or inflicted upon the victim.

(f) Adult Protective Services shall make a record of each report received. Adult Protective Services shall then evaluate each report for possible follow-up and investigation. Some reports may not be accepted for investigation if the vulnerable adult is not currently at risk of abuse, neglect, or exploitation.

(g) Adult Protective Services investigations will be conducted on all screened and accepted referrals. Under normal conditions, investigations will begin within three working days of receipt of the referral. Investigations will be completed within 60 days unless a case extension policy exception has been obtained.

(h) To obtain a case extension policy exception:

(i) The caseworker shall, with or without being requested by the client, submit a Policy Exception form to the Supervisor for approval.

(ii) The form shall document the reasons for the case extension request, and how the extension will assist in protecting the client.

(i) Eligible Adult Protective Services clients may receive emergency placements in a safe environment until a resolution of the immediate problem/crisis can be made.

(j) Private homes used as emergency shelter homes must meet the same standards as Adult Foster Care providers. Facilities used as emergency shelter placements shall be either certified or licensed as a residential facility or have a current business license.

(k) If the protective need identified during an investigation cannot be resolved by the investigation due date, the investigator may request a Short-Term Services Review Committee meeting for consultation, recommendations, and approval to continue efforts to resolve the protective need under the Short-Term Services Program. After closure of an investigation, no services can be provided without approval from the committee for Short-Term Services. That review committee may approve short-term services in 90-day increments, with subsequent reviews as needed to continue the service. Nevertheless, the vulnerable adult receiving these services, or the vulnerable adult's guardian or conservator, must voluntarily consent to and accept the services. If consent is withdrawn by the vulnerable adult, or the vulnerable adult's guardian or conservator, the services will cease unless a court order is obtained for such services to continue.

(l) Eligible Adult Protective Services clients may receive Protective Payee services to assure that basic living needs are being met and money management skills are being learned at a level appropriate to the client's level of functioning. Protective payee services may be provided to clients who:

(i) Have a physical or mental impairment which directly relates to the need for payee services, and are assessed by the worker to be incapable of handling their own funds.

(ii) Have no other appropriate person or institution to assume payee responsibility.

(iii) Are capable of consenting to the obtaining of services, and are then able to accept the services. Note: If consent is

withdrawn, the payee services will cease unless court ordered.

(iv) Do not reside in a health care facility as defined in Section 26-21-2, residential treatment program, or other facility that is capable of providing payee services. Have an income which falls within the Adult Services income guidelines. The Client may be assessed a fee for services based on the Adult Protective Services Payment Schedule.

(m) Eligible Adult Protective Services clients, or the service provider, may receive an immediate payment of funds in emergency situations. These funds will be issued through an Over-the-Counter-Check, or a one-time payment to the service provider. These funds may be issued for such purposes as shelter, food, clothing, medicine or other emergencies which are needed immediately and cannot be funded from any other source. The worker is authorized to request that an agreement-for-repayment of the funds document be signed by the client, if appropriate.

(n) Eligible Adult Protective Services clients may receive Adult Day Care to assist them in improving their ability to personally function and provide self-care. Adult Day Care may also be provided as respite for eligible caregivers. Clients may qualify for Adult Day Care if they require one or more of the following:

(i) Assistance with activities of daily living.

(ii) 24-hour supervision.

(iii) Assistance due to significant loss of memory or cognitive function.

(iv) Assistance due to developmental disabilities.

(v) Assistance in overcoming isolation related to their disability or to support the transition from independent living to group care or vice versa.

(vi) Assistance to prevent premature institutionalization.

(o) Eligible Adult Protective Services clients may receive Adult Foster Care to enable them to remain in a community setting and prevent premature institutionalization. Individuals who are unable to live alone or whose mental, emotional and physical conditions are such that the care given by a foster care provider will meet the person's needs may be appropriate for adult foster care. Individuals with the following medical, mental and behavioral problems will not be normally considered appropriate for Adult Foster Care assistance:

(i) Require medication which they are unable to manage and administer themselves.

(ii) Are considered by the Adult Protective Services to be a danger to themselves or others.

(iii) Are incontinent, unless they are capable of self care.

(iv) Are bedridden or confined to wheelchairs without having sufficient transfer skills from the wheelchair.

(v) Have mental or neurological problems requiring professional supervision and treatment.

(vi) Require constant assistance with toileting, dressing, grooming, hygiene or bathing.

(vii) Exhibit destructive verbal and behavioral problems under normal living conditions.

(viii) Require supervision at night time due to wandering or agitated behavior.

(p) Adult Foster Care services will only be provided in homes which are licensed in accordance with State standards.

(q) Eligible Adult Protective Services clients may receive Family Support payments to increase the capabilities of families to care for them in the natural home setting when no other services are available. These services are intended to help maintain the individual in a family member's home and prevent premature institutionalization. Vulnerable adult clients are eligible for this service when:

(i) The client is unable to live unassisted due to mental, emotional and physical conditions and requires assistance or care in order to be able to safely remain in the community.

(ii) A physician's statement indicates that the vulnerable adult is able to remain in his own home or the home of a relative and would benefit from Family Support Services.

(iii) The vulnerable adult meets income eligibility guidelines established by the Division.

(r) Adult Protective Services may petition the courts for legal authority to intervene when it has determined that the vulnerable adult cannot be protected in any less restrictive manner and there is evidence that the vulnerable adult lacks the capacity to consent to services.

(s) Services provided by Adult Protective Services will be terminated when:

(i) The circumstances which directly or indirectly caused, or were primary reasons for the abuse, neglect or exploitation, no longer exist; and the vulnerable adult is protected, or

(ii) The vulnerable adult receiving voluntary services requests that those services be terminated.

KEY: vulnerable adults, domestic violence, shelter care facilities, short-term services
November 18, 2002 62A-3-301 et seq.
Notice of Continuation June 1, 2007

R510. Human Services, Aging and Adult Services.
R510-400. Home and Community-Based Alternatives Services Policy and Procedures.
R510-400-1. Authority and Purpose.

(1) Authority.

Home and Community-Based Alternatives Services are provided by Section 62A-3-104 and the Older Americans Act, Title III B and Title III D. The Utah State Department of Human Services is the umbrella agency with oversight responsibility for the Division of Aging and Adult Services. Home and Community-Based Alternatives Services are funded from several sources and administered by the Division of Aging and Adult Services.

(2) Purpose.

(a) Home and Community-Based Alternatives Services provide a comprehensive array of quality client-centered services. The services are delivered in a variety of community settings designed to provide a choice of service delivery options to the client who can continue to live in his own home, if his needs for social and medical services can be met. Home and Community-Based Alternatives Services contribute to improving the quality of life and help to preserve the independence and dignity of the recipient.

(b) The objective of the Older Americans Act Title III B and III D Services is to provide services to the frail older client, including the older client who is a victim of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, and to his family.

R510-400-2. Definitions.

(1) Adult means an individual who is 18 years of age or older.

(2) Aging and Aged means an individual who is 60 years of age or older.

(3) Agency means the designated Area Agency on Aging or other subcontracting agency which may be selected by the Division, if the designated Area Agency on Aging declines to be a contractor or has been determined to be out of compliance with the contract.

(4) Assessment means a complete review of an individual's current functional strengths and deficits, living environment, social resources and care giving needs.

(5) Caregiver means an individual who has the primary responsibility of providing care and/or supervision to an adult, three or more times a week.

(6) Care Plan means a written plan which contains a description of the needs of the client, the services necessary to meet those needs, and the goals to be achieved.

(7) Case Management means assessment, reassessment, determination of eligibility, development of a care plan, ongoing documentation, arranging client-specific services, case recording, client monitoring and follow-up.

8. DAAS Approved Assessment Instrument means a document that meets minimum assessment criteria, as determined by DAAS, for documenting the needs of individuals.

(9) Department means the Utah State Department of Human Services.

(10) Director means the Director of the Agency.

(11) Division means the Utah State Division of Aging and Adult Services.

(12) Emergency means that a disabled adult is at risk of death or immediate and serious harm to self or others, as provided by Section 62A-3-301(6)(12).

(13) Equipment, Rent or Purchase means rental or purchase of equipment deemed necessary for the client's care.

(14) Home means an individual's place of residence.

(15) Home Health Aide means basic assistance and health maintenance by an Aide to individuals in a home setting under the supervision of appropriate health care professionals.

(16) Homemaker means services which provide assistance in maintaining the client's home environment and home management.

(17) Housekeeping Services means assistance with vacuuming, laundry, dish washing, dusting, cleaning bathroom, changing bed linen (unoccupied bed), cleaning stove and refrigerator, ironing, and garbage disposal which relate to the client's well being.

(18) Home and Community-Based Alternatives Services means a comprehensive array of services that are provided to an individual, which enable him to increase self-sufficiency and to maintain his functional independence.

(19) Protective Services means services provided by the Division, including the services of guardian and conservator provided in accordance with Title 75, Utah Uniform Probate Code, to assist persons in need of protection to prevent or discontinue abuse, neglect, or exploitation until that condition no longer requires intervention. The services shall be consistent, if at all possible, with the accustomed lifestyle of the disabled adult, as provided by Section 62A-3-301(12).

(20) Personal Care means assistance with activities of daily living in a home setting, to an individual who is unable to care for himself or when the caretaker is temporarily absent or requires respite.

(21) Respite means a rest or relief for the primary Caregiver from care giving burdens and responsibilities, to maintain the Caregiver as the primary person delivering care giving activities.

(22) Risk Score means a score that reflects the amount of risk an individual has of premature institutionalization. Risk is determined using a DAAS approved assessment instrument that reflects a moderate to high degree of functional, environmental, social resource and care giving needs by an individual.

(23) Screening Assessment means an instrument that initially determines if an individual has a degree of functional limitation that may potentially deem him eligible for Home and Community-Based Alternatives Services.

(24) Voluntary Contributions means a voluntary donation of money that a client or the family pays and may be in addition to an assessed fee for service.

R510-400-3. Funding Source.

(1) Home and Community-Based Alternatives Services are funded by a variety of Federal, State and local community dollars, program fees, voluntary and public contributions.

(2) The Older Americans Act Title III B and III D Services are funded by Federal dollars allocated by Congress, State matching funds, local matching funds and voluntary contributions.

R510-400-4. Eligibility.

(1) Services may be provided as funds permit to eligible adults as determined by DAAS Policy and Procedures for Home and Community-Based Alternatives Services.

(2) Older Americans Act Title III B and III D Services may be provided to eligible Aging and Aged Adults, as specified under Section 321, 341 and 342 of the Older Americans Act, 1965 as amended.

R510-400-5. Authorized Services.

The Agency may provide or provide for an array of home and community-Based alternatives services, determined by assessment to be essential to maintain the individual's independence in order for him to remain at home. These services may include case management, homemaker, personal care, home health assistance, skilled health care, respite, equipment rental or purchase, emergency response systems or other services as needed.

R510-400-6. Fees and Voluntary Contributions.

(1) Fees shall be assessed for all clients receiving Home and Community-Based Alternatives Services. Fees are based on the client's and spouse's adjusted income as determined by the DAAS Eligibility Declaration Form and calculated against the Department's Fee Schedule.

(2) Older Americans Act Title III B and III D Services participants shall not be assessed fees for receiving Older Americans Act Title III B and Title III D funded services, as specified under Section 321, 341 and 342 of the Older Americans Act, 1965 as amended.

R510-400-7. Service Provider Requirements.

Home and Community-Based Alternatives Services shall be provided through a public agency or a private licensed Service Provider Agency with at least one year experience in providing home support or home health services.

R510-400-8. Client Vouchers.

The agency shall develop policy and procedures for the provision of a voucher system of payment that may be available to the client who is able to manage the provision of services specified in his care plan. Such policy and procedures shall be developed in accordance to guidelines found in the Division's Home and Community-Based Alternatives Services Procedure Manual.

R510-400-9. Client Assessment.

The initiation of a DAAS approved Screening Assessment to establish a risk score shall be ten working days or less from the initial referral. Enough information shall be gathered with the client, family or referral source to determine potential eligibility and whether he shall be referred for an Assessment or referred to another agency or community resource.

R510-400-10. Care Planning.

The client's Care Plan shall be developed based upon his current situation and needs as identified by the DAAS approved assessment instrument.

R510-400-11. Payment to Relatives.

The Agency shall develop policy and procedures for the provision of direct payments to a relative of the eligible client for care giving services that comply with the Health Care Assistant Registration Act as found in Section 58-62-101 and DAAS Policy and Procedures for Home and Community-Based Alternatives Services as found in Utah Administrative Code R 510-400.

R510-400-12. Case Management.

Case Management shall be provided to all recipients of Home and Community-Based Alternatives Services.

R510-400-13. Record Keeping.

The recipient of Home and Community-Based Alternatives Services shall have an individual case file that includes client eligibility, assessment of the client's needs, care plan, quarterly reviews, progress notes, and when applicable, legal documents addressing guardianship, advanced directives or powers of attorney.

R510-400-14. Client Rights and Responsibilities.

The Agency shall have the responsibility to develop a method to inform all eligible clients of their rights and responsibilities. This shall be evidenced by a signed Client's Rights and Responsibilities Form in the case file.

R510-400-15. Grievance Procedures.

The Agency shall have the responsibility to develop procedures for Client Grievance and Fair Hearing.

R510-400-16. Waiting Lists.

The Agency shall maintain an active waiting list when funding dictates that services cannot be provided for all who have been identified as needing services.

R510-400-17. Termination of Service.

The Agency shall allow for the interruption, transfer and termination of services for the client receiving Home and Community-Based Alternatives Services or Older Americans Act Title III B and III D Services, whose needs, Agency Provider, circumstances or condition warrants.

R510-400-18. Purchase and Rental of Equipment.

(1) Equipment may be purchased or rented if it is deemed necessary for the client's care, providing no other funding source is available.

(2) Purchased equipment is the property of the Agency. The Agency will develop policy and procedures that address the disposition, inventory and repair of equipment.

R510-400-19. Contract Compliance.

The Division is responsible for monitoring Home and Community-Based Alternatives Services and Older Americans Act Title III B and III D Services. Each Agency shall be monitored annually.

R510-400-20. Emergency Interim Service.

Home and Community-Based Alternatives Services may be provided to the client when circumstances warrant the emergency provision of service.

KEY: elderly, home care services, long-term care alternatives
December 17, 1996 62A-3-101 through 62A-3-312
Notice of Continuation June 1, 2007

R523. Human Services, Substance Abuse and Mental Health.
R523-1. Procedures.
R523-1-1. Board of Substance Abuse and Mental Health-Responsibilities.

(1) The State Board of Substance Abuse and Mental Health is the program policy making body for the Division of Substance Abuse and Mental Health and for programs funded with state and federal monies. The Board has the authority and the responsibility to establish by rule procedures for developing its policies which seek input from local mental health authorities, consumers, providers, advocates, division staff and other interested parties (Section 62A-15-105). In order to ensure public input into the policy making procedure the Board will:

(a) Convene an annual meeting, inviting local mental health authorities, consumers, providers, advocates and division staff to provide them an opportunity to comment and provide input on new policy or proposed changes in existing policy.

(b) The Board shall include, as necessary, a time on the agenda at each regularly scheduled board meeting to entertain public comment on new policy or proposed changes in existing policy.

(c) Public requests to revise existing policy or consider new policy shall be made in writing to the Board in care of the Division of Substance Abuse and Mental Health.

(d) The Division shall prepare, for the Board's review, any comments they are in receipt of relative to public policy, which will be addressed at a regularly scheduled board meeting.

(e) The Board may direct the Division to follow-up on any unresolved issues raised as a result of policy review and report their findings at the next scheduled board meeting.

R523-1-2. State and Local Relationships.

(1) Local Mental Health Authorities (LMHA) are the "service designees" of the State Division of Substance Abuse and Mental Health (Division) to provide comprehensive mental health services as defined by state law pursuant to Section 17-43-302.

(2) When the Division requires other services outside the comprehensive range specified by law, it shall provide LMHAs the first opportunity to accept or reject the service contract. If the LMHA rejects the contract in writing or fails to meet the terms of the contract as determined by the Division, the Division may contract with any qualified provider, through a Request For Proposal (RFP) process. If an agency other than the LMHA receives a contract to provide a mandated service, the contracted service provider shall inform the LMHA that they have been awarded the contract and offer to coordinate the service with existing services provided by the LMHA.

(3) The Division has the responsibility and authority to monitor LMHA contracts. Each mental health catchment area shall be visited at least once annually to monitor compliance. The mental health center will be provided preliminary findings from the site review and an opportunity to comment. A written report will be sent to each LMHA describing the findings from the site visit.

(4) The Division shall oversee the continuity of care for services provided to consumers and resolve conflicts between the Utah State Hospital (USH) and LMHA, and also those between LMHA's.

(a) if negotiations between LMHA's and the USH regarding admissions, discharges or provisions of consumer services fail to be resolved at the local level, the following steps shall be taken:

(i) the director of the Division or designee shall appoint a committee to review the facts of the conflict and make recommendations;

(ii) if the recommendations of the committee do not adequately resolve the conflict, the clinical or medical director of the local mental health center and USH clinical director shall meet and attempt to resolve the conflict;

(iii) if a resolution cannot be reached, the community mental health center director and the superintendent of the USH shall meet and attempt to resolve the conflict;

(iv) if a resolution cannot be reached, the director of the Division or designee shall make the final decision.

(b) If conflicts arise between LMHA's regarding admissions, discharges, or provisions of consumer services, the final authority for resolution shall rest with the director of the Division or designee.

R523-1-3. Program Standards.

(1) The State Board of Substance Abuse and Mental Health, in compliance with law, adopts the policy that available state funds will be distributed on a 80% State, 20% local match basis to local mental health authorities which provide the continuum of care and meet the public policy priority adopted by the Board (17-43-102, 62A-1-107(6)). The Division of Substance Abuse and Mental Health will carry out this policy. A comprehensive mental health program includes:

(a) Inpatient care and services (hospitalization)
(b) Residential care and services
(c) Day treatment and psycho-social rehabilitation
(d) Outpatient care and services
(e) Twenty-four hour crisis care and services
(f) Outreach care and services
(g) Follow-up care and services
(h) Screening for referral services
(i) Consultation, education and preventive services (case consultation, public education and information, etc.)
(j) Case management.

(2) Each local mental health authority shall be responsible for providing these services directly or contracting for these services.

(3) The primary responsibility of the Division of Substance Abuse and Mental Health will be to insure the provision of services for those citizens who enter the mental health system directly as consumers and to work cooperatively with other agencies. Other public agencies such as Education, Corrections, Health and Social Services will have primary responsibility for arranging for or providing and paying for the mental health needs of citizens served by their agency when the required service directly benefits or is tied to their agency responsibility. The Division of Substance Abuse and Mental Health will clearly define items 1-9 above so that evaluation and implementation is feasible. These definitions will be approved by the State Board of Substance Abuse and Mental Health.

R523-1-4. Private Practice.

(1) Private practice policies shall be determined by local community mental health authorities. These policies will be available in written form for State review.

R523-1-5. Fee for Service.

(1) Each local authority:

(a) Shall require all programs that receive federal and state funds from the Division of Substance Abuse and Mental Health (Division) and provide services to clients to establish a policy for the collection of fees.

(i) Each fee policy shall include:

(A) a fee reduction plan based on the client's ability to pay for services; and

(B) a provision that clients who have received an assessment and require mental health treatment or substance abuse services will not be denied services based on the lack of ability to pay.

(ii) Any adjustments to the assessed fee shall follow the

procedures approved by the local authority.

(iii) Any change to the fee policy will be made in writing to the Division within ninety days.

(b) Shall approve the fee policy; and

(c) Shall set a usual and customary rate for services rendered.

(2) All programs shall provide a written explanation of the fee policy to all clients at the time of intake except in the case of emergency services.

(3) All clients shall be assessed fees based on:

(a) the usual and customary rate established by the local authorities, or

(b) a negotiated contracted cost of services rendered to clients.

(4) All programs shall make reasonable effort to collect outstanding fee charges and may use an outside collection agency.

(5) All programs may reduce the assessed fee for services if the fee is determined to be a financial hardship for the client.

(6) The Division shall annually review each program's policy and fee schedule to ensure that the elements set for in this rule are incorporated.

R523-1-6. Priorities for Treatment.

(1) Mental health services provided through public funds (federal, state, and local match) will address current mental health priorities listed below. The State Division of Substance Abuse and Mental Health, in collaboration with the Utah Council of Mental Health Program, Inc.'s evaluation committee (SCHEDULE), will develop or approve procedures and forms for periodic needs assessments.

(2) Immediacy of need and severity of the mental illness are the two primary variables considered in developing the following priorities of treatment. It is to be understood that emphasis upon certain under-served age groups may be given as appropriately demonstrated through needs studies.

(a) Effective and responsive crisis intervention assessment, direct care, and referral program available to all citizens.

(b) Provision of the least restrictive and most appropriate treatment and settings for:

a. severely mentally ill children, youth, and adults;

b. acutely mentally ill children, youth, and adults.

(c) Provisions of services to emotionally disabled children, youth and aged citizens who are neither acutely nor severely mentally ill, but whose adjustment is critical for their future as well as for society in general.

(d) Provision of services to emotionally disabled adults who are neither acutely nor severely mentally ill, but whose adjustment is critical to their personal quality of life as well as for society in general.

(e) Provision of consultation, education and preventive mental health services targeted at high risk groups in particular.

R523-1-7. Collections Carryover.

(1) Local center programs may carry collections forward from one fiscal year to another.

(2) Centers receive two general types of revenues - appropriations and collections. These terms are defined as follows:

(a) Appropriations:

(i) State appropriated monies

(ii) Federal Block Grant dollars

(iii) County Match of at least 20%

(b) Collections:

(i) First and third party reimbursements

(ii) Any other source of income generated by the center.

R523-1-8. Consumers Rights.

(1) Each local mental health center shall have a written statement reflecting consumers rights. General areas for consideration should be:

(a) consumer involvement in treatment planning.

(b) consumer involvement in selection of their primary therapist.

(c) consumer access to their individual treatment records.

(d) informed consent regarding medication

(e) grievance procedures

(2) This statement should also indicate the Center's commitment to always treat mental health consumers with dignity and individuality in a positive, supportive and empowering manner. This document is to be shared with the consumer at the time of intake and a signed copy made part of their individual file. The State Division of Substance Abuse and Mental Health shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.

R523-1-9. Statewide Program Evaluation, Research, and Statistics.

(1) Responsibility for Statewide program evaluation, research, and statistics belongs to the Division of Substance Abuse and Mental Health. This responsibility includes data system leadership, coordination, implementation, and monitoring.

(2) The Division of Substance Abuse and Mental Health shall develop and maintain, in collaboration with local mental health providers, a set of data system principles that address at least the following topics: standardization of data variables and definitions; variable integration across data sets; procedures for requesting data from MHOs; procedures for data review and dissemination; MHC participation in planning new statistical reports and requests; cost-effective and practical data collection procedures; confidentiality and data security; accuracy and data quality control; updating regular reports; and procedures for reviewing and updating the principles.

(3) The Division of Substance Abuse and Mental Health, in collaboration with the local Mental Health Authorities and their providers, shall assess service effectiveness (outcomes) and efficiency (productivity) and report the results to the State Board of Substance Abuse and Mental Health in an annual report. This report or reports shall contain data results on effectiveness and efficiency for the previous year, and a plan for assessing these variables for the following year. Changes in procedures for data collection and analysis for the previous year, and changes in data system principles shall also be reported to the Board.

R523-1-10. Allocation of Utah State Hospital Bed Days to Local Mental Health Authorities.

1. Pursuant to UCA 62A-15-611(2)(a), the Board herein establishes, by rule, a formula to allocate to local mental health authorities adult beds for persons who meet the requirements of UCA 62A-15-610(2)(a).

2. The formula established provides for allocation based on (1) the percentage of the state's adult population located within a mental health catchment area: and (2) a differential to compensate for the additional demand for hospital beds in mental health catchment areas that are located within urban areas.

3. The Board hereby establishes a formula to determine adult bed allocation:

a. The most recent available population estimates are obtained from the Utah Population Estimates Committee.

b. The total adult population figures for the State are identified which includes general adults and geriatric populations. Adult means age 18 through age 64. Geriatric means age 65 and older.

c. Adult and Geriatric population numbers are identified

for each county.

d. The urban counties are identified (county classifications are determined by the lieutenant governor's office pursuant to UCA 17-50-501 and 17-50-502 and the most recent classifications are used to determine which counties are defined as urban) and given a differential as follows:

i. The total number of adult beds available at the Utah State Hospital are determined, from which the total number of geriatric beds and adult beds are identified.

ii. 4.8% is subtracted from the total number of beds available for adults to be allocated as a differential.

iii. 4.8% is subtracted from the total number of beds available for geriatrics to be allocated as a differential.

e. The total number of available adult beds minus the differential is multiplied by the county's percentage of the state's total adult and geriatric populations to determine the number of allocated beds for each county.

f. Each catchments area's individual county numbers are added to determine the total number of beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

g. The differential beds are then distributed to urban counties based on their respective percentage of urban counties as a whole.

h. At least one adult (18 - 64) bed is allocated to each community mental health center.

4. In accordance with UCA 62A-15-611(6), the Board shall periodically review and make changes in the formula as necessary to accurately reflect changes in population.

5. Applying the formula.

a. Adjustments of adult beds, as the formula is applied, shall become effective at the beginning of the next fiscal year.

b. The Division of Substance Abuse and Mental Health, as staff to the Board, is responsible to calculate adult bed allocation as directed by the Board or as required by statute.

c. Each local mental health authority will be notified of changes in adult bed allocation.

6. The number of allocated adult beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

7. A local mental health authority may sell or loan its allocation of adult beds to another local mental health authority.

R523-1-12. Program Standards.

(1) The State Board of Substance Abuse and Mental Health has the power and the duty to establish by rule, minimum standards for community mental health programs (Section 62A-15-105).

(a) Each Community Mental Health Center shall have a current license issued by the Office of Licensing, Department of Human Services.

(b) Each Center shall have a comprehensive plan of service which shall be reviewed and updated at least annually to reflect changing needs. The plan shall:

(i) Be consistent with the "Comprehensive Mental Health Plan For Services To The Seriously Mentally Ill",

(ii) Designate the projected use of state and federal contracted dollars,

(iii) Define the Center's priorities for service and the population to be served.

(c) Each Center shall provide or arrange for the provision of services within the following continuum of care.

(i) Inpatient care and services (hospitalization),

(ii) Residential care and services,

(iii) Day treatment and Psycho-social rehabilitation,

(iv) Outpatient care and services,

(v) Twenty-four hour crisis care and services,

(vi) Outreach care and services,

(vii) Follow-up care and services,

(viii) Screening for referral services,

(ix) Consultation, education and preventive services,

(x) Case management.

(d) Each Center shall participate in a yearly on-site evaluation conducted by the Division.

(e) The local mental health authority shall be responsible for monitoring and evaluating all subcontracts to ensure:

(i) Services delivered to consumers commensurate with funds provided,

(ii) Progress is made toward accomplishing contract goals and objectives.

(f) The local mental health authority shall conduct a minimum of one site visit per year with each subcontractor. There shall be a written report to document the review activities and findings, a copy of which will be made available to the Division.

R523-1-14. Designated Examiners Certification.

(1) A "Designated Examiner" is a licensed physician or other licensed mental health professional designated by the Division as specially qualified by training or experience in the diagnosis of mental or related illness (62A-15-602(3) and 62A-15-606).

(a) The Division shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness. Certification will require at least five years continual experience in the treatment of mental or related illness in addition to successful completion of training provided by the Division.

(b) Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application the Director will cause to occur a review and examination of the applicants qualifications.

(c) The applicant must meet the following minimum standards in order to be certified.

(i) The applicant must be a licensed mental health professional.

(ii) The applicant must be a resident of the State of Utah.

(iii) The applicant must demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior, to be determined by training, experience and written examination.

(iv) The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

(v) The applicant must be able to discriminate between abnormal behavior due to mental illness which poses a substantial likelihood of serious harm to self or others from those forms of abnormal behavior which do not represent such a threat. Such knowledge will be determined by experience, training and written examination.

(vi) The applicant must be able to demonstrate a general knowledge of the court process and the conduct of commitment hearings. The applicant must demonstrate an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, to be determined by experience, training and written and oral examination.

(d) The Division Director will determine if experience and qualifications are satisfactory to meet the required standards. The Director will also determine if there are any training requirements that may be waived due to prior experience and training.

(e) Upon satisfactory completion of the required experience and training, the Director will certify the

qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated examiner and authorize the use of privileges and responsibilities as prescribed by law.

R523-1-15. Funding Formula.

(1) The Board shall establish by rule a formula for the annual allocation of funds to local mental health authorities through contracts (Section 62A-12-105).

(2) The funding formula shall be applied annually to state and federal funds appropriated by the legislature to the Division and is intended for the annual equitable distribution of these funds to the state's local mental health authorities.

(a) Appropriated funds will be distributed annually on a per capita basis, according to the most current population data available from the Office of Planning and Budget. New funding and/or decreases in funding shall be processed and distributed through the funding formula.

(b) The funding formula shall utilize a rural differential to compensate for additional costs of providing services in a rural area which may consider: the total population of each county, the total population base served by the local mental health center and/or population density.

(c) In accordance with UCA Section 62A-12-105 the funding formula may utilize a determination of need other than population if the board establishes by valid and acceptable data, that other defined factors are relevant and reliable indicators of need.

(d) Each Local Mental Health Authorities shall provide funding equal to at least 20% of the state funds that it receives to fund services described in that local mental health authority's annual plan in accordance with, UCA Section 17A-3-602.

(e) Application of the formula for allocation of state and federal funds may be subject to a phase-in plan for FY 03 through FY 06. At the latest, appropriations for FY 06 shall be allocated in accordance with the funding formula without any phase-in provisions.

(f) The formula does not apply to:

(i) Funds that local mental health authorities receive from sources other than the Division.

(ii) Funds that local mental health authorities receive from the Division to operate a specific program within its jurisdiction that is available to all residents of the state.

(iii) Funds that local mental health authorities receive from the Division to meet a need that exists only within the jurisdiction of that local mental health authority.

(iv) Funds that local mental health authorities receive from the Division for research projects.

R523-1-16. Allocation of Utah State Hospital Pediatric Beds to Local Mental Health Authorities.

1. Pursuant to UCA 62A-15-612(2), the Board herein establishes, by rule, a formula to allocate to local mental health authorities pediatric beds for persons who meet the requirements of UCA 62A-15-610(2)(b).

2. The formula established provides for allocation based on the percentage of the state's population of persons under the age of 18 located within a mental health catchment area.

3. Each community mental health center shall be allocated at least one pediatric bed. (UCA 62A-15-612(3))

4. The board hereby establishes a formula to determined pediatric bed allocation:

a. The most recent available population estimates are obtained from the Governor's Office of Planning and Budget.

b. The total pediatric population figures for the State are identified. Pediatric means under the age of 18.

c. Pediatric population figures are identified for each county.

d. The total number of pediatric beds available is multiplied by the county's percentage of the state's total pediatric population. This will determine the number of allocated pediatric beds for each county.

e. Each catchment area's individual county numbers are added to determine the total number of pediatric beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

5. In accordance with UCA 62A-15-612(6), the Board shall periodically review and make changes in the formula as necessary.

6. Applying the formula.

a. Adjustments of pediatric beds, as the formula is applied, shall become effective at the beginning of the new fiscal year.

b. The Division of Substance Abuse and Mental Health, as staff to the Board, is responsible to calculate pediatric bed allocation as directed by the Board or as required by statute.

c. Each local mental health authority will be notified of changes in pediatric bed allocation.

7. The number of allocated pediatric beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

8. A local mental health authority may sell or loan its allocation of adult beds to another local mental health authority.

R523-1-17. Medication Procedures for Children, Legal Authority.

(1) The Division of Substance Abuse and Mental Health hereby establishes due process procedures for children prior to the administration of antipsychotic medication, pursuant to Section 62A-15-704(3)(a)(i).

(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Substance Abuse and Mental Health.

(b) Antipsychotic medication means any antipsychotic agent usually and customarily prescribed and administered in the chemical treatment of psychosis.

(c) A legal custodian is one who has been appointed by the Juvenile Court and may include the Division of Child and Family Services, the Division of Juvenile Justice Services, and the Division of Substance Abuse and Mental Health.

(d) A legal guardian is one who is appointed by a testamentary appointment or by a court of law.

(e) A person under the age of 18 may be treated with antipsychotic medication when, as provided in this section, any one or more of the following exist:

(i) The child and parent/legal guardian/legal custodian give consent.

(ii) The child or the parent/legal guardian/legal custodian does not give consent, but a Neutral and Detached Fact Finder determines that antipsychotic medication is an appropriate treatment.

(iii) The medication is necessary in order to control the child's dangerous behavior and it is administered for an exigent circumstance according to this rule.

(f) A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with antipsychotic medications:

(i) The nature of the child's mental illness.

(ii) The recommended medication treatment, its purpose, the method of administration, and dosage recommendations.

(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment.

(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered.

(v) The possible side effects, if any of the recommended treatment.

(vi) The ability of the staff to recognize any side effects

which may actually occur and the possibility of ameliorating or abating those side effects.

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable.

(viii) The right to give or withhold consent for the proposed medication treatment.

(ix) When informing a child and his/her parent/legal guardian/legal custodian that they have the right to withhold consent the staff must inform them that the mental health authority has the right to initiate a medication hearing and have a designated examiner determine whether the proposed treatment is necessary.

(g) The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information under subsection F of this section, and that they consent to the proposed medication treatment.

(h) If either the child or parent/legal guardian/legal custodian refuses to give consent, the mental health authority may initiate a medication hearing in accordance with subsection J of this rule.

(i) Antipsychotic medication may be administered under the following exigent circumstances:

(i) A qualified physician has determined and certifies that he/she believes the child is likely to cause injury to him/herself or to others if not immediately treated. That certification shall be recorded in the Physician's Orders of the child's medical record and shall contain at least the following information:

(A) A statement by the physician that he/she believes the child is likely to cause injury to himself/herself or others if not immediately restrained and provided medication treatment.

(B) The basis for that belief (including a statement of the child's behaviors).

(C) The medication administered.

(D) The date and time the medication was begun.

(j) Involuntary treatment in exigent circumstances may be continued for 48 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall not be involuntarily treated unless a Notice to Convene a Medication Hearing has been prepared and provided to the child pursuant to the provision of subsection K of this section.

(k) If the child and/or parent/legal guardian/legal custodian refuse to give consent the treating staff may request a medication hearing be held to determine if medication treatment is appropriate.

(i) The treating physician shall document in the child's medical record, the child's diagnosis, the recommended treatment, the possible side effects of such treatment, the desired benefit of such treatment, and the prognosis.

(ii) The treating staff shall complete a Request to Convene a Medication Hearing form and submit it to the Director/Designee of the local mental health authority who will contact a Neutral and Detached Fact Finder and set a date and time for the hearing. The child and parent/legal guardian/legal custodian shall be provided notice of the medication hearing and the hearing shall be set as soon as reasonably possible after a request has been made, but no sooner than 24 hours of notification being provided to the child and parent/legal guardian/legal custodian.

(iii) Prior to the hearing, the Neutral and Detached Fact Finder is provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information.

(l) Medication hearings shall be conducted by a Neutral and Detached Fact Finder, shall be heard where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions. Other persons may attend the hearing if appropriate.

(ii) The Neutral and Detached Fact Finder shall begin each medication hearing by explaining the purpose and procedure of the hearing to the child, parent/legal guardian/legal custodian, and any other persons present.

(iii) The Neutral and Detached Fact Finder will review the child's current condition and recommended course of treatment.

(iv) The child, parent/legal guardian/legal custodian, and others present shall then be afforded an opportunity to comment on the issue of medication treatment.

(v) Following the review of the case and hearing of comments, the Neutral and Detached Fact Finder shall render a decision.

(vi) If needed the Neutral and Detached Fact Finder may ask everyone to leave the room to allow him/her time to deliberate.

(m) The Neutral and Detached Fact Finder may order medication treatment of a child if, after consideration of the record and deliberation, the Neutral and Detached Fact Finder finds that the following conditions exist:

(i) The child has a mental illness; and

(ii) The child is gravely disabled and in need of medication treatment for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

(iii) Without medication treatment, the child poses a likelihood of serious harm to him/herself, others, or their property. Likelihood of serious harm means either (a) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which placed another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

(v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

(n) The basis for the decision is supported by adequate documentation. The Neutral and Detached Fact Finder shall complete and sign a Medication Hearing form at the end of the hearing. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

(o) A child and/or parent/legal guardian/legal custodian may appeal the decision of a Neutral and Detached Fact Finder according to the following process, by submitting a written appeal to the Director/Designee of the Local Mental Health Authority providing treatment to the child, within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(i) Upon receipt of the appeal, a panel consisting of two physicians and a non-physician licensed professional (RN, LCSW, PhD, etc.) shall be assigned to hear the appeal.

(ii) The panel shall review the available documentation and make a decision within 48 hours (excluding Saturdays,

Sundays, and legal holidays) of the date of the appeal.

(iii) A written decision from the panel shall be provided to the child, the child's parent/legal guardian/legal custodian, the local mental health authority providing treatment to the child, and any other appropriate party.

(p) In the event that a significant medication change is proposed, the child and/or parent/legal guardian/legal custodian shall be provided an opportunity to give consent in accordance to subsection F of this section. If the child and parent/legal guardian/legal custodian refuse to give consent, a medication hearing may be initiated in according with subsection K of this section.

(q) Medication treatment ordered pursuant to subsection P of this section may continue after the initial hearing according to the following process:

(i) A Neutral and Detached Fact Finder shall review the case within 180 days of the initial hearing.

(ii) The Neutral and Detached Fact Finder shall review the medical record before rendering a decision to continue medication treatment.

(iii) The Neutral and Detached Fact Finder may order continued medication treatment if he/she finds the following conditions are met:

(A) The child is still mentally ill; and

(B) Absent continued medication treatment, the child will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in his/her ability to function in the least restrictive environment, thereby making him/her a substantial danger to him/herself or others, and

(C) The medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

(D) The medication treatment is in accordance with prevailing standards of accepted medical practice.

(iv) If the neutral and Detached Fact Finder approves continued medication treatment, he/she shall complete a Review of Continued Medication form, which shall be placed in the child's medical record. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

(v) At the end of 12 months, the case shall again be reviewed as outlined in this subsection (Q), and shall be reviewed every 6 months while the course of treatment is being administered.

R523-1-18. Psychosurgery and Electroshock Therapy Procedures for Children, Legal Authority.

(1) By this rule, the Division of Substance Abuse and Mental Health establishes the following due process procedure for children prior to their being administered psychosurgery or electroshock therapy as provided by Section 62A-15-704(3)(a)(ii).

(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Substance Abuse and Mental Health. The following terms are herein defined:

(b) ECT means electroconvulsive therapy.

(c) A Legal Custodian means a person who is appointed by the juvenile court. Such a person may have been selected from the Division of Child and Family Services, the Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health.

(d) A Legal Guardian means a person who holds a testamentary appointment or is appointed by a court of law.

(e) Psychosurgery means a neurosurgical intervention to modify the brain to reduce the symptoms of a severely ill psychiatric patient.

(f) A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with ECT or Psychosurgery:

(i) The nature of the child's mental illness;

(ii) The recommended ECT/Psychosurgery treatment, its purpose, the method of administration, and recommended length of time for treatment;

(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment

(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered

(v) The possible side effects, if any, of the recommended treatment

(vi) The ability of the staff to recognize any side effects, should any actually occur, and the possibility of ameliorating or abating those side effects

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable

(viii) The right to give or withhold consent for the proposed ECT/psychosurgery.

(ix) When informing a child and his/her parent/legal guardian/legal custodian they have the right to withhold consent, the local mental health authority must inform them that regardless of whether they give or withhold consent, a due process procedure will be conducted before two designated examiners to determine the appropriateness of such treatment.

(g) The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information listed in subsection E of this section, and that they consent or do not consent to the proposed treatment.

(h) If the parent/legal guardian/legal custodian refuses to consent to ECT/psychosurgery, the local mental health authority shall consider a treatment team dispositional review to determine whether the child is appropriate for treatment through their services.

(i) Regardless of whether the child or parent/legal guardian/legal custodian agrees or disagrees with the proposed ECT/psychosurgery, a due process procedure shall be conducted before the treatment can be administered.

(j) A physician shall request ECT or psychosurgery for a child by completing a Request to Treat With ECT or Psychosurgery form and submitting to the Director/Designee of the Local Mental Health Authority providing treatment.

(k) Upon receipt of the request, the Director/Designee shall contact two Designated Examiners, one of which must be a physician, and set a date and time for an ECT/Psychosurgery Hearing.

(l) The child and parent/legal guardian/legal custodian shall be provided notice of the hearing.

(m) Prior to the hearing, the two designated examiners shall be provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information. The attending physician shall document his/her proposed course of treatment and reason(s) justifying the proposal in the medical record.

(n) ECT/psychosurgery hearings shall be conducted by two Designated Examiners, one of whom is a physician, Hearings shall be held where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions.

(ii) If the child or others become disruptive during the hearing, the Designated Examiners may request that those persons be removed. The hearing shall continue in that person's absence.

(iii) The hearing shall begin with the child, parent/legal guardian/legal custodian, and any others being informed of the purpose and procedure of the hearing.

(iv) The record shall be reviewed by the Designated Examiners and the proposed treatment shall be discussed.

(v) The child, parent/legal guardian/legal custodian, and others present shall be afforded an opportunity to comment on the issue of ECT or psychosurgery.

(vi) Following the review of the case and the hearing of comments, the Designated Examiners shall render a decision

(vii) If needed the Designated Examiners may ask everyone to leave the room to allow them time to deliberate.

(o) The Designated Examiners may order ECT or psychosurgery if, after consideration of the record and deliberation, they both find that the following conditions exist:

(i) The child has a mental illness as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM); and

(ii) The child is gravely disabled and in need of ECT or Psychosurgery for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

(iii) Without ECT or psychosurgery, the child poses a likelihood of serious harm to self, others, or property. Likelihood of serious harm means either

(A) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or

(B) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which has placed another person or persons in reasonable fear of sustaining such harm, or

(C) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed treatment is an appropriate and accepted method of treatment for the patient's mental condition; and

(v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

(p) The basis for the decision shall be supported by adequate documentation. The Designated Examiners shall complete and sign an ECT or Psychosurgery form at the end of the hearing. A copy of the decision shall be provided to the child and/or parent/legal guardian/legal custodian.

(q) The child and/or parent/legal guardian/legal custodian may request a second opinion of a decision to treat with ECT or psychosurgery by filing a Request for a Second Opinion form with the Clinical Director/designee of the Division of Substance Abuse and Mental Health within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(r) ECT or psychosurgery may be commenced within 48 hours of the decision by the Designated Examiners, if no request for a second opinion is made. If a request is made, treatment may be commenced as soon as the Clinical Director/designee physician renders his/her decision if he/she agrees with the decision.

(s) Upon receipt of a Request, the Clinical Director/designee will review the record, consult with whomever he/she believes is necessary, and render a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of receipt of the Request. The Clinical Director/designee shall sign a Second Opinion for Decision to Treat with ECT/Psychosurgery form which is placed in the child's record. A copy shall be provided to the child and the parent/legal guardian/legal custodian prior to the commencement of treatment.

(t) If a child has been receiving ECT treatment and requires further treatment than that outlined in the original ECT plan, the procedures set forth in subsections F through S of this section shall be followed before initiating further treatment.

R523-1-19. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.

(1) Pursuant to the requirements of Subsection 62A-12-202 (9), and Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, all facilities owned or operated by community mental health centers that have any contracts with local mental health authority and/or the Utah State Division of Substance Abuse and Mental Health are designated as secure areas. Accordingly all weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers. There shall be a prominent visual notice of secure area designation. Law enforcement personnel are authorized to carry firearms while completing official duties on the grounds of those facilities.

R523-1-20. Family Involvement.

(1) Each mental heath authority shall annually prepare and submit to the Division of Substance Abuse and Mental Health a plan for mental health funding and service delivery (17A-3-602(4)(b), (62A-15-109). Included in the plan shall be a method to educate families concerning mental illness and to promote family involvement when appropriate, and with patient consent, in the treatment program of a family member.

(2) The State Division of Substance Abuse and Mental Health will monitor for compliance as part of the annual quality of care site visits (62A-15-1003).

R523-1-21. Declaration for Mental Health Treatment.

(1) The State Division of Substance Abuse and Mental Health will make available information concerning the declaration for mental health treatment (62A-15-1003). Included will be information concerning available assistance in completing the document.

(2) Each local mental health center shall have information concerning declarations for mental health treatment. Information will be distributed with consumer rights information at the time of intake. (R523-1-8)

(3) Utah State Hospital will provide information concerning the declaration for mental health treatment at the time of admittance to the hospital.

(4) Consumers who choose to complete a declaration for mental health treatment may deliver a copy to their mental health therapist, to be included as part of their medical record.

R523-1-22. Rural Mental Health Scholarship and Grants.

The State Division of Substance Abuse and Mental Health hereby establish by rule an eligibility criteria and application process for the recipients of rural mental health scholarship funds, pursuant to the requirements of Section 62A-15-103.

(1) Eligibility criteria. The following criteria must be met by an applicant to qualify for this program.

(a) An applicant must be a current employee at an eligible Employment Site or have a firm commitment from an Eligible Employment Site for full time employment. Any sites that provide questionable or controversial mental health and /or substance abuse treatment methodologies will not be approved as eligible employment sites. Eligible Employment sites must be one of the following:

(i) Primary Employment Sites are community mental health centers and/or substance abuse providers that receive federal funds through a contract with the Division to provide mental health or substance treatment services.

(ii) Secondary Employment Sites are mental health or substance abuse providers that are licensed to provide mental health/substance treatment services by the Utah Division of Occupational and Professional Licensing, and serve more than 75% of Utah residents in their programs.

(b) An applicant must also agree to work in a designated eligible underserved rural area. Underserved rural areas must be classified as a Health Professional Shortage Areas (HPSA). The State Division of Substance Abuse and Mental Health can be contacted for a current list of HPSA sites.

(c) For Scholarship Grants; show registration in a course leading to a degree from a educational institution in the United States or Canada that will qualify them to receive licensure in Utah as a Mental Health Therapist s defined in Section 62A-13-102(4).

(d) For Loan Repayment Grants; show the amount of loans needing repayment, verify that the loans are all current, licensure as a Mental Health Therapist as defined in Section 62A-13-102(4).

(2) Grants. Two types of grants are available to eligible applicants.

(a) A loan Repayment Grant is to repay bona fide loans for educational expenses at an institution that provided training toward an applicant's degree, or to pay for the completion of specified additional course work that meets the educational requirements necessary for licensure as a Mental Health Therapist.

(b) A Scholarship is to pay for current educational expenses from an Educational Program that meets the educational requirements necessary for licensure as a Mental Health Therapist, at a school within the United States.

(3) Funding. Grants for applicants will be based upon the availability of funding the matching of community needs (i.e., how critical the shortage of Mental Health Therapists), the applicant's field of practice, and requested employment site. Primary employment sites are given priority over secondary employment sites.

(a) The award for each applicant may not exceed $5,000 per person. The Division will notify the grantee of the award amount. Exceptions in the amount of the award may be made due to unique circumstances as determined by the Division.

(b) An applicant may receive multiple awards, as long as the total awards do not exceed the recommended amount of $5,000, unless the Division approves an exception.

(4) Grantee obligation.

(a) The service obligation for applicants consists of 24 continuous months of full time (40) hours per week) employment as a Mental Health Therapist at an approved eligible employment site. The Division may change this service obligation if the Division Director determines that due to unforeseen circumstances, the completion of the obligation would be unfair to the recipient.

(b) Failure to finish the education program or complete the service obligation results in a repayment of grant funds according to Section-62A13-108.

(5) Application forms and instructions for grants or scholarships can be obtained from the Division of Substance Abuse and Mental Health, 120 North 200 West, Room 209, Salt Lake City, Utah. Only complete applications supported by all necessary documents will be considered. All applicants will be notified in writing of application disposition with in 60 days. A written appeal may be made to the Division Director within 30 days from the date of notification.

R523-1-23. Case Manager Certification.

(1) Definitions.

(a) "Mental Health and Substance Abuse Case Manager" means an individual under the supervision of a qualified provider employed by the local mental health authority or contracted by a local substance abuse authority, who is responsible for coordinating, advocating, linking and monitoring activities that assist individuals with serious and often persistent mental illness and serious emotional disorder in children and individuals with substance abuse disorders to access prescribed medical and related therapeutic services. Also, to promote the individual's general health and their ability to function independently and successfully in the community.

(b) "Qualified providers" include any individual who is a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed practical nurse, a licensed professional counselor, licensed marriage and family counselor, or a licensed. substance abuse counselor, and employed by a local mental health authority or contracted by a local mental health authority.

(2) A certified case manager must meet the following minimum standards:

(a) be an individual who is not a licensed mental health professional, who is supervised by one of the qualified providers listed in Subsection R523-1-23(1)(b);

(b) be at least 18 years of age;

(c) have at least a high school degree or a GED;

(d) have at least two years experience in the support of individuals with mental illness or substance abuse;

(e) be employed by the local mental health authority or contracted by a local substance abuse authority;

(f) pass a Division exam which tests basic knowledge, ethics, attitudes and case management skills with a score of 70 percent or above; and

(g) completes an approved case management practicum.

(3) An individual applying to become a certified case manager may request a waiver of the minimum standards in Subsection R523-1-23(2) based on their prior experience and training. The individual shall submit the request in writing to the Division. The Division shall review the documentation and issues a written decision regarding the request for waiver.

(4) Applications and instructions to apply for certification to become a case manager can be obtained from the Division of Substance Abuse and Mental Health. Only complete applications supported by all necessary documents shall be considered.

(a) Individuals will be notified in writing of disposition and determination to grant or deny the application within 60 days of completion of case management requirements. The Division shall issue a certificate for three years.

(b) If the application is denied the individual may file a written appeal within 30 days to the Division Director.

(5) Each certified case manager is required to complete and document eight hours of continuing education (CEU) credits each calendar year related to mental health or substance abuse topics.

(a) A certified case manager shall submit CEU documentation to the Division when they apply for recertification.

(b) Documents to verify CEU credits include:

(i) a certificate of completion documenting continuing education validation furnished by the presenter:

(ii) a letter of certificate from the sponsoring agency verifying the name of the program, presenter, and number of hours attended and participants; or

(iii) an official grade transcript verifying completion of an undergraduate or graduate course(s) of study.

(6) Certified case managers shall submit the Request for

Re-certification and documentation of 24 hours of CEU's 30 days prior to the date of expiration on the initial certificate or re-certification. Failure to submit the Request for Re-certification will result in automatic revocation of the certificate.

(7) Certified case managers shall abide by the Rules of Professional Code of Conduct pursuant to Subsection R495-876(a), the Department of Human Services Provider Code of Conduct Policy.

(a) Each employer shall notify the Division within 30 days, if a certified case manager engages in unprofessional or unlawful conduct.

(b) The Division shall revoke, refuse to certify or renew a certification to an individual who is substantiated to have engaged in unprofessional or unlawful conduct.

(c) An individual who has been served a Notice of Agency Action that the certification has been revoked or will not be renewed may request a Request for Review to the Division Director or designee within 30 days of receipt of notice.

(d) The Division Director or designee will review the findings of the Notice of Agency Action and shall determine to uphold, amend or revise the action of denial or revocation of the certification.

(8) If a certified case manager fails to complete the requirements for CEU's, their certificate will be revoked or allowed to expire and will not be renewed.

(9) If an individual fails the Division examination they must wait 30 days before taking the examination again. The individual may only attempt to pass the examination two times with a twelve-month period.

(10) The case managers certification must be posted and available upon request.

KEY: bed allocations, due process, prohibited items and devices, fees

May 14, 2007 **17-43-302**

Notice of Continuation December 11, 2002 **62A-12-102**
62A-12-104
62A-12-209.6(2)
62A-12-283.1(3)(a)(i)
62A-12-283.1(3)(a)(ii)
62A-15-103
62A-15-105(5)
62A-15-603
62A-15-612(2)

R539. Human Services, Services for People with Disabilities.
R539-5. Self-Administered Services.
R539-5-1. Purpose.

(1) The purpose of this rule is to establish procedures and standards for Persons and their families receiving Self-Administered Services.

R539-5-2. Authority.

(1) This rule establishes procedures and standards for Self-Administered Services as required by Subsection 62A-5-103(8).

R539-5-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-2.

(2) In addition:

(a) "Employee" means any individual hired to provide services to a Person receiving Self-Administered Services.

(b) "Fiscal Agent" means an individual or entity contracted by the Division to perform fiscal, legal, and management duties.

(c) "Grant" means a budget allocated by the Division to the Person through which Self-Administered Services are purchased.

(d) "Grant Agreement" means a written agreement between the Person and the Division that outlines requirements the Person must follow while receiving Self-Administered Services.

(e) "Self-Administered Services" means a structure for a Person or Representative to administer Division paid services. This program allows the Person to hire, train, and supervise employees who will provide direct services from selected services as outlined in the current State of Utah Home and Community Based Services Waivers (Medicaid 1915C). Once the Person is allocated a budget, a Grant is issued for the purpose of purchasing specific services. Grant funds are only disbursed to pay for actual services rendered. All payments are made through a Fiscal Agent under contract with the Division. Payments are not issued to the Person, but to and in the name of the Employee.

R539-5-4. Participant Requirements.

(1) In addition to Division Rule, a Person receiving Self-Administered Services must adhere to the terms of their Grant Agreement.

(2) If the Person does not meet the requirements in Rule and the Grant Agreement, the Division may require the Person to use a contracted Provider.

(3) The Person shall ensure that each Employee completes the requirements outlined in R539-5-5.

(4) The Person shall provide the Fiscal Agent with the following documents for each Employee hired to provide services:

(a) Original Form W-4;

(b) Original Form I-9 (including supporting documentation);

(c) Copy of the signed Employment Agreement; and

(d) Original signed Timesheets, verifying the time worked is true and accurate.

(5) The Person or Representative shall complete a Monthly Summary of services for each month in which services are rendered and submit it to the Support Coordinator by the 15th of the month following the month of services.

(a) If the Person does not provide this information to the Division for a three month period, the fourth month's payment shall be withheld until the monthly summaries are submitted.

(b) If the Person submits all required monthly summaries within the fourth month, payment will be reinstated.

(c) If monthly summaries are not provided for the fifth month, then at the sixth month, the Division will require the Person to use a contracted Provider and not participate in Self-Administered Services.

(6) The Division may require the Person to use some form of technical assistance, if needed (i.e. Behaviorist, Accountant, Division Supervisor, etc.). Technical assistance is available to the Person, even if not required by the Division.

(7) The Person's Representative shall notify the Support Coordinator if any of the following occurs:

(a) If the Person moves;

(b) If the Person is in the hospital or nursing home; or

(c) Death of the Person.

R539-5-5. Employee Requirements.

(1) All Employees hired by the Person must be 16 years of age or older. Employees under age 18 must have the Employee Agreement co-signed by their parent/Guardian.

(2) Parents, Guardians, or step-parents shall not be paid to provide services to the Person, nor shall an individual be paid to provide services to a spouse with the exception that spouses who were approved by the Division to provide reimbursed support for a Person in a non-Medicaid funded program prior to May 17, 2005 may continue to be reimbursed. This exception is only valid for support of the current spouse receiving Division services and shall not be allowed by the Division in the event that the spouses divorce or if one spouse dies. A spouse who is approved by the Division to provide support under this provision is limited to a maximum of $15,000 during the State Fiscal year, which begins on July 1st and ends the following year on June 30th.

(3) Employees must complete the following prior to working with the Person and receiving payment from the Fiscal Agent:

(a) Complete and sign Form W-4;

(b) Complete and sign Form I-9 (including supporting documentation);

(c) Complete and sign the Employee Agreement Form;

(d) Read and sign the Department and Division Code of Conduct (Department Policy 05-03 and Division Directive 1.20); and

(e) Review the approved and prohibited Behavior Supports as identified in R539-3-10, the Support Book, and other best practice sources recommended by the Division, if applicable. Behavior Supports shall not violate R495-876, R512-202, UCA 62A-3-301 thru 62A-3-321, and 62A-4a-402 thru 62A-4-412 prohibiting abuse.

(f) Review the Person's Support Book.

(g) Complete any screenings and trainings necessary to provide for the health and safety of the Person (i.e., training for any specialized medical needs of the Person).

(h) If applicable, be trained on the Person's Behavior Support Plan.

(i) Complete and sign the Application for Certification Form.

R539-5-6. Incident Reports.

(1) The Person or Representative shall notify the Division by phone, email, or fax of any reportable incident that occurs while the Person is in the care of an Employee, within 24 hours of the occurrence.

(2) Within five business days of the occurrence of an incident, the Person or Representative shall complete a Form 1-8, Incident Report, and file it with the Division.

(3) The following incidents require the filing of a report:

(a) Actual and suspected incidents of abuse, neglect, exploitation, or maltreatment per the DHS/DSPD Code of Conduct and Utah Code Annotated Sections 62-A-3-301 through 321 for adults and Utah Code Annotated Sections 62-4a-401 through 412 for children;

(b) Drug or alcohol abuse;

(c) Medication overdoses or errors reasonably requiring medical intervention;

(d) Missing Person;
(e) Evidence of seizure in a Person with no seizure diagnosis;
(f) Significant property destruction (Damage totaling $500.00 or more is considered significant);
(g) Physical injury reasonably requiring a medical intervention;
(h) Law enforcement involvement;
(i) Use of mechanical restraints, time-out rooms or highly noxious stimuli that is not outlined in the Behavior Support Plan, as defined in R539-4; or
(j) Any other instances the Person or Representative determines should be reported.
(4) After receiving an incident report, the Support Coordinator shall review the report and determine if further review is warranted.

R539-5-7. Service Delivery Methods.
(1) Persons authorized to receive Self-Administered Services may also receive services through a Provider Agency in order to obtain the array of services that best meet the Person's needs.

KEY: disabilities, self administered services
May 11, 2007 **62A-5-102**
62A-5-103

R547. Human Services, Juvenile Justice Services.
R547-1. Residential and Nonresidential, Nonsecure Community Program Standards.
R547-1-1. Waiver Statement.

01. A residential or nonresidential alternative program shall comply with all (relevant) requirements unless a waiver for specific requirement(s) has been granted by the designated certifying officer of Juvenile Justice Services with specific approval of the Director of the Division. The certifying officer shall specify the particular requirement(s) to be waived, the duration of the waiver, and the terms under which the waiver is granted.

02. The Division will submit to the Board of Juvenile Justice Services at least annually a listing with expiration dates of programs receiving waivers.

A. Waiver of specific requirements shall be granted only when the specific program or facility has documented that the intent of the specific requirement(s) to be waived will be satisfactorily achieved in a manner other than that prescribed by the requirement(s).

B. The waiver shall contain provisions for a regular review of the waiver.

C. When a program fails to comply with the waiver specifications, the waiver shall be subject to immediate cancellation.

01. Administration A residential or nonresidential alternative program contracting with the Division of Juvenile Justice Services, shall not accept a youth in custody without the formal approval of the Division.

02. A residential or nonresidential alternative program shall allow Juvenile Justice Services to inspect all aspects of the program's functioning which impact on youth and to interview any staff member of the program or any youth in care of the program.

03. The residential or nonresidential alternative program shall make any information which the facility is required to have under these requirements and any information reasonably related to assessment of compliance with these requirements available to the Division of Juvenile Justice Services.

04. A residential or nonresidential alternative program shall assemble and make available upon request to Juvenile Justice Services the following information and documents:

A. Governing structure, including the charter, articles of incorporation;

B. By-laws or other legal basis for its existence;

C. Organizational structure of facility or program staff;

D. Job description of facility or program staff;

E. Names and positions of persons authorized to sign agreements, contracts and submit official documentation to Juvenile Justice Services;

F. Board structure and composition, with names and addresses and terms of memberships;

G. Existing purchase of service agreements;

H. Insurance coverage, required by contract;

I. Letters of compliance with existing sanitation, health and fire codes and reports of inspection and action taken;

J. Procedure for notifying interested parties of changes in the facility's policy and programs;

K. A master list of all social services providers which the facility uses; and

L. Financial and program audits and reviews.

05. A residential or nonresidential alternative program accepting any youth who resides in another state shall comply with the terms of the Interstate Compact on Juveniles, Section 55-12-1, and the Interstate Compact on the Placement of Children, Section 62A-4a-701.

06. A residential or nonresidential alternative program shall have a representative present at all judicial, educational or administrative hearings which address the status of a youth in care of the program, if notified by the division or the court.

07. A residential or nonresidential alternative program shall ensure that all entries in records are legible. All entries shall be signed, or initialed, by the person making the entry. All entries shall be accompanied by the date on which the entry was made.

08. A residential or nonresidential alternative program shall have a governing body which is responsible for and has authority over the policies and activities of the program.

09. The governing board shall have a set of by-laws or a constitution which describes its duties, responsibilities and authority. As a minimum, the agency by-laws include for the governing authority:

A. Memberships (types, qualifications, community representation, rights, duties) with one member not being an employee or officer but from the outside community;

B. Size of the governing body;

C. Method of selection;

D. Terms of office;

E. Duties and responsibilities of officers;

F. Times authority will meet;

G. Committees;

H. Quorums;

I. Parliamentary procedures;

J. Recording of minutes;

K. Method of amending the by-laws;

L. Conflict of interest provisions; and

M. Specification of the relationship of the chief executive to the governing body.

10. The governing authority of the agency shall hold meetings as prescribed in the by-laws.

11. The governing body of the program shall be responsible for ensuring the program's continual compliance and conformity with the provisions of the program's charter.

12. The governing body of a residential or nonresidential alternative program shall be responsible for ensuring the program's continual compliance and conformity with the terms of all leases, contracts or other legal agreements to which the program is a party.

13. The governing body of a residential or nonresidential alternative program shall be responsible for ensuring the program's continual compliance and conformity with all relevant laws and/or regulations, whether federal, state, local or municipal, governing the operations of the program.

14. The governing body of the program will abide by and show evidence of meeting the Civil Rights Act of 1964, Title 504, and Americans with Disabilities Act of 1990, 42 U. S. C. 12101.

15. The governing body of a residential or nonresidential alternative program shall designate a person to act as chief administrative officer of the program to whom all staff shall be responsible and shall delegate sufficient authority to such person as to implement policy and procedure and to manage the affairs of the program effectively.

16. The governing body of the residential or nonresidential alternative program shall regularly evaluate the performance of the chief administrative officer to ensure that this officer's conduct of the program's business conforms with the program's charter, all relevant laws and regulations, and policies defined by the governing body.

17. The governing body of the residential or nonresidential alternative program shall ensure that the program is housed, maintained, staffed, and equipped in such a manner as to implement the program effectively.

18. The governing body of the residential or nonresidential alternative program shall, in consultation with the chief administrative officer, formulate and periodically review and update written policies and procedures concerning:

A. The program policies, goals and current services;

B. Personnel practices and job descriptions;

C. Organizational chart which reflects the structure of authority, responsibility and accountability;

D. Fiscal management; and

E. This written administrative manual must be available to all staff as well as the general public and residents, if requested, unless protected trade secrets would be revealed.

19. The governing body of the residential or nonresidential alternative program shall ensure that the program has written policies and procedures to carry out ongoing internal evaluation of the services it offers and compiles a written report of such evaluation annually.

20. The governing body of the program shall have access to and use an organized system of information collection, retrieval and review. The agency shall participate in the establishment of information needs and establish guidelines regarding the security of all information about participants.

21. The governing body, in concert with the program administrator, shall use the findings of evaluation studies in decision-making and policy development.

22. The program director or designee of the residential or nonresidential alternative program shall consult with Juvenile Justice Services prior to making any substantial alteration in the program provided by the facility and shall meet with representatives of Juvenile Justice Services whenever required to do so.

23. The program director or designee cooperates with Juvenile Justice Services in evaluation of its operations in terms of written goals and objectives, program effectiveness, cost benefit analysis and statistical analysis of program data.

24. No employee or member of the immediate family of an employee of Juvenile Justice Services shall be a member of the governing body of the program.

25. The residential or nonresidential alternative program shall have written minutes of all meetings of the governing body of the program.

26. A publicly operated residential or nonresidential alternative program shall have an advisory board which includes representatives of the community in which the program is located and representatives of the parents of the type of youth served.

27. The members of the Advisory Board of a publicly operated residential or nonresidential alternative program shall be appointed for specific terms of office by the director of the agency operating the program.

28. The Advisory Board of the publicly-operated residential or nonresidential facility shall advise and assist the Administrative Officer.

A. The Advisory Board shall have a set of by-laws which describe its duties, responsibilities and authority.

B. The Advisory Board shall keep itself informed as to the operational policies and practices of the regional facility. The Advisory Board has the right and responsibility to consider all aspects of that facility's operations, and to make recommendations to the Administrative Officer. The Advisory Board shall make at least:

(1) Semi-annual visits to the residential or nonresidential alternative program.

(2) The Advisory Board shall at least annually provide the Administrative Officer with a report on the program. This report shall make recommendations for improving services provided by the program. The report shall be available to the public.

29. The Advisory Board of the publicly operated residential or nonresidential alternative program shall inform the Director in writing of any event or circumstance which the majority of the Advisory Board believes warrants correction.

30. In the event of serious unresolved disagreement between the Administrative Officer and the Advisory Board, the Advisory Board shall report to the Board of Juvenile Justice Services outlining the nature of the disagreement.

31. A residential or nonresidential alternative program shall have documents which identify the statutory basis for the existence of the program and the nature of the authorization of the program under existing laws.

A. A publicly-operated residential or nonresidential alternative program shall have documents which identify the statutory basis of its existence and the administrative framework of government within which it operates.

B. A privately-operated residential or nonresidential alternative program shall have documents which fully identify its ownership. A corporation, partnership, individual ownership, or association shall identify its officers and shall have, where applicable, the charter, partnership agreement, constitution; articles of association; and/or by-laws of the corporation, partnership, individual ownership, or association.

32. The privately-operated residential or nonresidential alternative program shall identify, document and publicize its tax status with the Internal Revenue Service.

33. The privately-operated residential or nonresidential alternative program shall have by-laws, approved by the governing authority, which are filed with the appropriate local, state, and/or federal body.

34. The Chief Executive Officer of a residential or nonresidential alternative program or a person designated by that officer and authorized to act, as necessary, in place of that officer shall be readily assessable to the staff of the program and/or the authorized representatives of Juvenile Justice Services.

35. A residential or nonresidential alternative program shall have a written statement specifying its philosophy, purposes, and program orientation and describing both short and long-term aims. The statement should identify the types of services provided and the characteristics of the youth to be served by the program. The statement of purpose shall be available to the public.

36. A residential or nonresidential alternative program shall have a written program plan which describes the services provided by the facility. The statement shall include a description of the facility's plan for the provision of services as well as the assessment and evaluation procedures used in treatment planning and delivery. The plan shall make clear which services are provided directly by the facility and which will be provided in cooperation with community resources. If the facility administers several programs at different geographical sites, appropriate resources shall be identified for each site. The program description shall be available to the public on request with protected trade secrets deleted.

R547-1-3. Fiscal Management.

01. The residential or nonresidential alternative program shall demonstrate that it is financially sound and manages its financial affairs prudently. All funds disbursed by the facility shall be expended in accordance with the program objectives as specified by the governing body and contractual agreements.

02. The program shall have a system of accountability which shall state funds allocated for each program function, funds spent for each, and specific cost of each service provided.

03. The program shall prepare an annual written budget of anticipated revenues and expenditures which is approved by the appropriate governing authority and included as part of the written contract.

04. The program director shall participate in budget reviews conducted by the governing board or parent governmental agency.

05. The program director shall present a budget request which is adequate to support the programs of the agency.

06. The agency shall have written policies which govern

revisions in the budget.

07. A residential or nonresidential alternative program shall demonstrate fiscal accountability through regular recording of all income, expenditures and the submission of an annual independent audit.

08. The program shall prepare and distribute to its governing authority and appropriate agencies and individuals the following documents, at a minimum: income and expenditure statements, funding source financial reports, and independent audit reports.

09. The program shall have written fiscal policies and procedures adopted by the governing authority which include, at a minimum: internal controls, petty cash, bonding, signature control on checks, resident funds, and employee expense reimbursement.

10. The program shall have a written policy for inventory control of all property and assets.

11. The program shall have a written policy for purchasing and requisitioning supplies and equipment.

12. The program shall use a method which documents and authorizes wage payment to employees and consultants. Amount paid is authorized by administrative officer; salary for administrative officer is set and approved by Board of Directors and reviewed annually.

13. A residential or nonresidential alternative program shall not permit public funds to be paid or committed to be paid to any corporation, firm, association, business or State agency or representative in which any members of the governing body of the program, the executive personnel of the program, or the members of the immediate families of members of the governing body or executive personnel have any direct or indirect financial interest, or in which one of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost and under terms favorable to the program. The program shall have a written disclosure of any financial transaction with the program in which a member of the Board or his/her immediate family is involved.

14. The program shall have a written policy to guard against conflicts of interest which adversely affect the program; this policy shall specifically state that no person connected with the program will use his or her official position to secure privileges or advantages for himself or herself.

15. The program shall have a written policy which ensures that it conforms to governmental statutes and regulations relating to campaigning, lobbying, and political practices.

16. A residential or nonresidential alternative program shall ensure that all purchase of service agreements involving professional services to youth in care are in writing and available to Juvenile Justice Services. The program shall abide by all State and Federal regulations and laws related to the governing of contracting bodies. Purchase of service agreements shall contain all terms and conditions required to define the clients to be served, the services to be provided, program budget, the procedures for payment, the payment plan, and terms of agreement.

17. A residential or nonresidential alternative program shall have copies of all leases into which the program has entered. These leases shall include the location of all property involved, the monthly or annual rent, the ownership of the property, the usable square footage and the terms of the lease.

18. If a member of the governing body of a residential or nonresidential alternative program, any staff member of the program or any member of the immediate family of either staff member or member of the governing body of the program, has any financial interest in any property rented by the program, the program shall have a report detailing the nature and extent of the financial interest and identifying the party or parties having the interest.

19. A residential facility or nonresidential alternative program which accepts payment of public funds, directly or indirectly, shall maintain adequate bonding. All persons delegated the authority to sign checks or manage funds shall be bonded at the program's expense.

20. A residential or nonresidential alternative program shall carry adequate insurance covering fire and liability as protection for youth in care and other insurance coverage as required by Juvenile Justice Services, and other federal, state and local statutes and regulations for contracts. In addition, the program shall have insurance which covers liability to third parties or youth in care arising through the use of any vehicle, whether owned or not owned by the program, used by any of the program's staff or agents on the program's business.

21. Provision should be made for indemnifying, bonding and insuring board members, trustees, officers, and employees of the residential or nonresidential alternative program against liability incurred while acting properly in behalf of the agency.

22. The insurance program of the program should be examined annually to assure adequate coverage.

23. A residential and nonresidential alternative program shall obtain the written informed consent of a youth, Juvenile Justice Services Case Manager, and the youth's parent(s) or guardian prior to involving the youth in any activity related to fund raising and/or publicity for the program.

24. A residential and nonresidential alternative program shall have written policies and procedures regarding the photographing and audio or audio-visual recording of youth in care.

25. The written consent of a youth and the youth's parent(s) or guardian shall be obtained before the youth is photographed or recorded for program publicity purposes.

26. All photographs and recordings shall be used in a manner which respects the dignity and confidentiality of the youth.

R547-1-4. Personnel/Volunteers.

01. A residential or nonresidential alternative program shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to carry out the responsibilities it undertakes and to adequately perform the following functions:

A. Administrative functions;

B. Fiscal functions;

C. Clerical functions;

D. Housekeeping, maintenance and food services functions (if residential);

E. Direct youth service functions;

F. Supervisory functions;

G. Record keeping and reporting functions;

H. Social service functions; and

I. Ancillary service functions.

02. A residential or nonresidential alternative program shall ensure that all staff members are properly certified and/or licensed as legally required.

03. Each program as applicable will have or contract for a director of clinical services who shall be properly certified or licensed and who shall be responsible for approval of all treatment or service plans.

04. A residential or nonresidential alternative program employing any person who does not possess usual qualifications for the position in which he/she is employed shall have a written statement justifying reasons for employing this person.

05. A residential or nonresidential alternative program shall have a description of all staff assignments. This description shall provide complete information on roles, functions, lines of authority, lines of responsibility and lines of communication. This description shall be provided to all staff members as part of the orientation procedure and, on request, to Juvenile Justice Services.

06. A residential or nonresidential alternative program

shall have a written description of personnel policies and procedures. This description shall be provided to all staff members.

07. The agency personnel policies include, at a minimum:

A. Organization chart;

B. Employment practices and procedures, including in-service training and staff development;

C. A code of conduct for all staff that defines acceptable and nonacceptable conduct both on and off duty;

D. Job qualifications and job descriptions;

E. Grievance and appeal procedures;

F. Employee evaluation;

G. Promotion;

H. Personnel records;

I. Benefits;

J. Holidays;

K. Leave;

L. Hours of work;

M. Salaries (or the base for determining salaries);

N. Disciplinary procedures;

O. Termination; and

P. Resignation.

08. The residential or nonresidential alternative program shall have a written policy which outlines experience and education substitutes if the agency permits such substitutions.

09. A residential or nonresidential alternative program shall actively recruit, and, when possible, employ, qualified personnel broadly representative of the racial and ethnic groups it services.

10. The program shall have a policy which does not deliberately exclude employment of ex-offenders but requires a criminal background check be conducted, by the division, prior to hiring.

11. A residential or nonresidential alternative program shall not hire, or continue to employ, any person whose health, educational achievement, emotional or psychological make-up impairs his/her ability to properly protect the health and safety of the youth or is such that it would endanger the physical or psychological well being of the youth.

12. The residential or nonresidential alternative program shall require written personal and prior work references or written telephone notes on such references prior to hiring and criminal background checks conducted by the Division consistent with its policy.

13. All program participants employed outside the program either full or part-time shall comply with all legal and regulatory requirements.

14. A residential or nonresidential alternative program shall have a written grievance procedure for employees which has been approved by Juvenile Justice Services.

15. A residential or nonresidential alternative program shall ensure that youth care staff have regularly scheduled hours of work. Work schedules shall be provided at least a week in advance.

16. A residential or nonresidential alternative program shall establish a written procedure, in accordance with applicable laws, regarding the discipline, suspension, lay-off or dismissal of its employees.

17. The program does not discriminate or exclude from employment women working in boys' programs or men working in girls' programs.

18. The residential or nonresidential alternative program shall have a personnel file for each employee which shall contain:

A. The application for employment and/or resume;

B. Reference letters from former employer(s) and personal references or phone notes on such references;

C. Any required medical examinations;

D. Applicable professional credentials/certification;

E. Periodic performance evaluations;

F. Personnel actions, other appropriate material, incident reports and notes, commendations relating to the individual's employment with the facility;

G. Wage and salary information; and

H. Employee's starting and termination dates.

19. The staff member shall have access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

20. A written procedure shall exist whereby the employee can challenge information in his or her personnel file and have it corrected or removed if it proves to be inaccurate.

21. Written policy and procedure shall ensure the confidentiality of the personnel record by restricting its availability only to the employee who is the subject of the record, Juvenile Justice Services and other agency employees who have a need for the record in the performance of their duties.

22. Records shall be kept locked to insure confidentiality. A residential or nonresidential alternative program shall not release a personnel file without the employee's permission except under court order or to an authorized representative of Juvenile Justice Services.

23. A residential or nonresidential alternative program shall maintain the personnel file of an employee who has been terminated for a period of five years.

24. A residential or nonresidential alternative program shall have a comprehensive written staff plan for the orientation, on-going training, development, supervision and evaluation of all staff members.

25. A residential or nonresidential alternative program shall ensure that each direct service staff member receives at least 40 hours of training activities during each full year of employment. Activities related to supervision of the staff member's routine tasks shall not be considered training activities for the purposes of this requirement.

26. A residential or nonresidential alternative program shall document that direct service staff members receive appropriate training in the following areas:

A. The facility's emergency and safety procedures on semi-annual basis;

B. The principles and practices of child care;

C. The facility's administrative procedures and overall program goals;

D. Acceptable behavior management techniques;

E. Crisis management;

F. First aid and CPR training; and

G. Passive physical restraint.

27. A residential or nonresidential alternative program shall have an introductory training and orientation to emergency and safety procedures, material in agency policy and procedures manual, and the responsibility of the staff member's job. This orientation should be prior to staff member assuming job responsibilities.

28. Inexperienced direct service staff shall be accompanied by experienced workers on initial tours of duty until such time as these staff are able to safeguard the health and safety of youth in care effectively.

29. A residential or nonresidential alternative program shall ensure that a minimum of one evaluation/planning conference per year for each staff is held, documented and signed by the staff person and his/her immediate supervisor. There must be an opportunity for the employee to express agreement or disagreement with the evaluation in writing. The staff person shall be given a copy of the evaluation.

30. Within the probationary period after employment, each new direct service or administrative employee shall have his/her first evaluation/planning conference with his/her supervisor for the purpose of evaluating performance and developing an

individual training plan.

31. The supervisor and the employee shall review strengths and weaknesses, set time-limited performance goals, devise training objectives to help meet the goal and establish a strategy that will allow achievement of these goals and objectives.

32. The program staff shall maintain membership and participate in professional associations and activities on the local and national levels, where appropriate.

33. A residential or nonresidential alternative program shall employ a staff of direct service workers sufficiently large and sufficiently qualified to implement the individual service plan of each youth in care with a minimum staffing ratio of 1 to 12 or as agreed upon by contract.

34. A residential or nonresidential alternative program shall have adequate staff coverage at all times as appropriate considering the time of day and the size and nature of the program.

35. The staff pattern of the facility shall concentrate staff when most participants are available to use facility resources.

36. There shall be at least one staff person who is readily available and responsive to resident needs on group home premises twenty-four hours a day in residential programs.

37. A residential or nonresidential alternative program shall establish procedures to assure adequate communications among staff to provide continuity of services to youth. This system of communication shall include:

A. A regular review of individual and aggregate problems of residents or clients including actions taken to resolve these procedures;

B. Sharing of daily information noting unusual circumstances and other information requiring continued action by staff;

C. Written reports maintained of all accidents, personal injuries and pertinent incidents related to implementation of youth's individual service plans, including notification to parents and Youth Correction worker.

38. Any employee of a residential or nonresidential alternative program working directly with youth in care shall have access to information from the youth's case records that is necessary for effective performance of the employee's assigned tasks.

39. A residential or nonresidential alternative program shall establish procedures which facilitate participation and feedback by staff members in policy-making planning and program development.

40. A residential or nonresidential alternative program shall obtain a professional service required for the implementation of the individual service plan of a youth that is not available from employees of the program.

41. The program shall ensure that a professional providing a direct service to a youth in care communicates with program staff as appropriate to the nature of the service.

42. A residential or nonresidential alternative program shall have documentary evidence that all professionals providing services to the program, whether working directly with youth in care or providing consultation to employees of the program, are appropriately qualified, certified and/or licensed as appropriate to the nature of the service.

43. A residential or nonresidential alternative program which utilizes volunteers on a regular basis, or utilizes volunteers to work directly with a particular youth or group of youth for an extended period of time, shall have a written plan for using such volunteers. This plan shall be given to all such volunteers. The plan shall indicate that all such volunteers shall:

A. Be directly supervised by a paid staff member;

B. Be oriented and trained in the philosophy of the program, and the needs of youth in care, and methods of meeting those needs; (There should be documentation of completion of orientation.)

C. Be subject to character and reference checks similar to those performed for employment applicants;

D. Be aware of any staff who have input into the service plans for youth they are working with directly and be briefed on any special needs or problems of these youth.

44. Volunteers shall be recruited from all cultural and socio-economic segments of the community.

45. The community residential or nonresidential program shall designate a staff member who serves as supervisor of volunteer services for residents.

46. The program shall have a written policy specifying that volunteers perform professional services only when certified or licensed to do so.

47. Written policy and procedure shall provide that the program director curtails, postpones or discontinues the services of a volunteer or volunteer organization when there are substantial reasons for doing so.

48. The program administration shall provide against liability or tort claims in the form of insurance, signed waivers or other legal provisions, valid in the jurisdiction in which the program is located.

49. A residential or nonresidential alternative program which accepts students for field placement shall have a written policy on student placements. Copies shall be provided to each student and his/her school. The policy shall include:

A. Statement of the purpose of a student's involvement with the program and the student's role and responsibility; and

B. A description of required qualifications for students, orientation and training procedures and supervision provided while the student is placed at the program.

50. A residential or nonresidential alternative program shall ensure that students meet all of the criteria established by the program for student placement service.

51. A residential or nonresidential alternative program shall ensure that students are supervised directly by an appropriate paid staff member who will act as a liaison between the program and the school making placements unless other appropriate arrangements are made.

52. Where paraprofessionals are employed, the program shall have written policies and procedures for their recruitment and established career lines for their advancement in the organization. There are written guidelines for staff regarding the supervision of paraprofessional personnel.

R547-1-5. Admission Policies and Procedures.

01. A residential or nonresidential alternative program shall have a written description of admissions policies and criteria which shall include the following information:

A. Policies and procedures related to intake;

B. The age and sex of youth in care;

C. The needs, problems, situations or patterns best addressed by the program;

D. Any other criteria for admission;

E. Criteria for discharge; and

F. Any preplacement requirements of the youth, the parent(s) or guardian and/or the placing agency.

02. The written description of admissions policies and criteria shall be provided to all placing agencies and shall be available to the parent(s) of any youth referred for placement.

03. A residential or nonresidential alternative program shall not refuse admission to any youth on the grounds of race or ethnic origin.

04. A residential or nonresidential alternative program shall not admit more youth into care than the number specified in the certification.

05. A residential or nonresidential alternative program shall not accept any youth for placement whose needs cannot be adequately met by the program.

06. When refusing admission to a youth, a program shall

provide a written statement of the reason for refusal of admission to the referring agency.

07. A residential or nonresidential alternative program shall ensure that the youth, his or her parent(s) or guardian, the placing agency and others, as appropriate, are provided reasonable opportunity to participate in the admission process and decisions and that due consideration is given to their concerns and feelings regarding the placement. Where such involvement of the youth's parent(s) or guardian is not possible, or not desirable, the reasons for their exclusion shall be recorded in the admission study.

08. A residential or nonresidential alternative program shall make its admission process as short in duration as possible.

09. The program shall, when applicable, have policies and procedures governing self-admission. Such policies and procedures shall include procedures for notification of parent(s) or guardian.

10. A residential or nonresidential sole contract program shall not consider a youth for care except that the youth is referred by the Juvenile Justice Services screening team, Youth Parole Authority or the juvenile court judges.

11. A residential or nonresidential program shall accept a youth into care only when a current comprehensive intake evaluation including social, health and family history, and if appropriate, psychological and developmental assessment has been completed, unless the admission is an emergency. This evaluation shall contain evidence that a determination has been made that the child cannot be maintained in a less restrictive (structured or highly supervised) environment within the community.

12. A residential or nonresidential alternative program shall, consistent with the youth's maturity and ability to understand, make clear its expectations and requirements for behavior, and provide the youth referred for placement with an explanation of the program's criteria for successful participation in and completion of the program.

13. A residential or nonresidential program shall ensure that a written placement agreement is completed. A copy of the placement agreement signed by all parties involved in its formulation shall be kept in the youth's case record and a copy shall be provided to each of the signing parties. The signing parties shall include: the placing agency, the residential or nonresidential program, the youth and the parent(s) or guardian.

14. The placement agreement shall include by reference or attachment at least the following:

A. The youth's and the parent(s) or guardian's expectations regarding family contact and involvement; the nature and goals of care; the religious orientations and practices of the youth; and anticipated discharge date and plan;

B. A delineation of the respective roles and responsibilities of all agencies and persons involved with the youth and his/her family;

C. Authorization to care for the youth;

D. Authorization to obtain medical care for the youth;

E. Arrangements regarding family visits, vacation, mail, gifts, and telephone calls;

F. Arrangements as to the nature of agreed upon reports and meetings involving the parent(s) or guardian and referral agency; and

G. Provision for notification of parent(s) or guardian and/or the placing agency in the event of unauthorized absences, medical or dental problems and any significant events regarding the youth.

15. A residential facility shall not admit a youth on emergency placement if the presence of the youth to be admitted will be damaging to the on-going functioning of the group and/or the youth already in care.

16. Each youth in care of a residential or nonresidential program shall be assigned a staff person who carries out the function of a prime worker in the program.

17. A residential or nonresidential program shall ensure that each youth, upon placement, shall be asked if she/he has any physical complaints. If yes, appropriate treatment shall be provided, the results including any treatment provided shall be documented and kept in the youth's record.

18. A residential program shall assign a staff member, preferably the youth's prime worker, to orient the youth and his/her parent(s) or guardian, if they are available, to life at the facility.

R547-1-6. Service Planning and Child Management.

01. A residential or nonresidential program shall have a written description of the methods of child management to be used at a program wide level. This description shall include:

A. Definition of appropriate and inappropriate behaviors;

B. Acceptable staff responses to inappropriate behaviors; and

C. The description shall be provided to all program staff.

02. There shall be a clear written list of rules and regulations governing conduct for youth in care of a residential program. These rules and regulations shall be posted in the facility and made available to each staff member, each youth in care, his/her parent(s) or guardian and placing agencies, as appropriate. Each participant should read, sign and date these rules.

03. Where a language or literacy problem exists which can lead to participant misunderstanding of agency rules and regulations, assistance shall be provided to the participant either by staff or by another qualified individual under the supervision of a staff member.

04. In co-educational programs, male and female participants shall have equal access to all agency programs and activities.

05. A residential or nonresidential alternative program shall have a written overall and treatment plan. Any significant change in this plan shall be submitted to Juvenile Justice Services and/or other involved agencies for review prior to implementation. The written plan shall include the following:

A. The name, position and qualifications of the person who has overall responsibility for the treatment program;

B. Staff responsibility for planning and implementation of the treatment procedures and techniques;

C. Staff competencies and qualifications;

D. The anticipated range and/or types of behavior or conditions for which such procedures and techniques are to be used;

E. The range of procedures and techniques to be used;

F. Restrictions on the use of stimuli that present significant risk of psychological or physical damage;

G. Assessment procedures for ensuring the appropriateness of the treatment for each youth;

H. Policies and procedures on involving and obtaining consent from the youth and parent(s) or guardian;

I. Requirements, where appropriate, for medical examination of a youth prior to implementation of the treatment on a regular basis;

J. Provisions for on-going monitoring and recording;

K. Provisions for regular and thorough review and analysis of the treatment data, the individualized treatment strategies and the overall treatment orientation;

L. Provisions for making appropriate adjustments in the treatment strategies and orientation; and

M. Policies and procedures encouraging termination of the treatment procedures at the earliest opportunity in the event of achievement of goals, or when the procedures are proving to be ineffective or detrimental for a particular youth.

06. Participant progress shall be reviewed at least every two weeks, either through staff meetings or by individual staff;

the outcome of each review is documented.

07. If a participant remains in a program for six months, a written report shall be submitted by his/her counselor to the program director and the committing authority stating the justification for keeping the juvenile in the program.

08. Agreed upon progress reports shall be made available to the parent or legal guardian of each participant and to the referring agency.

09. A residential or nonresidential facility shall have a statement describing the manner in which youth are arranged into groups within the facility and demonstrating that this manner of arranging youth into groups effectively addresses the needs of youth in care.

10. Within 30 days of admitting a youth in care, a residential or nonresidential alternative program shall conduct a comprehensive assessment of the youth and, on the basis of this assessment, shall develop a written, time-limited, goal-oriented individual treatment plan for the youth.

11. The assessment shall be conducted by a planning team. This team shall include persons responsible for implementing the service plan on a daily basis. At least one member of the team shall have an advanced degree in psychology, psychiatry, child care work, social work or related field and experience in providing direct services to youth and be certified and licensed in that area or supervised by a certified worker.

12. The planning team shall assess the needs and strengths of the child in the following areas:

A. Health care;

B. Education;

C. Personal/social development;

D. Family relationships;

E. Vocational training;

F. Recreation; and

G. Life skills development.

13. All methods and procedures used in this assessment shall be appropriate considering the youth's age, cultural background and dominant language or mode of communication.

14. A residential or nonresidential alternative program shall provide an opportunity for the following persons to participate in the planning process:

A. The youth, unless contraindicated;

B. His/her parent(s) or guardian, unless contraindicated;

C. Representative(s) of the placing agency;

D. School personnel;

E. Other persons significant in the youth's life; and

F. When any of the above persons do not participate in the planning, the program shall have a written statement documenting its efforts to involve the person(s). When the involvement of parent(s) or guardian or youth is contraindicated, the reasons for the contradiction shall be documented.

15. Unless it is not feasible to do so, a residential or nonresidential program shall ensure that the treatment plan and any subsequent revisions are explained to the youth in care and his/her parent(s) or guardian in language understandable to these persons.

16. A residential or nonresidential alternative program shall ensure that the treatment plan for each child includes the following components:

A. The findings of the assessment;

B. A statement of goals to be achieved or worked towards with and for the youth and his/her family;

C. Strategies for fostering positive family relationships for the youth with his/her family or guardian or for developing a permanent home for the youth;

D. Specification of the daily activities, including education and recreation, to be pursued by the program staff and the youth in order to attempt to achieve the stated goals;

E. Specification of any specialized services that will be provided directly or arranged for, and measures for ensuring their proper integration with the youth's on-going program activities;

F. Specification of time-limited targets in relation to overall goals and specific objectives and the methods to be used for evaluating the youth's progress;

G. Goals and preliminary plans for discharge and aftercare; and

H. Identification of all persons responsible for implementing or coordinating implementation of the plan;

17. The completed treatment plan shall be signed by the chief administrator of the program or a person designated by the administrator; a representative of the child placing agency; the youth, if indicated, and the youth's parent(s) or guardian unless clearly not feasible.

18. A residential or nonresidential alternative program shall review each treatment plan at least every six months and shall evaluate the degree to which the goals have been achieved. The treatment plan shall be revised as appropriate to the needs of the youth.

19. A residential or nonresidential alternative program shall have written, comprehensive policies and procedures regarding discipline and control, which shall be explained to all youth, families, and staff and placing agencies. These policies shall include positive responses to appropriate behavior.

20. A residential facility shall prohibit all cruel and unusual punishments including the following:

A. Punishments including any type of physical hitting or any type of physical punishment inflicted in any manner upon the body;

B. Physical exercises such as running laps or any performing of push-ups, when used solely as a means of punishment, except in accordance with a youth's service plan when such activities are approved by a physician and carefully supervised by the facility administration;

C. Requiring or forcing the youth to take an uncomfortable position, such as squatting or bending, or requiring or forcing the youth to repeat physical movements when used solely as a means of punishment;

D. Group punishments for misbehaviors of individuals except in accordance with the program's written policy;

E. Punishment which subjects the youth to verbal abuse, ridicule or humiliation;

F. Excessive denial of on-going program services or denial of any essential program service solely for disciplinary purposes;

G. Withholding of any meal;

H. Denial of visiting or communication privileges with family solely as a means of punishment;

I. Denial of sufficient sleep;

J. Requiring the youth to remain silent for long periods of time;

K. Denial of shelter, clothing or bedding;

L. Extensive withholding of emotional response or stimulation;

M. Chemical, mechanical or excessive physical restraint;

N. Exclusion of the youth from entry to the residence; and

O. Assignment of unduly physically strenuous or harsh work.

21. Youth in care of a residential or nonresidential program shall not punish other residents except as part of an organized therapeutic self-government program that is conducted in accordance with written policy and is supervised directly by staff.

22. A residential or nonresidential program shall ensure that all direct service staff members are trained in crisis management and the appropriate use of passive physical restraint methods.

23. A residential or nonresidential program shall not use any form of restraint other than passive physical restraint

without prior approval of Juvenile Justice Services.

24. All cases of physical force or restraint shall be reported in writing, dated and signed by the staff person reporting the incident; the report shall be placed in the participant's case record and reviewed by supervisory and higher authority.

25. A program shall only use time-out (placement in locked or secure room) procedures when these procedures are in accordance with written policies of the facility. These policies shall include procedures for recording each incident involving the use of time-out. The facility policies shall outline other less restrictive responses to be used prior to using time-out.

26. Each use of time-out procedures shall be directly supervised by supervisory staff.

27. The program's chief administrative officer, or designee, approved in writing shall approve any use of time-out procedures exceeding 30 minutes in duration.

28. Written policy and procedure shall ensure that prior to room restriction the youth has the reasons for the restriction explained to him/her, and has an opportunity to explain the behavior leading to the restriction.

29. During room restriction staff contact shall be made with the youth at least every fifteen minutes to ensure the well-being of the youth; the youth assists in the determination of the end of the restriction period.

30. Written policy and procedure shall ensure that prior to privilege suspension the youth has the reasons for restriction explained to him/her, and has an opportunity to explain the behavior leading to the suspension.

31. Written policy and procedure shall ensure that prior to facility restriction for up to 48 hours the youth has the reasons for the restriction explained to him/her, and has an opportunity to explain the behavior leading to the restriction. Facility restriction may include lack of participation in any activities outside the facility except school, church, health and exercise needs.

32. All instances of room restriction, privilege suspension and facility restriction shall be logged, dated and signed by staff implementing the discipline procedure; the log is reviewed by supervisory staff at least daily.

33. In compliance with applicable laws, the program shall maintain and make public written policies and procedures for conducting searches of residents and all areas of the facility as standard operating procedure to control contraband and locate missing or stolen property.

34. A written plan shall allow staff in residential or nonresidential alternative programs to monitor movement into and out of the facility, under circumstances specified in the plan.

35. The program shall maintain a system of accounting for the whereabouts of its participants at all times.

36. The program shall have written procedures for the detection and reporting of absconders to agency having jurisdiction, Juvenile Justice Services, and parents.

37. The residential program shall use work assignments within the facility only insofar as they provide a constructive experience for youth and not as unpaid substitution for adult staff.

38. Work assignments shall be in accordance with the age and ability of the youth and shall be scheduled so as not to conflict with other scheduled activities.

39. A facility shall comply with all child labor laws and regulations in making work assignments.

40. The residential or nonresidential program shall ensure that any youth who is legally not attending school is either gainfully employed or enrolled in a training program geared to the acquisition of suitable employment or necessary life skills.

41. A residential or nonresidential program shall have a written plan for ensuring that a range of indoor and outdoor recreational and leisure opportunities are provided for youth in care. Such opportunities shall be based on both the individual interests and needs of the youth and the composition of the living group.

42. A program shall ensure appropriate staff involvement in recreational and leisure activities.

43. A residential or nonresidential program shall utilize the recreational resources of the community whenever appropriate. The program shall arrange the transportation and supervision required for maximum usage of community resources.

44. A residential or nonresidential program which has recreation staff shall ensure that such staff are apprised of and, when appropriate, involved in the development and review of service plans.

R547-1-7. Records.

A residential or nonresidential alternative program shall maintain a written record for each youth which shall include administrative, treatment and educational data from the time of admission until the time the youth leaves the facility. A youth's case record shall include at least the following, if available.

A. Initial intake information form which shall include the following:

(1) The name, sex, race, religion, birth date of the child;

(2) The name, address, telephone number and marital status of the parent(s) or guardian of the child;

(3) Date of admission and source of referral;

(4) When the child was not living with his/her parent(s) prior to admission the name, address, telephone number and relationship to the child of the person with whom the child was living;

(5) Date of discharge, reason for discharge, and the name, telephone number and address of the person or agency to whom the child was discharged;

(6) The child's court status, if applicable;

(7) All documents related to the referral of the child to the facility;

(8) Documentation of the current custody and guardianship and legal authority to accept child;

(9) A copy of the child's birth certificate or a written statement of the child's birth date including the source of this information;

(10) Consent forms signed by the parent(s) or guardian prior to placement allowing the facility to authorize all necessary medical care, routine tests, immunizations and emergency medical or surgical treatment;

(11) Program rules and disciplinary procedures signed by participant;

(12) Cumulative health records;

(13) Education records and reports;

(14) Employment records;

(15) Treatment or clinical records and reports;

(16) Evaluation and progress reports;

(17) Records of special or critical incidents; including notification of parent and Juvenile Justice Services worker in case of medical emergency or AWOL of child; and

(18) Individual service plans and related materials which include referrals to other agencies, process recordings, financial disbursements such as allowance, clothing, holidays.

R547-1-8. Communications.

01. A residential or nonresidential alternative program shall have a written description of its overall approach to family involvement.

02. A residential or nonresidential alternative program shall make every possible effort to facilitate positive communication between a youth in care and his/her parents.

03. A residential program shall provide conditions of reasonable privacy for visits and telephone contacts between youth in care and their families.

04. Flexible visiting hours shall be provided for families who are unable to visit at the regular times.

05. Residential or nonresidential facilities shall strive to:

A. Maintain and develop youth-family relationships;

B. Enable parents and siblings to recognize and involve the youth as a continuing member of the family; and

C. Ensure that parents exercise their legal rights and responsibilities in a manner compatible with the youth's best interests.

06. Written policy provides, whenever possible and appropriate, that while a youth is in a residential facility, staff members shall counsel parents or guardians in preparation for the youth's return to their home or other placement; provision is made for trial visits prior to such decisions.

07. The program shall have written policies and procedures which provide increasing opportunities and privileges for resident involvement with family and in community activities prior to final release.

08. Residential or nonresidential facilities shall give consideration to the special needs of youth without families and youth for whom regular family contact is impossible.

09. A residential or nonresidential program shall have written policies and procedures with respect to:

A. The relationship between the program and community;

B. Involvement of youth in community activities;

C. Participation of the program in community planning to achieve coordinated programs and services for families and youth; and

D. Strategies for the optimum use of community resources.

10. In its use of community resources, the program shall maintain a periodic inventory and evaluation of functioning community agencies.

11. Staff shall use community resources, either through referrals for service or by contractual agreement, to provide residents with the services to become appropriately self-sufficient.

12. The program shall collaborate, whenever possible, with criminal justice and human services agencies in programs of information gathering, exchange and standardization.

13. A residential program shall have a written plan of basic daily routines which shall be available to all personnel. This plan shall be revised as necessary.

14. Youth shall participate in planning daily routines.

15. Daily routines shall not be allowed to conflict with the implementation of a youth's service plan.

16. The residential or nonresidential program shall have a written policy regarding visiting and other forms of youth's communication with family, friends and significant others.

17. Visiting and communication policy shall be developed with the goals of encouraging healthy family interaction, maximizing the youth's growth and development and protecting youth, staff and programs from unreasonable intrusions.

18. Visiting and communication policy shall be provided to youth, staff members, parent(s) or guardian and placing agencies.

19. The program shall provide opportunities for a youth in care to visit with parent(s) or guardian and siblings.

20. The program shall schedule or supervise visits in accordance with the youth's service plan.

21. A residential program shall have written procedures for overnight visits outside the facility including: procedures for recording the youth's location, the duration of the visit, the name and address of the person responsible for the youth while absent from the facility and the time of youth's return.

22. A residential or nonresidential program, shall have procedures established in cooperation with Juvenile Justice Services for determining and reporting the absence without leave of youth in care. These procedures must include notification of the youth's parent(s) or guardian, the placing agency and the appropriate law enforcement official.

23. A residential or nonresidential program shall permit a youth in care to receive and send mail. Program staff shall not read youth's mail; however, mail may be inspected for contraband in the presence of the receiving youth. Written program policies and practices concerning youth's mail shall conform with applicable federal laws.

A. If requested, the program shall provide postage for the mailing of a minimum of two letters per week for each resident.

24. A residential program shall be equipped with a sufficient number of telephones for the youth's use and shall have procedures for youth's use of these telephones.

25. When the right of a youth in care to communicate in any manner with a person outside the program must be curtailed, the program shall:

A. Inform the youth of the conditions of and reasons for restriction or termination of his right to communicate with the specific individual(s);

B. Inform the individuals over whom the restriction or termination of personal contact with the youth has been placed of the conditions of and reasons for that action; and

C. Place a written report summarizing the conditions of and reasons for restricting or termination of the youth's contact with the specified individual(s) into the youth's case record and forward a copy of this report to the Division of Juvenile Justice Services and review this decision at least weekly.

26. A residential or nonresidential program shall not bar a youth's attorney, clergyman or an authorized representative of the responsible placing agency from visiting, corresponding with or telephoning the youth.

R547-1-9. Education.

01. A program contracting to serve State or local agency youth shall abide by all standards developed by the State Board of Education for education of youth in custody.

02. A new program or facility will coordinate with the local school district on the number of youth to be educated and continue to coordinate on all new students.

03. A program shall ensure that every youth in its care attends an appropriate educational program in accordance with state law.

04. A program shall have a written description of its educational program which shall be provided to the youth and his/her parent(s) or guardian prior to the youth's admission.

05. A program shall not place a youth in care in an on-ground educational program unless such program is appropriate to the youth's needs.

06. A program shall ensure routine communication between the direct service team involved with a youth in care and any educational program in which the youth is placed.

07. A program shall provide appropriate space and supervision for quiet study after school hours. The program shall ensure that the youth has access to necessary reference materials.

08. A program shall ensure that educational, vocational preparation services and/or life skills training are available to a youth. Such training and services shall be appropriate to the age and abilities of the youth.

09. Every attempt shall be made to insure the continuity of educational programming for the youth.

10. Prior to the youth's admission to the program, the program shall attempt to secure the youth's previous educational records and shall create an appropriate educational program for the youth.

11. The program shall send the school of residence periodic reports of the youth's educational progress if it is likely that the youth will return to this school.

12. Prior to discharge, the program shall attempt to work with the youth's new school to ensure a smooth transition to the

new educational environment.

R547-1-10. Discharge and Aftercare.

01. At least three months, as soon as possible, prior to planned discharge of a youth the planning group (program worker and case worker) shall formulate an aftercare plan specifying the supports and resources to be provided to the youth. Aftercare plans are to be kept in the youth's case record.

02. Prior to discharge the planning group shall ensure that the youth is aware of and understands his/her aftercare plan.

03. When a youth is being placed in another program following discharge, representatives of the planning group shall, whenever possible, meet with representatives of that program prior to the youth's discharge to share information concerning the youth.

04. A program shall have a written policy concerning emergency discharge and/or all other discharges not in accordance with a youth's service plan. This policy shall ensure that emergency discharges take place only when the health and safety of a youth or other youth might be endangered by the youth's further placement at the program.

05. The program shall give at least 72 hours notice of discharge to the responsible agency, the parent(s) or guardian and the appropriate educational authorities.

06. Written policy and procedure shall require that all transfers from one community program to another allow for objections on the part of the youth involved; where such transfers are to a more restrictive environment, due process safeguards are provided.

07. When a youth in care is discharged, a residential or nonresidential program shall compile a complete written discharge summary within a month of the date of discharge, such summary to be included in the youth's case record and a copy sent to the referring agency. This summary shall include:

A. The name, address, telephone number and relationship of the person to whom the youth is discharged;

B. When the discharge date was in accordance with the youth's service plan;

C. A summary of services provided during care;

D. A summary of growth and accomplishments during care;

E. The assessed needs which remain to be met and alternate service possibilities which might meet those needs; and

F. A statement of an aftercare plan and identification of who is responsible for follow-up services and aftercare.

08. When the discharge date was not in accordance with the youth's service plan, the following items shall be added to the summary:

A. The circumstances leading to the unplanned discharge; and

B. The actions taken by the program and the reason for these actions.

R547-1-11. Confidentiality/Research.

01. A residential or nonresidential alternative program shall have written procedures for the maintenance and security of records specifying who shall supervise, who shall have custody of records, and to whom records may be released. Records shall be the property of Juvenile Justice Services and the program shall secure records against loss, tampering or unauthorized use.

02. Programs contracting with Juvenile Justice Services that use traveling files shall return them to the regional office within 30 days of the youth's release. Program shall not make duplicate copies of client records except by agreement with Juvenile Justice Services.

03. A residential or nonresidential alternative program shall maintain the confidentiality of all youths' case records. Employees of the program shall not disclose or knowingly permit the disclosures of any information concerning the youth or his/her family, directly or indirectly, to any unauthorized person. All case records shall be marked "confidential" and kept in locked files, which are also marked "confidential".

04. Without the voluntary, written consent of the parent(s) or guardian, a residential or nonresidential alternative program shall not release any information concerning a youth in care except to the youth, his parent(s) or guardian, their respective legal counsel, the court or an authorized public official in the performance of his/her mandated duties. Any releases of information will conform with the Utah Government Records Access and Management Act, Title 63, Chapter 2.

05. A residential or nonresidential alternative program shall, upon request, make available information in the case record of the youth, his parent(s) or guardian and their respective legal counsel if the information being released does not contain material which violates the right of privacy of another individual and/or material that should be withheld from release according to other laws, Title 63, Chapter 2, or by order of the court. If, in the professional judgment of administration of the program, it is felt that information contained in the record would be damaging to the youth, that information shall be withheld except under court order. Facilities which have on-grounds educational programs should comply with federal and state laws governing educational records.

06. The program shall provide that a "Release of Information Consent Form" will be signed by the participant and parent or guardian immediately before a release of information about the participant is completed, and that a copy of the consent form is maintained in the participant's record.

07. The "Release of Information Consent Form" shall include:

A. Name of person, agency or organization requesting information;

B. Name of person, agency or organization releasing information;

C. The specific information to be disclosed;

D. The purpose or need for the information;

E. Date consent form is signed;

F. Signature of the participant; and

G. Signature of individual witnessing participant signature.

08. A residential or nonresidential alternative program may use material from case records for teaching or research purposes, development of the governing body's understanding, knowledge of the program's services or similar educational purposes, provided that names are deleted and other identifying information is disguised or deleted.

09. A report shall be prepared at the termination of program participation, which reviews the person's performance in the program.

10. A residential or nonresidential alternative program shall have written policies regarding the participation of youth in research projects. The policies shall conform to the National Institute of Mental Health Standards on Protection of Human Subjects.

11. Policy shall prohibit participation in medical or pharmaceutical testing for experimental or research purposes.

12. Written policy and procedure shall govern voluntary participation in nonmedical and nonpharmaceutical research programs.

R547-1-12. Rules.

01. A residential or nonresidential program shall have a written description of its religious orientation, particular religious practices that are observed and any religious restrictions on admission. This description shall be provided to the youth, the parent(s) or guardian and the placing agency.

02. During the admission process the religious orientation

and policy of the program shall be discussed with the youth and his/her parent(s) or guardian. At this time, the program shall determine the wishes of the parent(s) or guardian and the youth regarding the youth's religious training.

03. Every youth shall have the opportunity to participate in religious activities and services in accordance with his/her own faith or that of the youth's parent(s) or guardian. The facility shall, when feasible, arrange transportation to services and activities in the community.

04. Youth may be encouraged to participate in religious activities but they shall not be coerced to do so.

05. The youth's family and Juvenile Justice Services shall be consulted on any change in religious affiliation made by the youth while he/she is in care.

06. A residential or nonresidential facility's program shall reflect consideration for and sensitivity to the racial, cultural, ethnic and/or religious backgrounds of youth in care.

07. The program shall involve a youth in cultural and/or ethnic activities, appropriate to his/her cultural and/or ethnic background.

08. A residential program shall have set routines for waking youth and putting them to bed.

09. A residential program shall ensure that each youth has ready access to a responsible staff member throughout the night.

10. When the needs of a youth so dictate, there shall be an awake staff member near his/her sleeping area.

11. A residential program shall ensure that the possessions and sleeping area of a youth are not disrupted or damaged during the youth's temporary absence from the facility.

12. A residential program shall ensure that no youth occupies a bedroom with a member of the opposite sex.

13. Juveniles and adults shall not share sleeping rooms.

14. A residential program shall ensure that each youth in care has adequate clean, well fitting, attractive and seasonable clothing as required for health, comfort and physical well-being and as appropriate to age, sex and individual needs.

15. A youth's clothing shall be identifiably his/her own and not shared in common.

16. A youth's clothing shall be kept clean and in good repair. The child shall be involved in the care and maintenance of his/her clothing. As appropriate, laundering, ironing and sewing facilities shall be accessible to the youth.

17. A residential program shall ensure that discharge plans make provisions for clothing needs at the time of discharge. All personal clothing shall go with a youth when he/she is discharged.

18. A residential program shall allow a youth in care to bring his/her personal belongings to the program and to acquire belongings of his/her own in accordance with the youth's service plan. However, the program shall, as necessary, limit or supervise the use of these items while the youth is in care. Where extraordinary limitations are imposed, the youth shall be informed by staff of the reasons, and the decisions and reasons shall be recorded in the youth's case record. Provisions shall be made for the storage for youth's property.

19. A residential program shall establish procedures to ensure that youth receive training in good habits of personal care, hygiene and grooming appropriate to their age, sex, race and culture.

20. The program shall insure personal supervision by staff for proper grooming and physical cleanliness of the youth.

21. The program shall ensure that youth are provided with all necessary toiletry items.

22. The program shall allow a youth freedom in selecting a style of wearing his/her hair that reflects the youth's personal taste.

23. A residential program shall permit and encourage a youth in care to possess his/her own money either by giving an allowance and/or by providing opportunities for paid work within the facility.

24. Money earned, received as a gift or received as allowance by a youth in care shall be deemed to be that youth's personal property.

25. Limitations may be placed on the amount of money a youth in care may possess or have unencumbered access to when such limitations are considered to be in the youth's best interests and are duly recorded in the youth's service plan.

26. A youth in care shall not normally be asked to assume expenses for his/her care and treatment. In accordance with his/her individual service plan, an older youth, employed or employable may be asked to pay some of his/her room and board and related expenses.

27. A residential program shall assist youth in care to assume responsibility for damage done by developing a restitution plan that may utilize earnings or allowance and is duly recorded in the youths individual service plan. The program shall assist the youth to pay court ordered restitution or fines by developing a payment schedule from earnings, if employed, or by referring the youth to a Division sponsored restitution project.

28. Written policy and procedure shall provide for establishment of personal fund accounts for residents and allow for maximum control by residents; any interest on personal funds over $500 should accrue to residents.

29. The program shall maintain a separate accounting system for youth's money.

30. A program shall have a written grievance and appeal policy and procedure for youth. This procedure shall be written in a clear and simple manner and shall allow youth to make complaints without fear of retaliation.

31. The grievance procedure shall be explained to the youth by a staff member. The staff member shall enter a note into the youth's file confirming that this explanation has taken place.

R547-1-13. Physical Environment.

01. Any individual or organization seeking certification of a residential or nonresidential alternative facility shall provide the following documentation to Juvenile Justice Services at the time of application:

A. Evidence that the proposed site location of the facility will be appropriate to youth to be served in terms of individual needs, program goals and access to service facilities; (ACA 6071)

B. Evidence that the proposed facility will meet zoning laws of the municipality in which the site is located and Department of Human Services regulations, including planning with local neighborhood counsels;

C. A copy of the site plan and a sketch of the floor plan of the proposed facility; and

D. A description of the way in which the facility will be physically harmonious with the neighborhood in which it is located considering such issues as scale, appearance, density and population.

02. Every building or part of a building used as residential facility or nonresidential alternative program shall be constructed, used, furnished, maintained and equipped in compliance with all standards, regulations and requirements established by federal, state, local and municipal regulatory bodies.

03. The governing authority shall designate who is permitted to live in the facility with concurrent authorization from the Division of Juvenile Justice Services.

04. A residential or nonresidential facility shall ensure that all structures on the grounds of the facility are maintained in good repair and are free from any dangers to health or safety.

05. A residential or nonresidential facility shall maintain the grounds of the facility in an acceptable manner and shall

ensure the grounds are free from any hazard to health or safety;

A. Garbage and rubbish which is stored outside shall be stored securely in noncombustible, covered containers and shall be removed on a regular basis not less than once a week;

B. Trash collection receptacles and incinerators shall be located as to avoid being a nuisance to neighbors;

C. Fences shall be in good repair;

D. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers to protect youth; and

E. Recreational equipment shall be so located, installed and maintained as to ensure the safety of youth.

06. A residential or nonresidential facility shall have access to outdoor recreational space and suitable recreational equipment.

07. Shrubbery and lawns shall be properly tended and trimmed for safety and appearance.

08. Ground shall adequately drain either naturally or through installed drainage systems.

09. At a minimum each facility shall have nine square yards of available grounds space per child in care unless there is ready and safe access to other recreational areas.

10. Signs which might tend to identify children in care in a negative manner shall not be used.

11. A residential or nonresidential facility shall be structurally designed to accommodate the physical needs of each youth in care.

12. Each residential facility shall contain space for the free and informal use of youth in care. This space shall be constructed and equipped in a manner consonant with the programmatic goals of the facility.

13. Space to accommodate group meetings of the residents shall be provided in the facility.

14. A visiting area shall be provided in the facility.

15. The residential facility shall provide an appropriate variety of interior recreation spaces.

16. A residential facility shall provide a dining area which permit youth and staff to eat together.

17. The residential facility shall provide a dining area which is clean, well lighted, ventilated and attractively furnished.

18. A residential facility shall ensure that each bedroom space in the facility has a floor area, exclusive of closets, of at least 74 square feet for the initial occupant and an additional 50 square feet for each other occupant of this space.

19. A residential facility shall not use any room with a ceiling height of less than seven feet six inches as a youth's bedroom.

20. A residential facility shall not permit more than four youth to occupy a designated bedroom space. Beds must be placed at least three feet apart on all sides.

21. A residential facility shall not use any room which does not have a source of natural light and is properly ventilated as a bedroom space.

22. Each youth in care of a residential facility shall have his/her own bed. This bed shall be standard size and shall have a clean, comfortable, nontoxic, fire-retardant mattress equipped with mattress cover, sheets, pillow, pillow case and blankets:

A. Sheets and pillow cases shall be changed at least weekly but shall be changed more frequently if necessary.

23. A residential program shall provide each youth in care with their own solidly constructed bed. Cot or other portable beds will not be used.

24. A residential facility shall ensure that the uppermost mattress of any bunk bed in use shall be far enough from the ceiling to allow the occupant to sit up in bed.

25. A residential facility shall provide each youth with his/her own dresser or other adequate storage space for private use, and a designated space for hanging clothing in proximity to the bedroom occupied by the youth.

26. The decoration of sleeping areas in a residential facility shall allow some scope for the personal tastes and expressions of the youth.

27. A residential facility shall have a minimum of one wash basin, one bath or shower with an adequate supply of hot and cold potable water for every six youth in care.

A. Bathrooms shall be so placed as to allow access without disturbing other youth during sleeping hours;

B. Bathrooms shall not open directly into any room in which food, drink or utensils are handled or stored;

C. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene unless youth are individually given such items and bath towels and wash cloths shall be changed weekly; and

D. Tubs and showers shall have slip-proof surfaces.

28. The residential facility shall provide toilets and baths or showers which allow for individual privacy unless youth in care require assistance.

29. A bathroom in a residential facility shall contain mirrors secured to the walls at convenient heights and other furnishings necessary to meet the youths basic hygienic needs.

30. Toilets, wash basins, and other plumbing or sanitary facilities in a residential facility shall, at all times, be maintained in good operating condition, and shall be kept free of any materials that might clog or otherwise impair their operation.

31. Kitchens used for meal preparation in a residential facility shall be provided with the necessary equipment for the preparation, storage, serving and clean up of all meals for all of the youth and staff regularly served by such kitchens. All equipment shall be maintained in working order.

32. Kitchen facilities and equipment shall conform to all health, sanitation and safety codes.

33. Programs that provide food service shall encourage youth to participate in the preparation, serving and clean up of meals and ensure that all food handlers comply with applicable State or local health laws and regulations.

34. When the program provides food service, all food service personnel shall have clean hands and fingernails, wear hairnets or caps and clean, washable garments, are in good health and free from communicable disease and open infected wounds, and practice hygienic food handling techniques.

35. When the program provides food service, all foods shall be properly stored at the completion of each meal.

36. A residential facility shall not use disposable dinnerware at meals on a regular basis unless the facility documents that such dinnerware is necessary to protect the health or safety of youth in care.

37. A facility shall ensure that all dishes, cups and glasses used by youth in care are free from chips, cracks or other defects.

38. Kitchen areas in a facility shall be so constructed to allow staff to limit youth's access to kitchen when necessary.

39. A residential facility utilizing live-in staff shall provide adequate separate living space for these staff.

40. A facility shall provide a space which is distinct from youth's living areas to serve as an administrative office for records, secretarial work and bookkeeping.

41. A residential or nonresidential facility shall have a designated space to allow private discussions and counseling sessions between individual youth and staff.

42. A facility shall have comfortable customary furniture as appropriate for all living areas. Furniture for the use of youth shall be appropriately designed to suit the size and capabilities of these youth.

43. There shall be evidence of routine maintenance and cleaning programs in all areas of the residential or nonresidential facilities.

44. A residential or nonresidential facility shall replace or repair broken, run-down or defective furnishings and equipment promptly.

A. Outside doors, windows and other features of the structure necessary for security and climate control shall be repaired within 24 hours of being found to be in a state of disrepair.

45. Any designated bedroom space in a facility, where the bedroom is not equipped with a mechanical ventilation system, shall be provided with windows which have an openable area at least 5% as large as the total floor area of the bedroom space.

46. A residential or nonresidential facility shall provide insect screening for all openable windows unless the facility is centrally air conditioned. This screening shall be readily removable in emergencies and shall be in good repair.

47. A residential facility shall ensure that all closets, bedrooms and bathrooms which have doors are provided with doors that can be readily opened from both sides.

48. A residential or nonresidential facility shall ensure that there are sufficient and appropriate storage facilities.

49. A residential or nonresidential facility shall have securely locked storage spaces for all potentially harmful materials. Keys to such storage spaces shall be available only to authorized staff members.

A. Poisonous, toxic, and flammable materials shall be stored in locked storage space that is not used for other purposes;

B. The facility shall have only those poisonous or toxic materials required to maintain the facility; and

C. Drugs, personnel files and case records shall be kept in locked storage spaces and access to drugs, personnel files and case records are to be carefully limited to authorized persons.

50. A residential or nonresidential facility shall ensure that all electrical equipment, wiring, switches, sockets and outlets are maintained in good order and safe conditions.

51. Any room, corridor or stairway within the residential or nonresidential facility shall be sufficiently illuminated.

52. Corridors within the residential facility's sleeping areas shall be illuminated at night.

53. A residential or nonresidential facility shall provide adequate lighting of exterior areas to ensure the safety of youth and staff during the night.

54. A residential or nonresidential facility shall take all reasonable precautions to ensure that heating elements, including hot water pipes, are insulated and installed in a manner that ensures the safety of youth.

55. A residential or nonresidential facility shall maintain the spaces used by youth at temperatures in accordance with federal, state and local laws.

56. Hot water accessible to youth in a facility shall be regulated to a temperature not in excess of 110 degrees F.

57. A residential facility using water from any source other than public water supply shall ensure that such water is annually tested by the local public health authority. The most recent test report shall be kept on file.

58. A residential or nonresidential facility shall not utilize any excessive rough surface or finish where this surface or finish may present a safety hazard to youth.

59. A facility shall not have walls or ceiling surfaces with materials containing asbestos.

60. A facility shall not use lead paint for any purpose within the facility or on the exterior or grounds of the facility nor shall the facility purchase any equipment, furnishings or decorations surfaced with lead paint.

61. A facility shall use durable materials and wall surfaces.

62. A facility shall, where appropriate, use carpeting to create a comfortable environment. Carpeting in use should be nontoxic and fire-retardant.

R547-1-14. General Safety.

01. The program shall have written procedures and a system that helps provide for staff and participant safety and privacy needs, and assists in protecting and preserving personal property.

03. Each residential facility shall have 24-hour telephone service. Emergency telephone numbers, including fire, police, physician, poison control, health agency and ambulance shall be conspicuously posted adjacent to the telephone.

04. A residential or nonresidential program shall notify Juvenile Justice Services immediately of a fire or other disaster which might endanger or require the removal of youth for reasons of health and safety.

05. All containers of poisonous, toxic and flammable materials kept in a facility shall be prominently and distinctly marked or labeled for easy identification as to contents and shall be used only in such manner and under such conditions as will not contaminate food or constitute hazards to the youth in care of staff.

06. Porches, elevated walkways and elevated play areas within a facility shall have barriers to prevent falls.

07. Every required exit, exit access and exit discharge in a facility shall be continuously maintained free of all obstructions or impediments to immediate use in the case of fire or other emergency.

08. The use of candles shall not be allowed in sleeping areas of a residential facility.

09. Power driven equipment used by the facility shall be kept in safe and good repair. Such equipment shall be used by youth only under the direct supervision of a staff member and according to the state law.

10. A facility shall have procedures to ensure the facility is protected from infestation by pests, rodents or other vermin.

11. Youth in care of a program shall swim only in areas considered by responsible staff as being safe. A certified individual shall be on duty when the youth are swimming. A certified individual is one who has a current water safety instructor certificate or senior lifesaving certificate from the Red Cross or its equivalent.

12. All on-grounds pools shall be enclosed with safety fences and shall be regularly tested to ensure that the pool is free of contamination.

13. On-ground pools shall comply with Department of Public Health requirements concerning swimming pools.

14. A residential or nonresidential facility shall have written policy and procedure specify the facility's fire prevention regulations and practices to ensure the safety of staff, participants and visitors. These include, but are not limited to: provision for an adequate fire protection service; a system of fire inspection and testing of equipment by a local fire official at least quarterly; smoke detectors; fire extinguishers, alarm systems and fire exits.

15. The facility shall comply with the regulations of the state or local fire safety authority, whichever has primary jurisdiction over the agency.

16. A residential or nonresidential facility shall have written procedures for staff and youth to follow in case of emergency or disaster. These procedures shall include provisions for the evacuation of buildings and assignment of staff during emergencies.

17. A residential or nonresidential facility shall train staff and youth to report fires and other emergencies appropriately. Youth and staff shall be trained in fire prevention.

18. A residential or nonresidential facility shall conduct emergency drills which shall include actual evacuation of youth to safe areas at least quarterly. The facility shall ensure that all personnel on all shifts are trained to perform assigned tasks during emergencies and ensure that all personnel on all shifts are familiar with the use of the fire-fighting equipment in the

facility:

A. A record of such emergency drills shall be maintained;

B. All persons in the building shall participate in emergency drills;

C. Emergency drills shall be held at unexpected times and under varying conditions to simulate the possible conditions in case of fire or other disasters;

D. The facility shall make special provisions for evacuation of any physically handicapped youth in the facility; and

E. The facility shall take special care to help emotionally disturbed or perceptually handicapped youth understand the nature of such drills.

19. A residential or nonresidential facility shall maintain an active safety program including investigation of all incidents and recommendations for prevention.

20. A residential facility or nonresidential alternative program shall ensure that each youth is provided with the transportation necessary for implementing the youth's service plan.

21. A residential facility or nonresidential alternative program shall have means of transporting youth in case of emergency.

22. Any vehicle used in transporting youth in care of the program shall be properly licensed and inspected in accordance with state law.

23. Any staff member of a residential or nonresidential alternative program or other person acting on behalf of the program operating a vehicle for the purpose of transporting youth shall be properly licensed to operate that class of vehicle according to state law.

24. A residential or nonresidential alternative program shall not allow the number of persons in any vehicle used to transport youth to exceed the number of available seats in the vehicle. Seat belts will be available for each seat and use is mandatory.

25. All vehicles used for the transportation of youth shall be maintained in a safe condition, be in conformity with all applicable motor vehicle laws, and be equipped in a fashion appropriate for the season.

26. A residential or nonresidential alternative program shall ensure that there is adequate supervision in any vehicle used by the facility to transport youth in care.

27. Identification of vehicles used to transport youth in care of a program shall not be of such nature as to embarrass or in any way produce notoriety for the youth.

28. A residential or nonresidential alternative program shall ensure that any vehicle used to transport youth has at least the minimum amount of liability insurance required by State law.

29. A residential or nonresidential alternative program shall ascertain the nature of any need or problem of a youth which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness or a disability. The program shall communicate such information to the operator of any vehicle transporting youth in care.

30. Youth in the care of a program shall not engage in any potentially dangerous activity without adequate supervision and training by qualified adults.

R547-1-15. Food Service.

01. A residential or nonresidential program shall ensure that a youth is, on a daily basis, provided with food of such quality and of such quantity as to meet the recommended daily dietary allowances adjusted for age, gender and activity of the Food Nutrition Board of the National Research Council.

02. A person designated by the Chief Administrative Officer of a program shall be responsible for the total food service of the facility.

03. A person responsible for food service shall:

A. Maintain a current list of youth with special nutritional needs;

B. Have an effective method of recording and transmitting diet orders and changes;

C. Record in the youth's medical records information relating to special nutritional needs; and

D. Provide nutrition counseling to staff and youth.

04. When the program provides food service, food service staff shall develop advanced planned menus and substantially follow the schedule.

05. A residential program shall ensure that a child in care is provided at least three meals or their equivalent available daily at regular times with not more that 14 hours between evening meal and breakfast. Between meal snacks of nourishing quality shall be offered.

06. The program shall ensure that the food provided to a youth in care by the program is in accord with his/her religious beliefs.

07. No youth in care at a program shall be denied a meal for any reason except according to a doctor's order.

08. A program shall ensure that, at all meals served at the facility, staff members eat substantially the same food served to youth in care, unless special dietary requirements dictate differences in diet. Staff members shall be present to eat at youths' tables for the major meal of the day.

R547-1-16. Medical Care.

01. A residential program shall ensure the availability of a comprehensive or preventive, routine and emergency medical and dental care plan for all youth in care. The program shall have a written plan for providing such care. The plan shall include:

A. A periodic health screening of each youth;

B. Establishment of an on-going immunization program;

C. Approaches that ensure that any medical treatment administered will be explained to the youth in language suitable to his/her age and understanding;

D. An on-going relationship with a licensed physician and dentist to advise the program concerning medical and dental care as required by the youth;

E. Availability of a physician on a 24 hours a day, seven days a week basis; and

F. The program shall show evidence of access to the resources outlined in the plan.

02. A residential program which provides services for emotionally disturbed youth in an open setting shall have well established psychiatric resources available on both an on-going and emergency basis.

03. A residential or nonresidential program will establish policies and procedures for serving "Acquired Immune Deficiency Syndrome" AIDS victims and others with communicable diseases that are consistent with those standards by the Department of Human Services and follow public health guidelines.

04. A residential program shall arrange for a general medical examination by a physician for each youth in care within 30 days of admission unless the youth has received such an examination within six months before admission and the results of this examination are available to the facility.

05. The medical examination shall include:

A. An examination of the youth for physical injury and disease;

B. Vision and hearing tests; and

C. A current assessment of the youth's general health.

06. Whenever indicated, the youth shall be referred to an appropriate medical specialist for either further assessment or treatment.

07. A residential program shall arrange an annual physical

examination of all youth.

08. A residential or nonresidential program shall ensure that youth receive timely, competent medical care when they are ill and that they continue to receive necessary follow-up medical care.

09. A residential program shall make every effort to maintain the youth in his/her normal environment during illness.

10. A residential program shall ensure that each youth has had a dental examination by a dentist within 60 days of the youth's admission unless the youth has been examined within 6 months prior to admission and the program has the results of that examination.

11. Each youth shall have dental examination as recommended by a dentist but shall not be less frequent than every 12 months.

12. The facility shall ensure that the youth receives any necessary dental work.

13. A residential program shall make every effort to ensure that a youth in care who needs glasses, a hearing aid, a prosthetic device or a corrective device is provided with the necessary equipment or device.

14. A residential program shall ensure that the youth has received all immunizations and booster shots which are required by the Department of Health within 30 days of his/her admission.

15. A program shall not require a youth in care to receive any medical treatment when the parent(s) or guardian of the youth or the youth objects to such treatment on the grounds that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent(s), guardian or youth is an adherent. In potentially life threatening situations, the problem shall be referred to appropriate medical and legal authorities.

16. A residential program shall maintain complete health records of a youth including: A complete record of all immunizations provided, a record of any medication, records of vision, physical or dental examinations and a complete record of any treatment provided for specific illnesses or medical emergencies.

17. Upon discharge, the program shall provide a copy or summary of the youth's health record to the person or agency responsible for the future planning and care of the youth.

18. A residential program shall make every effort to compile a complete past medical history on every youth. This history shall, whenever possible, include:

A. Allergies to medication;

B. Immunization history;

C. History of serious illness, serious injury or major surgery;

D. Developmental history;

E. Current use of prescribed medication; and

F. Medication history.

19. The program health care plan shall specify that only licensed physicians and dentists prescribe treatment for participants' medical and dental needs. Medical treatment by medical personnel other than a physician shall be performed pursuant to written standing or direct orders issued by the physician.

20. A residential or nonresidential program shall have written policies and procedures governing the use and administration of medication to youth. These policies and procedures shall be disseminated to all staff responsible for administering medication.

21. The written policies shall specify the conditions under which medications can be administered; who can administer medication; procedures for documenting the administration of medication and medication errors and drug reactions; and procedures for notification of the attending physician in cases of medication errors and/or drug reactions.

22. A residential or nonresidential program shall inform a youth and his/her parents(s) or guardian of the potential side effects of prescribed medications.

23. A residential or nonresidential program shall ensure that a youth is personally examined by the prescribing physician prior to receiving any medication. In cases of medical emergency, telephone orders for the administration of medication may only be placed by a licensed physician.

24. State licensure and certification requirements shall apply to health care personnel working in the program the same as those in the community.

25. A residential or nonresidential program shall maintain a cumulative record of all medication dispensed to youth including:

A. The name of the youth;

B. The type and usage of medication;

C. The reason for prescribing the medication;

D. The time and date medication is dispensed;

E. The name of the dispensing person; and

F. The name of the prescribing physician.

26. When a youth first comes into care, a residential or nonresidential program shall ascertain all medication the youth is currently taking. At this time the facility shall carefully review all medication the youth is using and make plans, in consultation with a licensed physician, to either continue the medication or to reconsider the medication needs of the youth considering the changed living circumstances.

27. A residential or nonresidential program shall have a written medication schedule for each youth to whom medication is prescribed. A youth's medication schedule shall contain the following information:

A. Name of youth;

B. Name of prescribing physician;

C. Telephone number at which prescribing physician may be reached in case of medical emergency;

D. Date on which medication was prescribed;

E. Generic and commercial name of medication prescribed;

F. Dosage level;

G. Time(s) of day when medication is to be administered;

H. Possible adverse side effects of prescribed medication; and

I. Date on which prescription will be reviewed.

28. A residential or nonresidential program shall provide a copy of a youth's medication schedule to all staff members responsible for administering the medication to the youth and such schedule shall subsequently be placed in the youth's case record.

29. When a urine surveillance program is in effect, the agency shall have a written policy for the collection of samples and interpretation of results.

30. A residential or nonresidential program shall not engage in the therapeutic use of psychotropic medications unless approval of such use by that program has been granted by Division of Juvenile Justice Services.

31. A program which uses psychotropic medications prescribed by an independent physician shall have a written policy governing the use of psychotropic drugs at the facility. This policy shall include the following:

A. Identification of doctors permitted to prescribe psychotropic drugs and their qualifications;

B. Identification of persons permitted to administer psychotropic drugs and their qualifications;

C. Criteria for the use of psychotropic medications;

D. A description of the program's medication counseling program;

E. Procedures for obtaining informed consent from the youth and the parent(s) or guardian where consent is required;

F. Procedures for monitoring and reviewing use of

psychotropic medication;

G. Procedures for staff training related to the monitoring of psychotropic medication;

H. Procedures for reporting the suspected presence of undesirable side effects; and

I. Record keeping procedures.

32. Psychotropic medication policy shall be disseminated to all direct service staff.

33. The program which uses psychotropic medications shall maintain a routine medication counseling program designed to inform youth to whom medications are being administered and their parent(s) or guardian of the projected benefits and potential side effects of such medication.

34. Unless there is a court order to the contrary, a facility shall ensure that the parent(s) or guardian of a youth for whom medication is prescribed give prior, informed, written consent to the use of that medication at a particular dosage.

35. When a youth is 14 years of age or older, the facility shall also obtain prior, informed, written consent from the youth except when the youth lacks the capacity for informed consent.

36. Either the youth and his/her parent(s) or guardian shall have the right to revoke medication consent at any time. When consent is revoked, administration of the medication shall cease immediately. The program shall inform the prescribing physician and may, if indicated, seek a court order to continue medication.

37. When medication consent is revoked by a youth, the program shall notify the parent(s) or guardian.

38. The program shall immediately file a statement describing the circumstances under which medication consent has been revoked. This statement shall be provided to the youth, the parent(s) or guardian, and the responsible agency.

39. A residential program which uses psychotropic medications shall ensure that a youth is personally examined by the prescribing physician prior to commencing administration of a psychotropic drug.

40. The prescribing physician shall provide a written initial report detailing the reasons for prescribing the particular medication, expected results of the medication and alerting facility staff to potential side effects.

41. Either the prescribing physician or another physician shall provide a written report on each youth receiving psychotropic medication at least every 30 days based on actual observation of the youth and review of the daily monitoring reports. This 30 day report shall detail the reasons medication is being continued, discontinued, increased in dosage, decreased in dosage or changed.

42. A program which uses psychotropic medications shall ensure that usages of medication are in accordance with the goals and objectives of the youth's service plan.

43. Psychotropic medications shall not be administered as a means of punishing or disciplining a youth.

44. Psychotropic medications shall not be used unless less restrictive alternatives have either been tried and failed or are diagnostically eliminated.

45. Licensed nurses or physicians shall supervise the administration of all psychotropic medications.

46. A program which uses psychotropic medications shall ensure that each youth who receives medication is the subject of a daily monitoring report completed by a facility staff member trained in the recognition of side effects of the medication prescribed. This report shall be submitted to the prescribing physician.

47. A program which uses psychotropic medications shall maintain the following information in the case record of each youth receiving the medication:

A. Medication history;

B. Documentation of all less restrictive alternatives either used or diagnostically eliminated prior to use of medication since entry into the program;

C. Description of any significant changes in the youth's appearance or behavior that may be related to the use of medication;

D. Any medication errors;

E. Monitoring reports; and

F. Medication review reports.

48. A program which uses psychotropic medications shall obtain an independent analysis of the facility's medication program at least annually.

49. A residential or nonresidential alternative program shall have written procedures for staff members to follow in case of medical emergency. These procedures shall both define the circumstances that constitute a medical emergency, and include instructions to staff regarding their conduct once the existence of a medical emergency is suspected or has been established.

50. A residential or nonresidential alternative program shall ensure that at all times, at least one staff member on duty is qualified to administer first aid.

51. The program shall maintain a list of first aid equipment and supplies to ensure sufficient availability of equipment and supplies at all times.

52. A first aid kit shall be available in a nonresidential facility and in each living unit of a residential facility, with type, size and contents to be determined according to the American Red Cross' current guidelines.

53. A program shall immediately notify the youth's parent(s) or guardian and Juvenile Justice Services of any serious illness, incident involving serious bodily injury or any severe psychiatric episode involving a youth.

54. In the event of the death of a youth, a program shall immediately notify the youth's parent(s) or guardian, the placing agency and Juvenile Justice Services. The agency shall cooperate in arrangement made for examination, autopsy or burial.

55. In the event of sudden death, a residential program shall notify the medical examiner or other appropriate authority, or law enforcement official, the placement agency, parent and Juvenile Justice Services.

R547-1-17. Child Abuse and Neglect.

01. A program shall require each staff member of the program or facility to read and sign a statement clearly defining child abuse and neglect and outlining the staff member's responsibility to report all incidents of child abuse or neglect according to state law, and the Department and Division Code of Conduct, and to report all incidents to the chief administrator of the program and to the Division of Juvenile Justice Services, Regional Administrator and Office of Quality Assurance.

02. A program shall have written policy and procedures for handling any suspected incident of child abuse including:

A. A procedure for ensuring that the staff member involved does not work directly with the youth involved or any other youth in the Juvenile Justice Services licensed and/or contracted, or Juvenile Justice Services operated program or facility until the investigation is completed or formal charges filed and adjudicated;

B. A procedure for disciplining any staff member found involved in an incident of child abuse or Code of Conduct Violation including termination of employment if found guilty of felony child abuse (misdemeanor guilty findings require Juvenile Justice Services Director approval for continued employment):

C. 57 A and B apply to staff members accused of abuse of children other than in a Juvenile Justice Services licensed and/or contracted program or facility.

D. Failure to implement and comply with Standard 16.57, A, B, and C may result in immediate suspension or revocation

of the program license as required by the Utah Code, 62A-7-119.

KEY: diversion programs, juvenile corrections, licensing, prohibited items and devices
April 30, 2002 62A-7-119
Notice of Continuation May 30, 2007

R547. Human Services, Juvenile Justice Services.
R547-3. Juvenile Jail Standards.
R547-3-1. Definitions and References.

(1) Definitions.

(a) "Low density population" means ten or less people per square mile.

(b) "Nonoffenders" means abused, neglected, or dependent youth.

(c) "Sight and sound separation" means that juvenile detainees must be located or arranged as to be completely separated from incarcerated adults by sight and sound barriers such that the adult inmates cannot see juvenile detainees and vice versa. Also, conversation is not possible between juvenile detainees and adult inmates.

(d) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(2) References.

(a) Standards from the Manual of Standards for Juvenile Detention Facilities and Services, also referred to as American Correctional Association (ACA) Standards, revision date of February 1979, were researched as background for the rules. This manual can be located at the Division of Juvenile Justice Services Administrative Office.

R547-3-2. Standards for Six Hour Juvenile Detention in Jail.

(1) Juveniles under the age of 18 shall not be confined in a county operated jail used for accused or convicted adult offenders except:

(a) when the juvenile is 14 years of age or older and, in a hearing before a magistrate, has been certified an adult, Section 78-3a-603 and Subsection 78-3a-502(3);

(b) when the juvenile is being held on a traffic offense, Subsection 78-3a-104(2), and the facility has been certified by the Division of Juvenile Justice Services to detain juveniles beyond six hours;

(c) when the juvenile is 16 years of age or older and is being held under a valid Juvenile Court order, Subsection 78-3a-114(8)(b), and the facility has been certified by the Division of Juvenile Justice Services to detain juveniles beyond six hours;

(d) in areas characterized by low density population. The state Juvenile Justice Services agency may promulgate regulations providing for specific approved juvenile holding accommodations within adult facilities which have acceptable sight and sound separation to be utilized for short-term holding purposes with a maximum confinement of six hours to allow adequate time to evaluate needs and circumstances regarding transportation, detention, or release of the juvenile in custody, Section 62A-7-201.

(2) The Division of Juvenile Justice Services may certify a jail to hold juveniles who are alleged to have committed a non-status offense or are accused of juvenile handgun possession for up to six hours if the following criteria are met:

(a) in areas characterized by low density population;

(b) no existing acceptable alternative placement exists which will protect the juvenile and the community;

(c) the county is not served by a local or regional certified juvenile detention facility;

(d) no juvenile under ten years of age will be held by holding authorities, as set forth in the following standards, for any length of time.

(3) Any jail or adult holding facility intended for use for juveniles must be certified by the State Division of Juvenile Justice Services.

(4) There shall be acceptable sight and sound separation from adult inmates. Written policy and procedure shall exist to assure supervision is maintained so that both visual contact and verbal communication between juvenile detainees and adult inmates is prohibited.

(5) The jail's juvenile detention room(s) shall conform to all applicable zoning laws.

(6) The jail's juvenile detention room(s) shall conform to all applicable local and state safety, fire, and building codes.

(7) The jail's juvenile detention room(s) shall conform to all applicable local and state health codes.

(8) The juvenile population shall not exceed the jail's certified capacity for juveniles.

(9) All juvenile housing and activity areas provide for, at a minimum:

(a) toilet and wash basin accessibility;

(b) hot and cold running water in wash basin and drinking water;

(c) adequate shelter, heat, light, and ventilation that does not compromise security or enable escape;

(d) seventy square feet of floor space per resident and in multiple bed room construction, a minimum of 40 square feet of floor space per resident;

(e) eight feet of clear floor to ceiling height for occupants;

(f) a bed at least two feet three inches wide and six feet four inches long in each room if the jail was designed after 1979. If there is more than one bed per room, there must be a minimum of 18 inches vertical clearance from all overhead obstructions.

(10) Whenever juveniles are detained, there shall be at a minimum:

(a) Removal of all property from the juvenile that could compromise the juvenile's safety, such as belts, shoelaces and suspenders, prior to placing a juvenile in a holding room;

(b) constant on-site supervision through visual or TV monitoring and audio two way communication;

(c) frequent personal checks to maintain communication with the juvenile and prevent panic and feelings of isolation;

(d) a written record of significant incidents and activities of the juvenile.

(11) The written policies and procedures providing for specific rules governing the supervision of inmates by jail staff of the opposite sex shall specifically provide for the following when the inmates are juveniles:

(a) An adult staff member of the same sex as the juvenile shall be present when a juvenile is securely held.

(b) Except in an emergency the staff member entering a juvenile's sleeping room shall be of the same sex. If there are two staff members entering the sleeping room, there may be one male and one female. When an emergency prevents the same sex staff member from entering the juvenile's room, then at least two opposite sex staff members must be present and a written report must be completed and kept on file justifying the necessity for the deviation from same sex supervision.

(c) When procedures require physical contact or examination, such as strip searches, these shall be done by a staff member of the same sex in private without TV monitoring. Procedures for body cavity searches shall conform to jail standards.

(d) A staff member of the same sex shall supervise the personal hygiene activities and care such as showers, toilet, and related activities.

(e) The use of restraints or physical force are restricted to instances of justifiable self-defense, protection of juveniles and others, protection of property and prevention of escapes, and only when it is necessary to control juveniles and in accordance with the principle of least restrictive action. In no event is physical force justifiable as punishment. A written report is prepared following all uses of force and is submitted to the facility administrator.

(12) Male and female residents shall not occupy the same sleeping room at the same time.

(13) There shall be no viewing devices, such as peep holes, mirrors, of which the juvenile is not aware.

(14) No inmate, juvenile or adult, shall be allowed to have authority or disciplinary control over, be permitted to supervise, or provide direct services of any nature to other detained juveniles.

(15) The juvenile's health and safety while jailed shall be safeguarded. The jail administration shall:

(a) have services available to provide 24 hours a day emergency medical care;

(b) provide for immediate examination and treatment, if necessary, of juveniles injured on the jail premises;

(c) not accept juveniles who are unconscious, obviously seriously injured, a suicide risk, obviously emotionally disturbed, or obviously under the influence of alcohol or drugs and are unable to care for themselves, until they have been examined by a qualified medical practitioner or have been taken to a medical facility for appropriate diagnosis and treatment and released back to the jail;

(d) train all jail staff members to recognize symptoms of mental illness or retardation;

(e) provide for the detoxification of a juvenile in the jail only when there is no community health facility to transfer the juvenile to for detoxification;

(f) require that any medical services provided while the juvenile is held be recorded.

(16) As long as classification standards are met, juvenile detainees may be housed together if age, compatibility, dangerousness, and other relevant factors are considered.

(17) Adult jails that are certified to hold juveniles for up to six hours must have written procedures which govern the acceptance of such juveniles. These procedures must include the following:

(a) When an officer or other person takes a juvenile into custody, the officer shall without unnecessary delay notify the parents, guardian, or custodian.

(b) The jail staff shall verify with the officer or other person taking the juvenile into custody that the juvenile's parents, guardian, or custodian have been notified of the juvenile's detention in jail. If notification did not occur, jail staff will contact the juvenile's parents, guardian, or custodian.

(c) The officer shall also promptly file with the detention or shelter facility a brief written report stating the facts which appear to bring the juvenile within the jurisdiction of the Juvenile Court and give the reason why the juvenile was not released.

(18) There must be written policy and procedures that require that the decision to detain the juvenile for up to six hours or to release the juvenile from jail be in accordance with the following principles:

(a) A juvenile shall not be detained by policy any longer than is reasonably necessary to obtain the juvenile's name, age, residence, and any other necessary information, and to contact the juvenile's parents, guardian, or custodian.

(b) The juvenile shall then be released to the care of the parent or other responsible adult unless the immediate welfare or the protection of the community requires that the juvenile be detained or that it is unsafe for the juvenile or the public to leave the juvenile in the care of the parents, guardian, or custodian. On release from jail, the parent or other person to whom the juvenile is released may be required to sign a written promise on forms supplied by the court to bring the juvenile to court at a time set, or to be set, by the court, Subsection 78-3a-113(3)(b).

(19) The written procedures for admitting juvenile detainees will include completion of an admission form on all juveniles that includes, as a minimum, the following information:

(a) date and time of admission and release;

(b) name, nicknames, and aliases;

(c) last known address;

(d) law enforcement jurisdiction, name, and title, of delivering officer;

(e) specific charge(s);

(f) sex;

(g) date of birth and place of birth;

(h) race or nationality;

(i) medical problems, if any;

(j) parents, guardian, or responsible person to notify in case of emergency, including addresses and telephone numbers;

(k) space for remarks, to include notation of any open wounds or sores requiring treatment, evidence of disease or body vermin, or tattoos;

(l) probation officer or caseworker assigned, if any;

(20) Juvenile processing procedures shall include written safeguards to prohibit nonoffenders from being detained in the facility and to ensure youth are held in accordance with R547-3-2.

(21) There must be a written procedure governing the transfer of a juvenile to an appropriate juvenile facility which includes the following:

(a) If the juvenile is to be transferred to a juvenile facility, the juvenile must be transported there without unnecessary delay, but in no case more than six hours after being taken into custody. A copy of the report stating the facts which appear to bring the juvenile within the jurisdiction of the court and giving the reason for not releasing the juvenile shall be transmitted with the juvenile when transported.

(b) A written record shall be retained on file of all juveniles released, stating as a minimum to whom they were released, the release date, time, and authority.

(c) Procedures for releasing juvenile detainees shall include at a minimum:

(i) verification of identity;

(ii) verification of release papers;

(iii) completion of release arrangements;

(iv) return of juvenile detainee's personal effects and funds;

(v) verification that no jail property or other resident property leaves the jail with the juvenile.

(22) The written procedures governing the stay of a juvenile shall include:

(a) A juvenile, while held in a certified jail, shall have the same legal and civil rights as an adult inmate.

(b) A juvenile, while held in a certified jail, shall have the right to the same number of telephone calls as an adult inmate held the same amount of time.

(c) Unless the juvenile is to be transferred to an approved detention facility, visits should be limited to the juvenile's attorney, clergyman, and officers of the court. If the juvenile is to be transferred, an effort shall be made to provide for visitation by the juvenile's parents, guardian, or custodian prior to the transfer.

(d) If a juvenile is held during daylight hours the juvenile should be allowed access to reading materials. Where feasible the juvenile should be provided access to physical exercise and recreation, such as radio and TV.

(23) A case record shall be maintained on each juvenile admitted to a certified jail. Policies and procedures concerning the case records and the information in them shall be established which meet the following as a minimum:

(a) The contents of case records shall be identified and separated according to an established format.

(b) Case records shall be safeguarded from unauthorized and improper disclosure, in accordance with written policies and in compliance with Rule 38 of the Juvenile Court Rules of Practice and Rule 7-201 of the Code of Judicial Administration.

(c) The facility shall assure that no information shall be entered into a case record that is incomplete, inaccurate, or unsubstantiated. At any point that it becomes apparent that this has occurred, the facility shall immediately make the necessary

correction.

(24) A case record shall be maintained on each juvenile, as appropriate, and kept in a secure place. It shall contain as a minimum the following information and documents:

(a) initial intake information form;

(b) documented legal authority to accept, detain, and release juveniles;

(c) current detention medical/health care record;

(d) consent for necessary medical or surgical care, signed by parent, person acting in loco parentis, Juvenile Court judge, or facility official;

(e) record of medication administered;

(f) record of incident reports;

(g) a record of cash and valuables held;

(h) visitors' names, if any, personal and professional, and dates of visits;

(i) final discharge or transfer report.

(25) The jail facility director shall submit to the state Division of Juvenile Justice Services agency a monthly accurate report of the numbers of juveniles confined during the preceding month and provide information on each juvenile in the categories indicated on the report form as provided by the State.

R547-3-3. Standards for Juveniles Detained in Jail beyond Six Hours.

(1) The following standards must be met in addition to the standards in Section R547-3-2 when a facility is certified under Section 62A-7-201 beyond a six hour hold. See Subsection R547-3-2(1)(b) and (c).

(2) There is a written statement that describes the philosophy, goals, or purposes of the facility, which is reviewed at least annually and updated if necessary.

(3) Written policy and procedure provide that all employees who have juvenile contact receive an additional 20 hours of specialized juvenile training during their first year of employment, and 40 hours integrated with training requirements for each subsequent year of employment provided or approved by Juvenile Justice Services.

(4) Single sleeping cells have at least 70 square feet of floor space, and juveniles are provided activities and services outside their rooms at least 14 hours a day, except in disciplinary cases. (ACA 2-8138)

(5) The total indoor activity area outside the cell area provides space of at least 100 square feet per juvenile. (ACA 2-8143)

(6) Educational space and instruction shall be provided in conformity with local or state educational requirements. (ACA 2-8146)

(7) Space is available for religious services. (ACA 2-8149)

(8) There is a day room for each cell cluster. The room has a minimum of 35 square feet of floor space per juvenile and is separate and distinct from the sleeping area, which is immediately adjacent and accessible. (ACA 2-8169)

(9) Written policy precludes the use of food as a disciplinary measure. (ACA 2-8225)

(10) Clean clothing is provided for juveniles--clean socks, underwear and towels on a daily basis, and other clothing at least twice a week. (ACA 2-8244)

(11) Written policy and procedure provide an approved shower schedule that allows daily showers and showers after strenuous exercise. (ACA 2-8246)

(12) A history of the juvenile's immunizations will be obtained within 30 days of admission and at the time the health appraisal data are collected. Immunizations are updated, as required, within legal constraints. (ACA 2-8266)

(13) Written policy and procedure provide for the prompt notification of the juvenile's parents/guardian, or legal custodian in case of serious illness, surgery, injury or death. (ACA 2-8271)

(14) Written policy and procedure ensure a special program for juveniles requiring close medical supervision. A physician develops a written medical treatment plan for each of these patients that includes directions to medical and nonmedical personnel regarding their roles in the care and supervision of these patients. (ACA 2-8277)

(15) Under no circumstances is a stimulant, tranquilizer or psychotropic drug to be administered for purposes of program management and control or for purposes of experimentation and research. (ACA 2-8282)

(16) Programs and training are provided residents as needed within 72 hours for the development of sound habits and practices regarding personal hygiene. (ACA 2-8285)

(17) Written policy and procedure provide that when a juvenile is in need of hospitalization, a staff member accompanies him or her and stays with the juvenile at least during admission. (ACA 2-8286)

(18) Written policy and procedure provide that all informed consent standards in the jurisdiction are observed and documented for medical care. The informed consent of parent, guardian or legal custodian applies when required by law. When health care is rendered against the patient's will, it is in accord with state and federal laws and regulations. (ACA 2-8287)

(19) Written policy and procedure grant juveniles access to recreational opportunities and equipment, including, when the climate permits, outdoor exercise if detained more than 24 hours. (ACA 2-8298)

(20) Written policy and procedure provide that juveniles are not subjected to corporal or unusual punishment, humiliation, mental abuse or punitive interference with the daily functions of living, such as eating or sleeping. (ACA 2-8301)

(21) Juveniles are not required to participate in uncompensated work assignments unless the work is related to housekeeping, maintenance of the facility or grounds, or personal hygienic needs, or the work is part of an approved vocational training program or court approved work. (ACA 2-8302)

(22) There are no restrictions on the right of juveniles to determine the length and style of their hair, except in individual cases where such restrictions are necessary for reasons of health and safety. (ACA 2-8306)

(23) Written policy and procedure authorize juveniles to keep facial hair, if desired, except in individual cases where such restrictions are necessary for reasons of health and safety. (ACA 2-8307)

(24) Written policy and procedure specify that cell restriction for minor misbehavior serves only a "cooling off" purpose, is short in time duration, with the time period--fifteen minutes to sixty minutes--specified at the time of assignment. (ACA 2-8314)

(25) During room restriction, personal contact or observation is made by staff with the juvenile at least every 15 minutes, depending on the juvenile's emotional state. The juvenile assists in determining the end of the restriction period. (ACA 2-8316)

(26) Whenever juveniles are removed from the regular program, they are seen by a counselor or probation officer as soon as possible, but not more than 24 hours after removal. (ACA 2-8319)

(27) Juveniles placed in confinement separate from their living unit are visually checked by staff at least every 15 minutes and visited at least once each day by personnel from administrative, clinical, social work, religious or medical units; a log is kept stating who authorized the confinement, persons visiting the juvenile, the person authorizing release from confinement, and the time of release. (ACA 2-8321)

(28) The facility provides or makes available the following

minimum services and programs to adjudicated and preadjudicated juveniles: (ACA 2-8354)

(a) visiting with parents/guardians;
(b) private communication with visitors and staff;
(c) counseling;
(d) continuous supervision of living units;
(e) medical services;
(f) food services;
(g) recreation and exercises;
(h) reading materials.

(29) Educational opportunities are available to all juveniles within 72 hours of admittance, excluding weekends and holidays. (ACA 2-8356)

(30) Educational programs in facilities are designed to assist detained juveniles in keeping up with their studies and are initiated within 72 hours. (ACA 2-8357)

(31) Written policy and procedure provide a recreation and leisure time plan that includes, at a minimum, at least one hour per day of large muscle activity and one hour of structured leisure time activities. (ACA 2-8363)

(32) The facility has a staff member or trained volunteer who coordinates and supervises the recreation program. (ACA 2-8364)

(33) Library services are available to all detained juveniles. (ACA 2-8366)

(34) Written policy defines the principles, purposes and criteria used in the selection and maintenance of library materials. (ACA 2-8367)

(35) There is a social services program that makes available a range of resources to meet the needs of juveniles, including individual and family counseling and community services. (ACA 2-8369)

(36) The social services program is administered and supervised by a person qualified and trained in the social or behavioral services. (ACA 2-8370)

(37) Each juvenile is assigned a counselor, jail or probation officer at intake. (ACA 2-8374)

(38) Work assignments do not conflict with education programs. (ACA 2-8378)

(39) Written policy and procedure provide for securing citizen involvement in programs, including roles as advisors and interpreters between the program and the public, direct services and cooperative endeavors with juveniles under supervision. (ACA 2-8408)

(40) Written policy and procedure provide for the screening and selection of volunteers, allowing for recruitment from cultural and socioeconomic segments of the community. (ACA 2-8411)

(41) Prior to assignment, each volunteer completes an orientation and training program appropriate to the nature of the assignment. (ACA 2-8412)

(42) Written policy and procedure ensure that consultants, contract personnel and volunteers who work with juveniles comply with the facility's policies on confidentiality of information. (ACA 2-8085)

(43) Service personnel other than facility staff perform work in the facility only under direct and continuous supervision of facility staff in those areas permitting contact with juveniles. (ACA 2-8007)

(44) There is a written description of the facility that specifies its mission within the context of the system of which it is a part. This description is reviewed at least annually and updated if necessary. (ACA 2-8008)

(45) Where statute permits, the juvenile work plan provides for juvenile work assignments in public works projects. (ACA 2-5360)

(46) Where statute permits, the juvenile work plan includes provision for juveniles to work in various nonprofit and community service projects. (ACA 2-5361)

(47) Where statute permits, written policy and procedure allow for juvenile participation in work or educational release programs. (ACA 2-5381)

(48) Temporary release programs are required to have the following elements: (ACA 2-5382)

(a) written operational procedures;
(b) careful screening and selection procedures;
(c) written rules of juvenile conduct;
(d) a system of supervision;
(e) a complete recordkeeping system;
(f) a system for evaluating program effectiveness;
(g) efforts to obtain community cooperation and support.

KEY: juvenile corrections
November 18, 2002 62A-7-201
Notice of Continuation May 30, 2007

R547. Human Services, Juvenile Justice Services.
R547-7. Juvenile Holding Room Standards.
R547-7-1. Definitions.

(1) "Nonoffenders" means abused, neglected, or dependent youth.

(2) "Sight and sound separation" means that juvenile detainees must be located or arranged as to be completely separated from incarcerated adults by sight and sound barriers such that the adult inmates cannot see juvenile detainees and vice versa. Also, conversation is not possible between juvenile detainees and adult inmates.

(3) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

R547-7-2. Standards for Two Hour Juvenile Detention in Local Law Enforcement Facilities.

(1) Criteria by which juveniles may be held:

(a) The maximum holding period will be two hours as provided for by Subsection 62A-7-201(4).

(b) Extensive efforts will be made by holding authorities during these two hours to contact the juvenile's parents, guardian, or other responsible adult and arrange for the juvenile's release.

(c) No juvenile under ten years of age will be held by holding authorities, as set forth in the following standards, for any length of time.

(d) Only juveniles who are alleged to have committed a non-status offense or are accused of juvenile handgun possession may be detained for identification or interrogation or while awaiting release to a parent or other responsible adult.

(e) Despite the authorization to hold a juvenile in a certified holding room for up to two hours, no juvenile shall be held in such a room unless there is no other alternative which will protect the juvenile and the community.

(2) Any holding facility intended for use for juveniles must be certified by the state Division of Juvenile Justice Services, Subsection 62A-7-201(4).

(3) There shall be acceptable sight and sound separation from adult inmates Subsection 62A-7-201(4). Written policy and procedure shall exist to assure supervision is maintained so that both visual contact and verbal communication between juvenile detainees and adult inmates is prohibited.

(4) The juvenile holding rooms and the building in which they are located shall conform to all applicable:

(a) zoning laws;

(b) local and state safety, fire, and building codes;

(c) local and state health codes.

(5) All two hour holding room areas provide for, at a minimum:

(a) access to a toilet and wash basin;

(b) adequate shelter, heat, light, and ventilation that does not compromise security or enable escape;

(c) access to a drinking fountain;

(d) adequate utilitarian furnishings, including suitable chairs or benches.

(6) Whenever juveniles are detained, there shall be at a minimum:

(a) Removal of all property from the juvenile that could compromise the juvenile's safety, such as belts, shoelaces, and suspenders, prior to placing a juvenile in a holding room;

(b) constant on-site supervision, through visual monitoring and audio two way communication, Subsection 62A-7-201(4);

(c) a P.O.S.T. certified or qualified staff must be available to intervene within 60 seconds should a problem or medical emergency arise with a juvenile;

(d) frequent personal checks must occur with the juvenile to maintain communication and prevent panic and feelings of isolation;

(e) a written record of significant incidents and activities of the juvenile.

(7) A staff member of the same sex shall supervise the personal hygiene activities and care such as toilet related activities.

(8) When procedures require physical contact or examination, such as strip searches, these shall be done by a staff member of the same sex in private without TV monitoring. Body cavity searches shall be performed only when there is probable cause to believe that weapons or contraband will be found. With the exception of the mouth, all body cavity searches performed visually will be done by two personnel of the same sex as the youth. Manually performed body cavity searches will be performed by medically trained personnel, at least one of which will be the same sex as the youth being examined.

(9) There shall be no viewing devices, such as peep holes or mirrors, of which the juvenile is not aware.

(10) No detainee, juvenile or adult, shall be allowed to have authority or disciplinary control over, be permitted to supervise, or provide services of any nature to other detained juveniles.

(11) The juvenile's health and safety while in the holding room shall be safeguarded by following standard elements on medical and health service. In order to assure this, the holding room administration shall:

(a) have services available to provide 24 hours a day emergency medical care;

(b) provide for immediate examination and treatment, if necessary, of juveniles injured on the holding room premises;

(c) not accept juveniles who are unconscious, obviously seriously injured, a suicide risk, obviously emotionally disturbed, or obviously under the influence of alcohol or drugs and are unable to care for themselves, until they have been examined by a qualified medical practitioner or have been taken to a medical facility for appropriate diagnosis and treatment and released back to the holding room;

(d) train all holding room staff members to recognize symptoms of mental illness or retardation;

(e) require that any medical services provided while the juvenile is held be recorded.

(12) As long as classification standards are met, juveniles may be detained together if age, compatibility, dangerousness, and other relevant factors are considered. Juveniles of opposite genders may not be detained together.

(13) There must be written procedures in holding rooms governing the acceptance of juveniles, which include the following:

(a) When an officer or other person takes a juvenile into custody, they shall without unnecessary delay notify the parents, guardian, or custodian.

(b) The holding room staff shall verify with the officer or other person taking the juvenile into custody that the juvenile's parents, guardian, or custodian have been notified of the juvenile's detention. If notification did not occur, agency staff will contact the juvenile's parents, guardian, or custodian.

(14) There must be written policy and procedure that require that the decision to detain the juvenile for up to two hours or release the juvenile be in accordance with the following principles: Sections 78-3a-113, 78-3a-114, and 62A-7-205

(a) A juvenile shall not be detained any longer than is reasonably necessary to obtain their name, age, residence and any other necessary information, and to contact the juvenile's parents, guardian, or custodian.

(b) The juvenile shall then be released to the care of the parent or other responsible adult unless the immediate welfare or the protection of the community requires that the juvenile be detained or that it is unsafe for the juvenile or the public to leave the juvenile in the care of the parents, guardian or custodian. If after interrogation it is found that the juvenile

should be detained, transfer to an appropriate juvenile facility shall occur without unnecessary delay.

(c) A release record must be maintained which includes:

(i) information regarding physical and emotional condition of juvenile;

(ii) relationship of adult assuming release responsibility to juvenile;

(iii) means of proof of adult identification;

(iv) signature of said adult assuming responsibility regarding juvenile's physical and emotional condition and understanding of reason for holding the juvenile in custody.

(15) An admission or referral form must be completed on each juvenile detained which includes, as a minimum, the following information:

(a) date and time of admission and release;

(b) name, nicknames, and aliases;

(c) last known address;

(d) law enforcement jurisdiction, name, and title, of delivering officer;

(e) specific charges;

(f) sex;

(g) date of birth and place of birth;

(h) race or nationality;

(i) medical problems, if any;

(j) parents, guardian, or responsible person to notify in case of emergency, including addresses and telephone numbers;

(k) space for remarks, to include notation of any open wounds or sores requiring treatment, evidence of disease or body vermin, or tattoos;

(l) probation officer or caseworker assigned, if any.

(16) The written procedures governing the stay of a juvenile shall include:

(a) A juvenile, while held in a certified holding room, shall have the same legal and civil rights as an adult detainee.

(b) A juvenile, while held in a certified holding room, shall have the right to the same number of telephone calls as an adult detainee held the same amount of time.

(17) A case record shall be maintained on each juvenile and shall be kept in a secure place. It shall contain, as a minimum, the following information and documents:

(a) initial intake information form;

(b) documented legal authority to accept, detain, and release youth;

(c) record of incident reports;

(d) a record of cash and valuables held;

(e) visitors' names, if any, personal and professional, and dates of visits;

(f) final release or transfer report.

(18) The holding room facility director shall submit to the state Division of Juvenile Justice Services a monthly accurate report of the numbers of juveniles confined during the preceding month and provide information on each juvenile in the categories indicated on the report form as provided by the state.

(19) Written policy and procedure provide that when a juvenile is in need of hospitalization, a staff member accompanies and stays with the juvenile until admission, if permitted by medical personnel, or until an adult family member or legal guardian arrives to remain with the juvenile.

(20) All informed consent standards in the jurisdiction are observed and documented for medical care. The informed consent of parent, guardian, or legal custodian applies when required by law. When health care is rendered against the patient's will, it is ordered by a standing magistrate or deemed an emergency as defined by Section 26A-1.

(21) Written policy and procedure provide that juveniles are not subjected to corporal or unusual punishment, humiliation, or mental abuse.

(22) Written policy and procedure restrict the use of restraints or physical force to instances of justifiable self-defense, protection of juveniles and others, protection of property and prevention of escapes, and only when it is necessary to control juveniles and in accordance with the principle of least restrictive action. In no event is physical force justifiable as punishment. A written report is prepared following all uses of force and is submitted to the facility administrator.

(23) At intake, each juvenile detained is informed of the steps in the detention process.

(24) Juvenile processing procedures shall include written safeguards to prohibit nonoffenders from being detained in the facility and to ensure youth are held in accordance with R547-7-2(1)(c)(d).

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R547. Human Services, Juvenile Justice Services.
R547-12. Division of Juvenile Justice Services Classification of Records.
R547-12-1. Division of Juvenile Justice Services Classification of Records.

(1) The following classification scheme applies to the youth records of the Division of Juvenile Justice Services:

(a) Medical, psychological, and psychiatric reports are classified as controlled information. Other records produced by the Division of Juvenile Justice Services or its contractors are controlled if the agency reasonably believes that releasing the information in the record would be detrimental to the subject's mental health or to the safety of any individual.

(b) Progress reports, quarterly reports, reports to the Court, Parole Board reports, and correspondence are classified as private information, as are all other records in the case file that originate with the Division.

(c) Police reports, juvenile court legal and social information, school reports, and all other documents generated by agencies other than Juvenile Justice Services shall retain the classification assigned to them by the agency from which they were received.

KEY: juvenile corrections
1992 62A-7
Notice of Continuation May 30, 2007 63-2

R590. Insurance, Administration.
R590-93. Replacement of Life Insurance and Annuities.
R590-93-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A and pursuant to Subsection 31A-23a-402(8), which allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive.

R590-93-2. Purpose and Scope.

(1) The purpose of this rule is:

(a) to regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and

(b) to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:

(i) assure that purchasers receive information with which a decision can be made in the purchaser's own best interest;

(ii) reduce the opportunity for misrepresentation and incomplete disclosure; and

(iii) establish penalties for failure to comply with requirements of this rule.

(2) This rule applies to all insurers and producers doing life insurance and annuity transactions in this state.

(3) Unless otherwise specifically included, this rule shall not apply to transactions involving:

(a) credit life insurance;

(b) group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section R590-93-8;

(c) group life insurance and annuities used to fund prearranged funeral contracts;

(d) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner or when a term conversion privilege is exercised among corporate affiliates;

(e) proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(f)(i) policies or contracts used to fund:

(A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(B) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(C) a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(ii) Notwithstanding Subsection (i), this rule shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

(g) where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(h) existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;

(i) immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this rule; or

(j) structured settlements.

(4) Registered contracts shall be exempt from the requirements of Subsections R590-93-6(1)(c) and R590-93-7(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

R590-93-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule.

(1) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

(2) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

(3) "Existing policy or contract" means an individual life insurance policy, herein referred to as policy, or annuity contract, herein referred to as contract, in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

(4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in Subsection R590-93-5(1)(e).

(5) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in R590-177, Life Insurance Illustrations Rule.

(6) "Notice" means Appendix A and Appendix C, Important Notice: Replacement of Life Insurance or Annuities, and Appendix B, Notice Regarding Replacement, from the National Association of Insurance Commissioners, dated 2006 and which are incorporated herein by reference. The notice is

to be made available by the replacing insurer and must be imprinted with the name, address, and telephone number of the replacing insurer.

(7)(a) "Policy summary" for policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:

(i) current death benefit;

(ii) annual contract premium;

(iii) current cash surrender value;

(iv) current dividend;

(v) application of current dividend; and

(vi) amount of outstanding loan.

(b) "Policy summary" for universal life policies, means a written statement that shall contain at least the following information:

(i) the beginning and end date of the current report period;

(ii) the policy value at the end of the previous report period and at the end of the current report period;

(iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, e.g., interest, mortality, expense and riders;

(iv) the current death benefit at the end of the current report period on each life covered by the policy;

(v) the net cash surrender value of the policy as of the end of the current report period; and

(vi) the amount of outstanding loans, if any, as of the end of the current report period.

(8) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

(9) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(10) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

(a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

(b) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(c) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(d) reissued with any reduction in cash value; or

(e) used in a financed purchase.

(11) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract holder related to the policy or contract purchased.

R590-93-4. Duties of Producers.

(1) A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by the applicant as to whether the applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.

(2) If the applicant answered "yes" to the question regarding existing coverage referred to in Subsection (1), the producer shall present and read to the applicant, not later than at the time of taking the application, the Notice regarding replacements in the form as described in Appendix A or other substantially similar document filed with the commissioner. However, a filing shall not be required when amendments to the Notice are limited to the omission of references not applicable to the product being sold or replaced. The Notice shall be signed by both the applicant and the producer attesting that the Notice has been read aloud by the producer or that the applicant did not wish the Notice to be read aloud, in which case the producer need not have read the Notice aloud, and left with the applicant. With respect to an electronically completed application and Notice, the producer is not required to leave a copy of the electronically completed Notice with the applicant.

(3) The Notice shall list each existing policy or contract contemplated to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(4) In connection with a replacement transaction the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract holder in printed form no later than at the time of policy or contract delivery.

(5) Except as provided in Subsection R590-93-6(3), in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

R590-93-5. Duties of Insurers that Use Producers.

Each insurer shall:

(1) maintain a system of supervision and control to insure compliance with the requirements of this rule that shall include at least the following:

(a) inform its producers of the requirements of this rule and incorporate the requirements of this rule into all relevant producer training manuals prepared by the insurer;

(b) provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;

(c) a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Subsection (b) above;

(d) procedures to confirm that the requirements of this rule have been met;

(e) procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;

(2) have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the department. The capacity to monitor shall include the ability to produce records for each producer's:

(a) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

(b) number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;

(c) annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

(d) number of transactions that are unreported replacements of existing policies or contracts by the existing

insurer detected by the company's monitoring system as required by Subsection R590-93-5(1)(e); and

(e) replacements, indexed by replacing producer and existing insurer;

(3) require with or as a part of each application for life insurance or an annuity a signed statement by the applicant as to whether the applicant has existing policies or contracts;

(4) require with each application for life insurance or annuity that indicates an existing policy or contract, a completed Notice regarding replacements as contained in Appendix A;

(5) when the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Subsection R590-93-4(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;

(6) ascertain that the sales material and illustrations required by Subsection R590-93-4(5) of this rule meet the requirements of this rule and are complete and accurate for the proposed policy or contract;

(7) if an application does not meet the requirements of this rule, notify the producer and applicant and fulfill the outstanding requirements; and

(8) maintain records in any media or by any process that accurately reproduces the actual document.

R590-93-6. Duties of Replacing Insurers that Use Producers.

(1) Where a replacement is involved in the transaction, the replacing insurer shall:

(a) verify that the required forms are received and are in compliance with this rule;

(b) with respect to an electronically completed Notice, the replacing insurer shall send a printed copy of the electronically executed Notice to the applicant within five working days of the date the Notice is received by the company;

(c) notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or the policy summary for the proposed policy or disclosure document for the proposed contract within five business days of a request from an existing insurer;

(d) be able to produce copies of the notification regarding replacement required in Subsection R590-93-4(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

(e) provide to the policy or contract holder notice of the right to return the policy or contract within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it; such notice may be included in Appendix A or C. This subsection does not preempt the requirements of 31A-22-423.

(2) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(3) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Subsection R590-93-4(5) with regard to sales materials, the insurer may:

(a) require with each application a statement signed by the producer that:

(i) represents that the producer used only company-approved sales material; and

(ii) states that copies of all sales material were left with the applicant in accordance with Subsection R590-93-4(4); and

(b) within ten days of the issuance of the policy or contract:

(i) notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Subsection R590-93-4(4);

(ii) provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and

(iii) stress the importance of retaining copies of the sales material for future reference; and

(c) be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

R590-93-7. Duties of the Existing Insurer.

Where a replacement is involved in the transaction, the existing insurer shall:

(1) retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later;

(2) within 5 days of a replacement notification send a letter to the policy or contract holder of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced. The policy or contract information shall be provided within five business days of receipt of the request from the policy or contract holder; and

(3) upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy holder that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent directly to the policyholder if the check is sent to anyone other than the policyholder. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

R590-93-8. Duties of Insurers with Respect to Direct Response Solicitations.

(1) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the Notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) provide to applicants or prospective applicants with the policy or contract a Notice, as described in Appendix C, or other substantially similar document filed with the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, and references not

applicable to the product being sold or replaced, without having to file the document with the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the Notice referred to in this subsection. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed Notice referred to in this section; and

(b) comply with the requirements of Subsection R590-93-6(1)(c), if the applicant furnishes the names of the existing insurers, and the requirements of Subsections R590-93-6(1)(d), R590-93-6(1)(e), and R590-93-6(2).

R590-93-9. Violations and Penalties.

(1) Any failure to comply with this rule shall be considered a violation of 31A-23a-402. Examples of violations include:

(a) any deceptive or misleading information set forth in sales material;

(b) failing to ask the applicant in completing the application the pertinent question regarding existing policies or contracts;

(c) the intentional incorrect recording of an answer;

(d) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

(e) advising a policy or contract holder to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

(2) Policy and contract holders have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract holders of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this rule.

(3) Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policy holder an in force illustration if available or a policy summary for the replacement policy or disclosure document for the replacement contract and the appropriate Notice regarding replacements in Appendix A or C.

(4) Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at the legal rate as provided in Title 15 of the Utah Code on the amount refunded in cash.

R590-93-10. Relationship to Other Statutes and Rules.

If any portion of this rule is inconsistent with any provision of any statute or other rule dealing with life insurance or annuity marketing practices or disclosure, said inconsistent portion shall be interpreted so as to provide the greatest information or protection to the policyholder.

R590-93-11. Severability.

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provision shall be and remain in full force.

R590-93-12. Enforcement Date.

The commissioner will begin enforcing this rule 45 days after the effective date.

KEY: life insurance, annuity replacement
May 29, 2007 31A-2-201
Notice of Continuation April 28, 2004 31A-23a-402

R590. Insurance, Administration.
R590-235. Medicare Prescription Drug Plan.
R590-235-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201 (3), wherein the Commissioner is empowered to administer and enforce Title 31A, and to make administrative rules to implement the provisions of Title 31A.

R590-235-2. Purpose and Scope.

(1) The purpose of this rule is to establish licensing and regulatory requirements in the State of Utah for a stand-alone prescription drug plan (PDP).

(a) Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, commonly referred to as the Medicare Modernization Act (MMA), created requirements for a new type of organization called a Prescription Drug Plan (PDP) to provide Medicare Part D benefits.

(b) Base requirements for contracts with PDP sponsors include state licensure as a risk bearing entity in the jurisdiction where the entity proposes to serve Medicare Part D beneficiaries.

(2) This rule applies to all entities that offer a stand alone PDP in the State of Utah.

R590-235-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(2) "Stand-Alone Medicare Prescription Drug Plan (PDP):"

(a) means a prescription drug plan, offered by insurers and other private companies to provide Medicare Part D benefits under the Medicare Modernization Act; and

(b) does not include a Medicare prescription drug plan included in the benefit package offered by a Medicare Advantage company.

(3) "Medicare Advantage Company" means a company selling a Medicare authorized product replacing Medicare Part A and Part B benefits.

R590-235-4. Licensure and Regulatory Requirements.

A PDP may be licensed and regulated as either a Utah domiciled health maintenance organization (HMO), a limited health plan (LHP), or an indemnity insurer, either Utah domiciled or foreign.

(1) Regulatory requirements for a Utah domiciled PDP organized as:

(a) an HMO or LHP are established by Title 31A, Chapter 8;

(b) an indemnity insurer are established by Title 31A, Chapter 5.

(2) Regulatory requirements for a foreign indemnity insurer are established by Title 31A, Chapter 14.

(3) A PDP is required to file Quarterly and Annual Statement Blanks in accordance with the instructions provided by the National Association of Insurance Commissioners (NAIC) and in accordance with Statutory Accounting Principles (SAP).

(4) A PDP applicant must apply for licensure using the NAIC Uniform Certificate of Authority Application forms:

(a) Primary Application Form for a domestic insurer PDP; or

(b) Expansion Application Form for a foreign indemnity insurer PDP.

R590-235-5. Minimum Capital and Surplus Requirements.

(1) The minimum capital or permanent surplus requirement is:

(a) $400,000 for indemnity insurers, whether domestic or foreign;

(b) $100,000 for an HMO; and

(c) for an LHP:

(i) may not be less than $10,000 or exceed $100,000.

(ii) the actual amount is to be set by the commissioner after a hearing and consideration of various factors.

(2) Risk-Based Capital (RBC) requirements, as outlined in Section 31A-17-602, are applicable regardless of the license type.

R590-235-6. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days after adoption.

R590-235-7. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.

KEY: prescription drug plans
June 7, 2006 31A-2-201

R590. Insurance, Administration.
R590-238. Captive Insurance Companies.
R590-238-1. Authority.

This rule is promulgated pursuant to the general rulemaking authority granted the insurance commissioner by Subsection 31A-2-201(3)(a) and the specific authority granted by Section 31A-37-106.

R590-238-2. Purpose and Scope.

The purpose of this rule is to set forth the financial, reporting, record-keeping, and other requirements which the commissioner deems necessary for the regulation of captive insurance companies, under the Captive Insurance Companies Act (the Act), Chapter 37, Title 31A. This rule applies to all captive insurance companies licensed under the Act.

R590-238-3. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-37-102 apply to this rule.

(2) "Company" means a captive insurance company as defined in Section 31A-1-301.

(3) "Work Papers" or "working papers" include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their audit of the company.

R590-238-4. Annual Reporting Requirements.

(1) A captive insurance company authorized in this state shall file an annual report of its financial condition with the commissioner as required by Section 31A-37-501. The report shall be verified by oath of two of its executive officers and shall be prepared using generally accepted accounting principles ("GAAP"). The annual report may be filed electronically consistent with directions from the commissioner.

(2) An association captive insurance company, a sponsored captive insurance company, and an industrial insured captive insurance company shall observe the requirements of Section 31A-4-113 when they file an annual report on its financial condition. In addition, an industrial insured group shall observe the requirements of Section 31A-4-113.5 when it files an annual report.

(3) All captive insurance companies, except those noted in Subsection R590-238-4(2), are to use the "Captive Insurance Company Annual Statement Form."

R590-238-5. Risk Limitation.

(1) The commissioner may limit the net amount of risk a captive insurance company retains for a single risk after considering the impact of the retention on the captive insurance company's capital and surplus.

(2) The commissioner may also prescribe and demand additional capital and surplus of any captive insurance company if he determines that the captive insurance company is not adequately capitalized for the type, volume and nature of the risk that is being covered by the captive insurance company.

R590-238-6. Annual Audit.

(1) All companies shall have an annual audit by an independent certified public accountant, approved by the commissioner, and shall file such audited financial report with the commissioner on or before June 30 for the preceding year ending December 31. Financial statements furnished under this section shall be prepared in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants ("AICPA").

(2) The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.

(3) The annual audit shall consist of the following:

(a) Opinion of Independent Certified Public Accountant

(i) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the AICPA.

(ii) The opinion of the independent certified public accountant shall cover all years presented.

(iii) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(b) Report of Evaluation of Internal Controls

(i) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, controls as the system of authorization and approval and the separation of duties.

(ii) The review shall be conducted in accordance with generally accepted auditing standards and the report shall be filed with the commissioner.

(c) Accountant's Letter

The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

(i) that he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and pronouncements of the Financial Accounting Standards Board;

(ii) the general background and experience of the staff engaged in the audit, including their experience in auditing captive or other insurance companies;

(iii) that the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this rule.

(iv) that the accountant consents to the requirements of R590-238-10;

(v) that the accountant consents and agrees to make the work papers as defined in R590-238-3(3) available for review by the commissioner, his designee or his appointed agent; and

(vi) that the accountant is properly licensed by an appropriate state licensing authority.

(d) Financial Statements

(i) The financial statements required shall be as follows:

(A) balance sheet;

(B) statement of gain or loss from operations;

(C) statement of changes in financial position;

(D) statement of cash flow;

(E) statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus); and

(F) notes to financial statements.

(ii) The notes to financial statements shall be those required by GAAP and shall include:

(A) a reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner;

(B) a summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and

(C) a narrative explanation of all material transactions with the company. For purposes of this provision, no transaction shall be deemed material unless it involves 3% or more of a company's admitted assets as of the December 31 next preceding.

(e) Certification of Loss Reserves and Loss Expense Reserves of the company's opining actuary

(i) The annual audit shall include an actuarial opinion as to the reasonableness of the company's loss reserves and loss

expense reserves, unless waived by the commissioner.

(ii) The individual who certifies as to the reasonableness of reserves shall be approved by the Commissioner and shall be a Fellow or Associate of the Casualty Actuarial Society and a member in good standing of the American Academy of Actuaries, for property and casualty companies or a Fellow or Associate of the Society of Actuaries and a member in good standing of the American Academy of Actuaries for life and health companies.

(4) Certification under Subsection R590-238-6(3)(e) shall be in such form as the commissioner deems appropriate.

R590-238-7. Designation of Independent Certified Public Accountant.

(1) A certified public accountant that is retained to conduct the independent annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner.

(2) A company that terminates the appointment of an independent certified public accountant retained to conduct the annual audit required in this rule shall report the name and address of the certified public accountant in writing to the commissioner within ninety days after the appointment is terminated and shall within the same period report the name and address of the certified public accountant that is subsequently retained.

R590-238-8. Notification of Adverse Financial Condition.

A company shall require its certified public accountant to immediately notify an officer and all members of the board of directors of the company in writing of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner. The company shall furnish such notification to the commissioner within five working days of receipt thereof.

R590-238-9. Additional Deposit Requirement.

(1) Whenever the commissioner deems that the financial condition of a company warrants additional security, the commissioner may require the company to deposit, in trust for the company, cash, securities approved by the commissioner, or an irrevocable letter of credit issued by a bank chartered by the State of Utah or a member bank of the Federal Reserve System with the commissioner.

(2) The commissioner shall return the deposit or letter of credit of a company if the company ceases to do any business only after being satisfied that all obligations of the company have been discharged.

(3) A company may receive interest or dividends from the deposit or exchange the deposits for others of equal value with the approval of the commissioner.

R590-238-10. Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.

(1) Each company shall require its independent certified public accountant to make all work papers prepared in the conduct of the audit of the company available for review by the commissioner or his appointed agent. The company shall require that the accountant retain the audit work papers for a period of not less than five years after the period reported upon.

(2) The review by the commissioner shall be considered an official investigation by the commissioner and all working papers obtained during the course of such investigation shall be confidential business papers and shall be classified as business confidential protected records. The company shall require that the independent certified public accountant provide photocopies of any of the working papers that the department considers relevant. The department may retain any photocopies of working papers.

R590-238-11. Documentation Required to be Held in Utah by Licensed Captives.

(1) All companies licensed by the commissioner as a captive insurance company, shall maintain and make ready for inspection and examination by the commissioner, or the commissioner's agent, any and all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each company.

(2) Original documents may be kept in the offices of the company's captive manager, the company's parent, or the company itself. Accurate and complete copies shall be held in an office located in Utah that is designated by the company and approved by the commissioner.

R590-238-12. Reinsurance.

(1) Any company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(a) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the transfer of the risk or liability to the reinsurer.

(b) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(2) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

(3) The commissioner, in his discretion, may require that complete copies of all reinsurance treaties and contracts be filed and approved by him.

R590-238-13. Service Providers.

No person shall act, in or from this state, as an captive insurance manager, broker, agent, or salesman, or reinsurance intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

R590-238-14. Directors.

(1) Every company shall report any change in its executive officers or directors to the commissioner within thirty days after a change is made, including, in its report, a biographical affidavit of any new executive officer or director.

(2) No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company. Such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

(3) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

R590-238-15. Conflict of Interest.

(1) Each company licensed in Utah is required to adopt a conflict of interest statement for officers, directors and key employees. The statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company he represents but this shall not preclude a person from being a director or officer in more than one insurance company.

(2) Each officer, director, and key employee shall file a yearly disclosure with the board of directors.

R590-238-16. Acquisition of Control of or Merger with Domestic Company.

The acquisition of control of or merger of a domestic captive insurance company shall be regulated pursuant to Section 31A-16-103.

R590-238-17. Suspension or Revocation.

(1) The commissioner may by order suspend or revoke the license of a company or place the same on probation on the following grounds:

(a) the company has not commenced business according to its plan of operation within two years of being licensed;

(b) the company has ceased to carry on insurance business in or from within Utah;

(c) at the request of the company; or

(d) any reason provided in Section 31A-37-505.

(2) Before the commissioner takes any action set forth under R590-238-17(1) the commissioner shall give the company notice in writing of the grounds on which the commissioner proposes to act, and shall afford the company a hearing as to such proposed action in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act.

R590-238-18. Change of Information in Initial Application.

(1) Any material change in a company's business plan that was filed with the commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval of the commissioner.

(2) Any change in any other information filed with the initial application must be filed with the commissioner within sixty days after the change, but does not require prior approval.

(3) The company shall immediately notify the commissioner upon making changes in board members or officers of the company.

R590-238-19. Application and Forms.

(1) Any person that wants to form a captive insurance company shall make application to the commissioner for authority to conduct a captive insurance using the form, "Application to Form a Captive Insurance Company."

(2) Two complete copies of the application including forms, attachments, exhibits and all other papers and documents filed as a part thereof, accompanied by the appropriate filing fee, shall be filed in writing or online with the commissioner. A written application, including all required attachments and information, may be filed by personal delivery or mail addressed to: Office of the Commissioner, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114-6901, Attention: Captive Insurance Administrator.

(3) At least one of the copies of the application shall be signed in the manner prescribed in the application. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the application.

(4) A company must include with its application, a feasibility study demonstrating the feasibility of the business plan of the company. The department may test the feasibility of the study by examining the company's corporate records, including: charter; bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and other factors as the commissioner deems necessary.

R590-238-20. Fee Schedule. Initial Application. Renewal.

(1) An applicant for a certificate of authority under the captive insurance code shall pay a nonrefundable fee established in the department's fee rule, R590-102-7 for examining, investigating, and processing its initial application for license to the commissioner at the time the application is filed.

(2) In addition, each company that is licensed by the commissioner shall pay a license fee, without proration, for the initial year of registration and a renewal fee for each succeeding year in the amount established in the department's fee rule, R590-102-7.

(3) Each company shall pay an annual nonrefundable e-commerce and internet technology services fee each year in the amount established in the department's fee rule, R590-102-14(1)(b) to the commissioner.

(4) Each captive insurance company shall pay a nonrefundable fee in the amount established in the department's fee rule, R590-102 for photocopies of documents to the commissioner.

R590-238-21. Authorized Forms.

(1) The following forms are to be used for any applicant applying for a certificate of authority for a new captive insurance company and may be obtained from the department's captive administrator at (801)537-9174 or (801)537-9047:

(a) "Application to Form A Captive Insurance Company;"

(b) "Biographical Affidavit For Captive Insurance Company;"

(c) "Utah Insurance Department Captive Insurance Company Reinsurance Exhibit;"

(e) "Utah Approved Irrevocable Letter of Credit;"

(f) "Statement if Economic Benefit to the State of Utah;" and

(g) "Appointment Of The Insurance Commissioner For The State Of Utah As Attorney To Accept Service of Process."

(2) The following forms are to be used when applying to become an Approved captive insurance company provider and are available on the department's captive website:

(a) "Application for Placement on Approved Captive Insurer Management Firm List;"

(b) "Application To Certify Loss And Expense For Captive Insurance Companies Captive Actuary Application;" and

(c) "Application For Authorization As An Independent Certified Public Accountant for Captive Insurance Companies."

(3) All captive insurance companies, except those noted in R590-238-4(2), are to use the "Captive Insurance Company Annual Statement Form."

(4) A company shall file a "Statement of Economic Benefit to the State of Utah" form with its initial application and for each of the 12 months ending December 31, of each applicable year.

(5) The forms indicated in Sections (2), (3), and (4) are available on the department's captive website, www.captive.utah.gov/licensing.html.

R590-238-22. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons and circumstances are not effected.

KEY: captive insurance
May 25, 2007 **31A-2-201**
31A-37-106

R616. Labor Commission, Boiler and Elevator Safety.
R616-1. Coal, Gilsonite, or other Hydrocarbon Mining Certification.
R616-1-1. Authority and Purpose.

This rule is established pursuant to Section 40-2-1.1 and Section 40-2-14, which authorize the Labor Commission to enact rules governing the certification of individuals to work in the positions of underground mine foreman, surface mine foreman, fire boss, underground electrician or surface electrician in coal mines, gilsonite mines or other hydrocarbon mines in Utah.

R616-1-2. Definitions.

A. "Commission" means the Labor Commission created in Section 34A-1-103.

B. "Division" means the Division of Boiler and Elevator Safety of the Labor Commission.

C. "Certification" means a person being judged competent and qualified by the Division for a mining position identified in Section 40-2-15 by meeting standards established by the Division and the examining panel pursuant to the requirements in Sections 40-2-14 through 16.

R616-1-3. Fees.

As required by Section 40-2-15, the Labor Commission shall establish and collect fees for certification sufficient to fund the Commission's miner certification process. The Commission's fees schedule shall be submitted to the Legislature for approval pursuant to Section 63-38-3(2).

R616-1-4. Code of Federal Regulations.

The provisions of 30 CFR, sections 1 through 199, "Federal Underground Coal Mine Safety Standards," 11th ed., July 1, 1996, are hereby incorporated by reference.

R616-1-5. Initial Agency Action.

Division action either granting or denying an applicant's application for certification are classified as informal adjudicative actions pursuant to Section 63-46b-4 of the Utah Administrative Procedures Act and shall be adjudicated accordingly.

KEY: certification, labor, mining
May 23, 2007 34A-1-104
Notice of Continuation May 28, 2003 40-2-1 et seq.

R651. Natural Resources, Parks and Recreation.
R651-611. Fee Schedule.
R651-611-1. Use Fees.

All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities.

A. Fees for services covering one or more months, for docks and dry storage, must be paid in advance for the season as determined by the Division.

B. Fee permits and passes are not refundable or transferable. Duplicate annual permits and special fun tags will be issued only upon completion of an affidavit and payment of the required fee. Inappropriate use of fee permits and passes may result in confiscation by park authorities.

C. Fees shall not be waived, reduced or refunded unless authorized by Division guideline; however, park or unit managers may determine and impose equitable fees for unique events or situations not covered in the current fee schedule. The director has the prerogative to waive or reduce fees.

D. The Multiple Park Permit, Senior Multiple Park Permit, Special Fun Tag, Camping Permit and Daily Private Vehicle Permit are good for one (1) private vehicle with up to eight (8) occupants, with the exception of any special charges. Multiple Park Permits, Senior Multiple Park Permits, and Special Fun Tags, are not honored at This Is The Place State Park.

E. No charge for persons five years old and younger.

F. With the exception of the Multiple Park Permit, Senior Multiple Park Permit, and Special Fun Tag, fees are applicable only to the specific park or facility where paid and will not be honored at other parks or facilities, unless otherwise stated in division guideline.

G. The contract operator, with the approval of the Division Director, will set fees for This Is The Place State Park.

H. A "senior" is defined as any resident of the State of Utah 62 years of age or older. Residency and proof of age are verified by presentation of a valid driver's license or a valid Utah identification card.

I. Charges for services unique to a park may be established by the park manager with approval from the region manager. All approved charges must be submitted to the Division director or designee.

R651-611-2. Day Use Entrance Fees.

Permits the use of all day activity areas in a state park. These fees do not include overnight camping facilities or special use fees.

A. Annual Permits

1. $70.00 Multiple Park Permit (good for all parks)

2. $35.00 Senior Multiple Park Permit (good for all parks)

3. $200.00 Commercial Dealer Demonstration Pass

4. Duplicate Annual Permits may be purchased if originals are lost, destroyed, or stolen, upon payment of a $10.00 fee and the submittal of a signed affidavit to the Division office. Only one duplicate is allowed.

B. Special Fun Tag - Available free to Utah residents, who are disabled, as defined by the Special Fun Tag permit affidavit.

C. Daily Permit - Allows access to a specific state park on the date of purchase.

1. $9.00 ($5.00 for seniors) per private motor vehicle or $5.00 per person ($3.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 1

Deer Creek	Jordanelle - Hailstone
Utah Lake	Willard Bay

2. $7.00 ($4.00 for seniors) per private motor vehicle or $4.00 per person ($2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 2

Bear Lake - Marina	Bear Lake - Rendezvous
Dead Horse Point	East Canyon
Jordanelle - Rockcliff	Quail Creek
Rockport	Sand Hollow
Yuba	

3. $6.00 ($3.00 for seniors) per private motor vehicle or $3.00 per person ($2.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 3

Antelope Island	Goblin Valley
Hyrum	Kodachrome
Palisade	

4. $2.00 ($1.00 for seniors) per private vehicle at the following park:

TABLE 4

Great Salt Lake

5. $6.00 per adult, $3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively), and $3.00 for seniors at Utah Field House State Park.

6. $2.00 per person ($1.00 for seniors), or $6.00 per family (up to eight (8) individuals ($3.00 for seniors), at the following parks:

TABLE 5

Camp Floyd
Territorial

7. $3.00 per person ($1.50 for seniors), or $6.00 per family (up to eight (8) individuals ($3.00 for seniors), at the following parks:

TABLE 6

Anasazi	Edge of the Cedars
Fremont	Iron Mission

8. $5.00 ($3.00 for seniors) per private motor vehicle or $3.00 per person ($2.00 for seniors),for pedestrians or bicycles at the parks not identified above, including the east side of Bear Lake.

9. $10.00 per OHV rider at the Jordan River OHV Center.

10. $2.00 per person for commercial groups or vehicles with nine (9) or more occupants ($15.00 per group at Great Salt Lake).

D. Group Site Day Use Fee - Advance reservation only. $2.00 per person, age six (6) and over, for sites with basic facilities. Minimum $50.00 fee established for each facility.

E. Antelope Island Wildlife Management Program: A $1.00 fee will be added to the entrance fee at Antelope Island. This additional fee will be used by the Division to fund the Wildlife Management Program on the Island.

R651-611-3. Camping Fees.

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. Camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Fees for individual sites are based on the following schedule:

1. $9.00 with pit or vault toilets; $12.00 with flush toilets;

$15.00 with flush toilets and showers or electrical hookups; $18.00 with flush toilets, showers and electrical hookups; $21.00 with full hookups.

2. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

3. Special Fun Tag holders may receive a $2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

4. One-half the campsite fee rounded up to the nearest dollar will be charged per vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that unit. No more than one additional vehicle is allowed at any individual campsite. This fee is not applicable at primitive campsites.

B. Group Sites - (by advance reservation for groups)

1. $2.00 per person, age six (6) and over at sites with vault toilets. Minimum $50.00 fee for each facility.

2. $3.00 per person, age six (6) and over at sites with flush toilets and/or pavilions. Minimum $75.00 fee for each facility.

R651-611-4. Special Fees.

A. Golf Course Fees

1. Palisade rental and green fees.

a. Nine holes general public - weekends and holidays - $12.00

b. Nine holes weekdays (except holidays) - $10.00

c. Nine holes Jr/Sr weekdays (except holidays) - $8.00

d. 20 round card pass - $160.00

e. 20 round card pass (Jr only) - $100.00

f. Promotional pass - single person (any day) - $450.00

g. Promotional pass - single person (weekdays only) - $300.00

h. Promotional pass - couples (any day) - $650.00

i. Promotional pass - family (any day) - $850.00

j. Promotional pass - annual youth pass - $150.00

k. Companion fee - walking, non -player - $4.00

l. Motorized cart (18 holes) - $10.00

m. Motorized cart (9 holes) - $5.00

n. Pull carts (9 holes) - $2.00

o. Club rental (9 holes) - $5.00

p. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

q. Driving range - small bucket - $2.50

r. Driving range - large bucket - $3.50

2. Wasatch Mountain and Soldier Hollow rental and green fees.

a. Nine holes general public - $12.50

b. Nine holes general public (weekends and holidays) - $13.50

c. Nine holes Jr/Sr weekdays (except holidays) - $11.00

d. 20 round card pass - $220.00 - no holidays or weekends

e. Annual Promotional Pass (except holidays) - $1,000.00

f. Business Class Membership Pass - $1,000.00

g. Companion fee - walking, non-player - $4.00

h. Motorized cart (9 holes - mandatory on Mt. course) - $13.00

i. Motorized cart (9 holes single rider) - $6.00

j. Pull carts (9 holes) - $2.25

k. Club rental (9 holes) - $6.00

l. School teams - No fee for practice rounds with coach and team roster (Wasatch County only).

Tournaments are $3.00 per player.

l. Tournament fee (per player) - $5.00

m. Driving range - small bucket - $2.50

n. Driving range - large bucket - $5.00

o. Advance tee time booking surcharge - $15.00

3. Green River rental and green fees.

a. Nine holes general public - $10.00

b. Nine holes Jr/Sr weekdays (except holidays) - $8.00

c. Eighteen holes general public - $16.00

d. 20 round card pass - $140.00

e. Promotional pass - single person (any day) - $350.00

f. Promotional pass - personal golf cart - $350.00

g. Promotional pass - single person (Jr/Sr weekdays) - $275.00

h. Promotional pass - couple (any day) - $600.00

i. Promotional pass - family (any day) - $750.00

j. Promotional pass - annual youth pass - $150.00

k. Companion fee - walking, non-player - $4.00

l. Motorized cart (9 holes) - $10.00

m. Motorized cart (9 holes single rider) - $5.00

n. Pull carts (9 holes) - $2.25

o. Club rental (9 holes) - $5.00

p. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

4. Golf course hours are daylight to dark

5. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.

6. Jr golfers are 17 years and under. Sr golfers are 62 and older.

B. Boat Mooring and Dry Storage

1. Mooring Fees:

a. Day Use - $5.00

b. Overnight Boat Parking - $7.00 (until 8:00 a.m.)

c. Overnight Boat Camping - $15.00 (until 2:00 p.m.)

d. Monthly - $4.00/ft.

e. Monthly with Utilities - (Bear Lake) $6.00/ft.

f. Monthly with Utilities - (Other Parks) $5.00/ft.

g. Monthly Off Season - $2.00/ft

h. Monthly (Off Season with utilities) - $3.00/ft

2. Dry Storage Fees:

a. Overnight (until 2:00 p.m.) - $5.00

b. Monthly During Season - $75.00

c. Monthly Off Season - $50.00

d. Monthly (unsecured) - $25.00

C. Application Fees - Non -refundable PLUS Negotiated Costs.

1. Grazing Permit - $20.00

2. Easement - $250.00

3. Construction/Maintenance - $50.00

4. Special Use Permit - $50.00

5. Commercial Filming - $50.00

6. Waiting List - $10.00

D. Assessment and Assignment Fees.

1. Duplicate Document - $10.00

2. Contract Assignment - $20.00

3. Returned checks - $20.00

4. Staff time - $40.00/hour

5. Equipment - $30.00/hour

6. Vehicle - $20.00/hour

7. Researcher - $5.00/hour

8. Photo copy - $ .10/each

9. Fee collection - $10.00

R651-611-5. Reservations.

A. Camping Reservation Fees.

1. Individual Campsite $8.00

2. Group site or building rental $10.25

3. Fees identified in #1 and #2 above are to be charged for both initial reservations and for changes to existing reservations.

B. All park facilities will be allocated on a first-come, first-serve basis.

C. Selected camp and group sites are reservable in advance

by calling 322-3770, 1-800-322-3770 or on the Internet at: www.stateparks.utah.gov.

D. Applications for reservation of skating rinks, meeting rooms, buildings, mooring docks, dry storage spaces and other sites not covered above, will be accepted by the respective park personnel beginning on the first business day of February for the next 12 months. Application forms and instructions are available at the park.

E. All unreserved mooring docks, dry storage spaces and camp picnic sites are available on a first-come, first-serve basis.

F. The park manager for any group reservation or special use permit may require a cleanup deposit.

G. Golf course reservations for groups of 20 or more and tournaments will be accepted for the calendar year beginning the first Monday of March. Reservations for up to two starting times (8 persons) may be made for Saturday, Sunday and Monday, the preceding Monday; and for Tuesday through Friday, the preceding Saturday. Reservations will be taken by phone and in person during golf course hours.

H. One party will reserve park facilities for more than fourteen (14) consecutive days in any 30-day period.

KEY: parks, fees
May 22, 2007 **63-11-17(8)**
Notice of Continuation February 13, 2006

R657. Natural Resources, Wildlife Resources.
R657-2. Adjudicative Proceedings.
R657-2-1. Purpose and Authority.

(1) This rule sets forth the standards and procedures governing all adjudicative proceedings before the Wildlife Board and the division, except as provided in subsection (2), and specifically governs the following adjudicative proceedings:

(a) requests for agency action;

(b) declaratory orders brought pursuant to Section 63-46b-21;

(c) requests for species reclassification under Section R657-3;

(d) requests for a variance under Section R657-3;

(e) post-issuance requests for a variance or amendment to a license, permit, tag or certificate of registration;

(f) request for review of a division action taken to deny a certificate of registration under Section R657-3;

(g) requests for agency action brought to contest the division's determination of eligibility for issuance or renewal of a license, permit, tag, or certificate of registration;

(h) appeals of divisions actions taken pursuant to Section 23-16-4; and

(i) a petition brought requesting the making, amendment, or repeal of a rule brought pursuant to Section 63-46a-12.

(2)(a) Unless otherwise specifically provided, this rule does not govern actions taken under Sections 23-19-9 and R657-26 to suspend a wildlife license, permit, tag, or certificate of registration.

(b) The hearing officer or Wildlife Board hearing an appeal of a hearing officer's decision to revoke a person's license, permit, tag, or certificate of registration, or to suspend receipt of privileges granted thereunder, may use any of the provisions established in this rule in conducting an adjudicative proceeding to the extent such provisions do not conflict with any of the procedural provisions of Section 23-19-9 or R657-26 and where conducting the proceeding according to this rule would promote fairness and equity to the parties.

(3) All rights, powers, and authorities provided in Chapter 46b, Title 63 are hereby reserved to the division and Wildlife Board in conducting adjudicative proceedings under this rule and to the extent this rule does not address a specific procedural matter, the provisions of Chapter 46b, Title 63 shall govern.

R657-2-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and 63-46b-2.

(2) In addition:

(a)(i) "Adjudicative proceeding" means:

(A) a division or Wildlife Board action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all division or Wildlife Board actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(B) judicial review of any action provided in Subsection (A).

(ii) "Adjudicative proceeding" does not mean any matter not governed by Title 63, Chapter 46b, Utah Administrative Procedures Act.

(b) "Assistant director" means the assistant director of the division.

(c) "Director" means the director of the division.

(d) "Division" means the Utah Division of Wildlife Resources.

(e) "Petitioner" means a person or entity who files a request for agency action initiating an adjudicative proceeding.

(f) "Presiding Officer" means the director, chairman of the Wildlife Board, or an individual or body of individuals designated by the director, the chairman of the Wildlife Board, or by statute or division rule to conduct an adjudicative proceeding.

(g) "Regional advisory council" means the entities created by Section 23-14-2.6.

(h) "Respondent" means any person or entity against whom a proceeding is initiated or whose property interest may be affected by a proceeding initiated by the division, the Wildlife Board or any other person.

R657-2-3. Construction - Deviation From Rule.

(1) This rule shall be construed in accordance with Title 63, Chapter 46b.

(2) This rule shall be liberally construed to secure a just, speedy, and economic determination of issues.

(3)(a) The presiding officer may, for good cause, deviate from the provisions of this rule if:

(i) the presiding officer finds that strict compliance with this rule is impractical or unnecessary; or

(ii) a deviation from the rule promotes the furtherance of justice or the statutory purposes for which the action is brought.

(b) All parties shall be notified by the presiding officer of any deviation from this rule.

R657-2-4. Computation of Time.

The time within which any act shall be done, as provided in this rule, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, in which case it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

R657-2-5. Commencement of Adjudicative Proceedings.

(1) An adjudicative proceeding may be commenced by either:

(a) a notice of agency action, if the proceeding is commenced by the division or the Wildlife Board; or

(b) a request for agency action, if the proceeding is commenced by a person other than the division or Wildlife Board.

(2) A notice of agency action shall be filed and served according to the requirements of Section 63-46b-3(2).

(3) A request for agency action brought by a person other than the division or Wildlife Board shall be filed and served in accordance with the requirements of Section 63-46b-3(3) and R657-2-6.

R657-2-6. Request for Agency Action.

(1) A request for agency action must be filed with the presiding officer of the entity that has authority to provide relief to the petitioner. The presiding officer may refuse acceptance of any request for agency action if there is reason to believe:

(a) the request is frivolous or brought in bad faith;

(b) the matter has already been acted upon and further consideration is unnecessary;

(c) the relief sought is beyond the agency's jurisdiction; or

(d) the request fails to comply with the procedural requirements of this rule.

(2) At the time the request for agency action is filed, the petitioner shall also file any motions, affidavits, briefs, or memoranda in support of the request for agency action.

(3) The presiding officer shall review the request for agency action.

(a) If the request for agency action is made to the division, the person designated as the presiding officer shall take action upon the request within a reasonable time.

(b)(i) If the request for agency action is made to the Wildlife Board, and the request concerns a matter over which the Wildlife Board has authority, the presiding officer may:

(A) have the request for agency action placed on the

Wildlife Board's agenda for action;

(B) submit the request for agency action to the appropriate regional advisory council or councils, requesting the council or councils to hold public hearings, take input, and make recommendations to the Wildlife Board as provided in Section 23-14-2.6; or

(C) deny the request and notify the requesting party in writing of the denial and that the party may request a hearing before the Wildlife Board to challenge the denial.

(ii) In determining when to schedule the matter for hearing before the Wildlife Board, the presiding officer may consider the following:

(A) If the matter is general in nature, and the Wildlife Board's agenda allows, the matter may be brought at the next regularly-scheduled Wildlife Board meeting;

(B) If the matter involves a serious or irreparable harm to a person or entity that may be resolved by holding a hearing before the next regularly-scheduled meeting, the Wildlife Board may hold an emergency meeting; or

(C) If the matter involves an issue that is part of an annual decision making process, the matter may be scheduled at the next annual meeting where such decisions are made, but no later than one year after the date the request is received.

(4)(a) The presiding officer may schedule the request for agency action on the Wildlife Board agenda for action without regional advisory council input if:

(i) the presiding officer determines that the public interest in deciding the matter without seeking input from the regional advisory councils outweighs the benefit of considering recommendations of the regional advisory councils;

(ii) the request for agency action seeks a remedy that affects only one person or a small number of persons, thus making broad public input unnecessary; or

(iii) the delay associated with seeking regional advisory council input will result in serious or irreparable harm to the petitioner or the respondent, provided the petitioner or respondent has not been negligent in filing the request for agency action in a timely fashion.

(b) Upon a majority vote of the Wildlife Board, any request for agency action submitted to it by the presiding officer that has not been considered by the regional advisory councils may be referred to the regional advisory councils for the purpose of gathering input prior to the Wildlife Board taking further action.

(5) The petitioner shall provide a copy of the request for agency action to any person known by the petitioner to have a direct interest in the proceeding or who will be directly affected by its outcome.

R657-2-7. Designation of Adjudicative Proceedings.

(1) Except as otherwise provided in this rule or at the discretion of the presiding officer, all adjudicative proceedings before the division and the Wildlife Board are designated as informal.

(2) Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding or a formal adjudicative proceeding to an informal adjudicative proceeding if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(3) Any party to an adjudicative proceeding, including the division, may by motion request a formal hearing.

R657-2-8. Pleadings.

(1) Pleadings shall consist of a notice of agency action, a request for agency action, responses, motions and affidavits, briefs, and memoranda of law and fact in support thereof.

(2) A notice of agency action, request for agency action, and any pleadings relative thereto must be double-spaced, typewritten or legibly handwritten, and presented on standard 8 1/2 by 11 inch paper. Pleadings filed relative to a notice of agency action or request for agency action shall contain a clear and concise statement of the matter that is the basis of the pleading, with an appropriate description of the relief sought.

(3) The presiding officer may allow pleadings to be amended at any time. Initiatory pleadings may be amended without leave of the presiding officer at any time before a responsive pleading has been filed. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

(4) Motions may be submitted either by written motion or oral argument and the filing of affidavits in support or contravention thereof may be permitted. A written motion must be accompanied by a supporting memorandum of fact and law.

(5) Pleadings shall be signed by the party or the party's representative and shall show the signer's address. The signature shall be deemed to certify that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there is good ground to support it.

(6) Exhibits must be clearly marked to show the party proffering the exhibit, and the exhibit number.

(7) All pleadings shall be submitted to the presiding officer at least 20 days prior to the date upon which the matter that is the subject of the pleadings will be decided.

(8) An original of all pleadings, affidavits, briefs, memoranda, and exhibits will be filed with the division. The presiding officer may direct any party to provide additional copies as needed.

(9)(a) Upon the issuance of a notice of agency action or after receipt of a request for agency action, the presiding officer shall provide notice to all parties of the pending adjudicative proceeding.

(b) Any response to a notice of agency action or request for agency action must be submitted within 30 days of the mailing date of the notice of agency action or the notice required under Subsection 63-46b-3(3)(d), which shall include:

(i) the docket number or other reference number;

(ii) the name of the adjudicative proceeding;

(iii) a statement of the relief that the respondent seeks;

(iv) a statement of the facts; and

(v) a statement summarizing the reasons that the relief requested should be granted.

(10) The presiding officer may extend the response time for good cause.

R657-2-9. Parties.

(1) Parties to an adjudicative proceeding shall be persons who have a statutory right to be parties and persons who have a legally-protected interest or right in the subject matter which may be affected by the proceeding.

(2) The division will be considered a party to all adjudicative proceedings conducted by the Wildlife Board.

R657-2-10. Appearances and Representation.

(1) Parties shall enter their appearances at the beginning of the hearing or at such time as may be designated by the presiding officer by stating:

(a) the party's full name and address; and

(b) the party's position or interest in the proceeding.

(2) Any individual or an agent designated by an individual, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency, may represent his, her, or its interest in the proceeding.

(3) Any party may be represented by an attorney or legal representative as authorized and permitted by the Utah State Bar and state law.

(4) Subject to the limitations imposed by the presiding officer to ensure the adjudicative proceeding is conducted in an orderly and efficient manner, each party to an adjudicative proceeding may participate in the hearing and may introduce evidence, examine and cross-examine each witness, make arguments, and participate generally in the proceeding.

R657-2-11. Notice and Service.

(1) Timely notice of all proceedings shall be given to all parties and any other person who, in the opinion of the presiding officer, has a direct interest in the proceeding.

(2) When a party is represented by an attorney or other authorized representative, service upon the attorney or representative shall constitute service upon the party.

(3) Any person desiring notification by mail from the Wildlife Board or division of specific matters may request to be notified by filing the name, address, telephone number, and specific matters for which the person seeks notification.

R657-2-12. Discovery.

(1)(a) Discovery for informal hearings is prohibited and the division or Wildlife Board may not issue subpoenas or other discovery orders.

(b) Upon motion by a party to a formal hearing, and for good cause shown, the presiding officer may authorize discovery against another party to a formal hearing, including the division, as provided in the Utah Rules of Civil Procedure.

(2) All parties may have access, upon request, to information contained in division files and all materials and information gathered in any investigation pertinent to the adjudicative proceeding, to the extent permitted under Title 63, Chapter 2 - Governmental Records Access and Management Act and under Title 63, Chapter 46b - Administrative Procedures Act.

(3) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer at the presiding officer's discretion in the interest of just, fair, and economic decision making.

R657-2-13. Prehearing Procedure.

The presiding officer may, upon written notice to all parties of record, hold a prehearing conference to:

(1) formulate or simplify the issues;

(2) obtain admission of fact and documents that will avoid unnecessary introduction of evidence or other efforts of establishing proof of a matter asserted;

(3) arrange for the exchange of proposed exhibits; and

(4) agree to matters that may expedite the orderly conduct of the proceedings or its settlement.

R657-2-14. Continuance.

(1) Any party may, by filing a motion, request the presiding officer to continue an adjudicative proceeding, provided the motion is filed within a reasonable time prior to the date of the hearing and proper notice is given to the other parties to the proceeding. The presiding officer may grant such a request and continue the proceeding until the next regularly scheduled meeting, or another more convenient time, unless in the presiding officer's judgement, it would be contrary to the just and fair resolution of the proceeding.

(2) The Wildlife Board, on its own motion, or on the motion of the division, may order the continuance of any proceeding until the next regularly scheduled meeting of the Wildlife Board in order to allow adequate time for division staff to evaluate any evidence presented during a hearing.

R657-2-15. Intervention.

(1) A person may not intervene in an informal adjudicative proceeding, unless allowed by the presiding officer for good cause.

(2) A person may file a petition for an order granting leave to intervene in a formal adjudicative proceeding as provided in Section 63-46b-9 and in accordance with the following:

(a) Any petition to intervene or materials filed after the date a response is due may be considered at the next regularly scheduled meeting only upon separate motion of the intervenor made at or before the hearing for good cause shown.

(b) Any party to a formal adjudicative proceeding in which intervention is sought may make an oral or written response to the petition for intervention. The response shall:

(i) state the basis for opposition to intervention and may suggest limitations to be placed upon the participation of the intervenor if intervention is granted; and

(ii) be presented or filed at or before the hearing.

(3) The presiding officer will consider the petition for an order granting leave to intervene and any response in determining whether to allow a party to intervene.

(4) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation in the hearing, the presiding officer may dismiss the intervenor from the proceeding.

(5) Where two or more intervenors have substantially the same interests and positions in the proceeding the presiding officer may at any time during the proceeding limit the number of intervenors who will be permitted to testify, cross-examine witnesses, or make and argue motions and objections.

R657-2-16. Hearings, Evidence, and Argument.

(1)(a) After the commencement of an adjudicative proceeding, the presiding officer may hold a hearing if:

(i) a hearing is required by statute or rule; or

(ii) a hearing is requested by a party within 30 days after the commencement of the adjudicative proceeding.

(b) The presiding officer may, at the presiding officer's discretion, initiate a hearing to determine matters within the presiding officer's authority.

(2) Notice of the hearing shall be served on all parties by regular mail at least 10 days prior to the hearing.

(3) If the hearing is informal, it shall be conducted in accordance with the provisions of Section 63-46b-5. If the hearing is formal it shall be conducted in accordance with the provisions of Section 63-46b-8.

(4)(a) An informal hearing may be conducted without adherence to the rules of evidence required in judicial proceedings. The Utah Rules of Evidence shall be used as a guide for evidentiary matters in formal hearings.

(b) The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence from the hearing.

(c) The weight given to evidence shall be determined by the presiding officer.

(5) Hearsay evidence is admissible in informal and formal hearings consistent with Utah law governing the admissibility of such in administrative adjudicative proceedings.

(6) Documentary evidence may be received in the form of copies or excerpts and, upon request, parties shall be given an opportunity to compare the copy with the original.

(7) Upon the conclusion of taking evidence, the presiding officer may, in the presiding officer's discretion, permit the parties to make closing oral arguments.

R657-2-17. Burden of Proof.

The petitioner shall have the burden of proof by

preponderance of the evidence in all adjudicative proceedings.

R657-2-18. Record of Hearing.

(1) The division or Wildlife Board may record any informal hearing. The division or Wildlife Board shall record formal hearings.

(2)(a) Any party, at the party's own expense, may have a reporter, approved by the division or Wildlife Board, prepare a transcript from the record of the hearing and shall furnish a transcript of the testimony to the division or Wildlife Board free of charge.

(b) This transcript shall be available at the Salt Lake division office to any party to the hearing.

R657-2-19. Failure to Appear - Default.

(1) When a party or the party's authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the presiding officer may:

(a) continue the matter;

(b) enter an order of default as provided by Section 63-46b-11; or

(c) hear the matter in the absence of the defaulting party.

R657-2-20. Decisions and Orders.

(1) After the presiding officer has reached a final decision upon the adjudicative proceeding, the presiding officer shall issue a signed order in writing:

(a) in accordance with Section 63-46b-5(1)(c) for orders issued at the conclusion of an informal hearing; and

(b) in accordance with Section 63-46b-10 for orders issued at the conclusion of a formal hearing.

R657-2-21. Agency Review.

(1)(a) When a division action is taken by a division employee, other than the director acting as the presiding officer, any aggrieved party may seek review of the order.

(b) The request for review shall be made to the director in accordance with Section 63-46b-12(1).

(c) Except as provided in Section 63-46b-14(2), review by the director is a prerequisite for judicial review.

(2) Requests for review of an action within the statutory or regulatory purview of the division shall:

(a) be filed with the director within 30 days after the issuance of the order; and

(b) be sent to each party.

(3) The request for review shall be reviewed by the director or the assistant director, when designated by the director.

(4)(a) Unless otherwise provided by law, all reviews shall be based on the record before the presiding officer.

(b) In order to assist in review, parties, upon request, may be allowed to file briefs or other documents explaining their position.

(5) Parties are not entitled to a hearing on review unless:

(a) specifically allowed by statute; or

(b) the director grants a hearing to assist the review.

(6) Notice of any hearing shall be mailed to all parties within 10 days of the hearing.

(7)(a) Within a reasonable time after the filing of any response, other filings, or after any hearing, the director shall issue a written order on review and mail a copy of the order on review to each party.

(b) The order on review shall contain the items, findings, conclusions, and notices set forth in Subsection 63-46b-12(6)(c).

R657-2-22. Judicial Review.

(1) Any party aggrieved by final division or Wildlife Board action may obtain judicial review of such action pursuant to Sections 63-46b-14, 63-46b-15, and 63-46b-16, except where judicial review is expressly prohibited by statute.

(2) A petition for judicial review shall be filed within 30 days after the date the order constituting final agency action is issued.

(3) A party may seek judicial review of an action taken by the division or Wildlife Board only after exhausting all administrative remedies available, including those available through the Wildlife Board and the regional advisory councils, as required herein, unless a court of competent jurisdiction makes a finding that requiring exhaustion:

(a) would result in irreparable injury; or

(b) would serve no useful purpose.

R657-2-23. Declaratory Orders.

(1) Pursuant to Section 63-46b-21, any person may file a request for agency action requesting that the division or Wildlife Board issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the division or Wildlife Board.

(2) A request for a declaratory order shall set forth:

(a) the specific statute, rule, or order which is in question;

(b) the specific facts for which the order is requested;

(c) the manner in which the person making the request claims the statute, rule, or order may affect him or her; and

(d) the specific questions for which a declaratory order is requested.

(3) The division or Wildlife Board may, in their discretion, decline to issue declaratory orders where they deem the facts presented to be conjectural, or where the public interest would best be served by not issuing such an order.

R657-2-24. Emergency Orders.

The division or Wildlife Board may issue an order on an emergency basis without complying with this rule under the circumstances and procedures set forth in Section 63-46b-20.

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July 3, 2002 63-46b-5
Notice of Continuation May 7, 2007 23-14-2.1

R657. Natural Resources, Wildlife Resources.
R657-4. Possession of Live Game Birds.
R657-4-1. Purpose and Authority.

(1) Under authority of Sections 23-13-4, 23-14-18, and 23-14-19, the Wildlife Board has established this rule for the possession, importation, purchase, propagation, sale, barter, trade, or disposal of live game birds.

(2) The provisions of Rule R657-3 do not apply to activities conducted by holders of a valid certificate of registration for aviculture to the extent those activities are covered by this rule.

R657-4-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aviculture installation" means an enclosed place such as a pen or aviary where privately owned game birds are propagated or kept, and restricts the game birds from escaping into the wild.

(b) "Commercial use" means, for purposes of this rule, the sales of any game birds authorized by the certificate of registration in excess of $5,000 annually.

(c) "Game bird" means;

(i) crane;

(ii) Blue, Ruffed, Sage, Sharp-tailed, and Spruce grouse;

(iii) Chukar, Red-legged, and Hungarian partridge;

(iv) pheasant;

(v) Band-tailed Pigeon;

(vi) Bobwhite, California, Gambel's, Harlequin, Mountain, and Scaled quail;

(vii) waterfowl;

(viii) Common Ground, Inca, Mourning, and White-winged dove;

(ix) wild or pen-reared wild turkey of the following subspecies:

(A) Eastern;

(B) Florida or Osceola;

(C) Gould's;

(D) Merriam's;

(E) Ocellated; and

(F) Rio Grande; and

(x) ptarmigan.

(d) "Pen-reared wild turkey" means any turkey or turkey egg held under human control that:

(i) is imprinted on other poultry or humans; and

(ii) has morphological characteristics of wild turkeys.

(e) "Wild turkey" means recognized subspecies and hybrids of free-ranging turkeys hatched in the wild. Recognized subspecies and hybrids between subspecies include Eastern, Florida or Osceola, Gould's, Merriam's, Ocellated, and Rio Grande.

R657-4-3. Certificates of Registration.

(1) Except as provided in Subsections R657-4-3(5) and R657-4-7(2), a person may not possess, import, purchase, propagate, sell, barter, trade, or dispose of any live game bird, or the eggs of any game bird, without first obtaining a certificate of registration for aviculture from the division.

(2) Any person who has obtained a certificate of registration for aviculture may possess, import, purchase, propagate, sell, barter, trade, or dispose of only those species of game birds designated on that person's certificate of registration.

(3) Certificates of registration for aviculture:

(a) are not transferable; and

(b) are valid for five years from the date of issuance.

(4)(a) Any person who has applied for and obtained a certificate of registration for aviculture must comply with all state, federal, city, and other municipality laws, rules, and regulations pertaining to the possession of live game birds.

(b) A person shall not operate a hatchery or offer any chicks, poults, or hatching eggs for sale in Utah without first obtaining a hatchery license from the Department of Agriculture and Food as provided in Section 4-29-4.

(5) A person who acquires live game birds is not required to obtain a certificate of registration:

(a) if the game birds are used for training dogs as provided in Rule R657-46;

(b) if the game birds are used for the sport of falconry and:

(i) each game bird held in possession is banded with a metal leg band purchased from the division;

(ii) the game birds are not held in possession longer than 60 days;

(iii) a bill of sale establishing proof of purchase from a legal source is in possession; and

(iv) a valid entry permit number and a certificate of veterinary inspection has been obtained from the Department of Agriculture and Food as provided in Rule R58-1 if the game birds are imported into Utah; or

(c) for holding game birds in temporary storage while the game birds are in transit through Utah provided the birds are identified as to their source and destination and are not removed from the shipping containers.

R657-4-4. Application for a Certificate of Registration.

(1) A person may obtain a certificate of registration for aviculture by submitting a completed application and the appropriate fee to the regional division office in the area in which the aviculture installation is to be located.

(2) If the applicant is under the age of 18, a parent or guardian must co-sign the application and is responsible for compliance with this rule and all other associated laws.

(3) A person may apply to renew a certificate of registration on or three months before the date on which the certificate of registration expires.

R657-4-5. Exhibit of Certificate of Registration, Game Birds, and Equipment.

A conservation officer or any other peace officer may request any person engaged in activities covered under this rule to exhibit:

(1) the person's certificate of registration, permit, health certificate, bill of sale, or proof of ownership;

(2) any game birds held in possession; or

(3) any device, apparatus, or facility used for activities covered under this rule.

R657-4-6. Unlawful Possession -- Release of Game Birds.

(1) A person may not:

(a) take any live game bird or the egg of any game bird from the wild, except as provided in Rules R657-3 and R657-6 and the proclamation of the Wildlife Board for taking upland game;

(b) release or abandon any live game bird without first obtaining written authorization from the division director or appropriate regional supervisor as provided in Subsection (2), except that game birds may be released for training dogs or raptors as provided in Rule R657-46; or

(c) release any wild turkey or pen-reared wild turkey from captivity.

(2) A person must submit a letter requesting permission to release game birds and must include the operator's:

(a) name, address and telephone number;

(b) certificate of registration number;

(c) area and date of intended release;

(d) species to be released;

(e) number and sex of each species to be released; and

(f) a statement from a veterinarian that the birds have been tested for Salmonella pullorum or come from a source flock that

participates in the National Poultry Improvement Plan (NPIP).

(3) In determining whether to allow the release of a game bird as allowed under Subsection (1)(b), the division shall consider:

(a) the potential release site and its relative impact on wildlife and wildlife habitat;

(b) the species or subspecies of game birds to be released; and

(c) the activity for which the game birds are to be released.

(4)(a) Any game bird that escapes from captivity becomes the property of the state of Utah.

(b) The director may authorize the destruction of any escaped game birds that may impact wildlife.

(5) The division may dispose of game birds or their eggs held in possession in violation of this rule.

(6) Game birds or their eggs held in captivity must be confined to the registered aviculture installation, except when in transit or being displayed.

R657-4-7. Importation of Live Game Birds and Eggs of Game Birds.

(1) Except as provided in Subsection (2) and Section R657-4-3(5), a person importing live game birds or the eggs of game birds into Utah must first obtain:

(a) a valid entry permit number and a certificate of veterinary inspection from the Department of Agriculture and Food as provided in Rule R58-1 and in accordance with Section 4-29-2; and

(b) a certificate of registration from the division.

(2) A nonresident importing live game birds into Utah is not required to obtain a certificate of registration for aviculture unless the game birds remain in Utah longer than 72 hours.

R657-4-8. Sale or Purchase of Live Game Birds.

(1)(a) Any person who sells, barters, trades, or disposes of a live game bird or the egg of a game bird to another person must provide a bill of sale.

(b) The transferer's certificate of registration number must be written on the bill of sale.

(2)(a) Any person who possesses, imports, purchases, propagates, sells, barters, trades, or disposes of live game birds must keep a record of each transaction that includes:

(i) the species;

(ii) the number and sex of the game birds;

(iii) the name and address of each party to the transaction; and

(iv) the date of the transaction.

(b) The records required under Subsection (a) must be maintained for five years.

R657-4-9. Penalty for Violation.

A violation of any provision of this rule is punishable as provided in Section 23-13-11.

KEY: wildlife, birds, game laws, aviculture

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Notice of Continuation May 31, 2007	**23-14-19**
	23-13-4

R657. Natural Resources, Wildlife Resources.
R657-12. Hunting and Fishing Accommodations for People With Disabilities.
R657-12-1. Purpose and Authority.

Under authority of Sections 23-14-18, 23-19-1, 23-19-36, 23-20-12 and 63-46a-3, this rule provides the standards and procedures for a person with disabilities to:

(1) obtain a certificate of registration for taking wildlife from a vehicle;

(2) obtain a fishing license as authorized under Section 23-19-36(1);

(3) obtain a certificate of registration to participate in companion hunting;

(4) obtain a certificate of registration to receive a limited entry season extension;

(5) obtain a certificate of registration to receive a general deer or elk season extension; or

(6) obtain a certificate of registration to hunt with a crossbow.

R657-12-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Blind" means the person:

(i) has no more than 20/200 visual acuity in the better eye when corrected; or

(ii) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of the field of vision no greater than 20 degrees.

(b) "Crutch" means any mobility aid or assistive technology device, including a cane, crutch, walker, long or short braces, or other prosthetic or orthotic device which aids in mobility.

(c) "Loss of either or both lower extremities" means the permanent loss of use or the physical loss of one or both legs or a part of either or both legs which materially impedes a person's mobility.

(d) "Upper extremity disabled" means a person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be physically unable to use a legal hunting weapon or fishing device.

R657-12-3. Providing Evidence of Disability for Obtaining a Fishing License.

(1) A resident may receive a free fishing license under Section 23-19-36(1) by providing evidence the person is blind, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities.

(2) A person may obtain this license at any division office.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(a); or

(d) a signed statement by a licensed physician verifying the person is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-4. Obtaining Authorization to Hunt from a Vehicle.

(1) A person who is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities, and who possesses a valid license or permit to hunt protected wildlife may receive a certificate of registration to take protected wildlife from a vehicle pursuant to Section 23-20-12.

(2)(a) Applicants for the certificate of registration must provide evidence of disability as provided in Subsections R657-12-3(3)(a), (b), or (d).

(b) Certificates of registration may be renewed annually.

(3) Wildlife may be taken from a vehicle under the following conditions:

(a) Only those persons with a valid hunting license or permit and a certificate of registration allowing them to hunt from a vehicle may discharge a firearm or bow from, within, or upon any motorized terrestrial vehicle;

(b) Shooting from a vehicle on or across any established roadway is prohibited;

(c)(i) Firearms must be carried in an unloaded condition, and a round may not be placed in the firearm until the act of firing begins, except as authorized in Title 53, Chapter 5, Part 7 of the Utah Code; and

(ii) Arrows must remain in the quiver until the act of shooting begins; and

(d) Certificate of registration holders must be accompanied by, and hunt with, a person who is physically capable of assisting the certificate of registration holder in recovering wildlife.

(4) Certificate holders must comply with all other laws and rules pertaining to hunting wildlife, including state, federal, and local laws regulating or restricting the use of motorized vehicles.

R657-12-5. Companion Hunting and Fishing.

(1) A person may take protected wildlife for a person who is blind, upper extremity disabled or quadriplegic provided the blind, upper extremity disabled or quadriplegic person:

(a) satisfies hunter education requirements as provided in Section 23-19-11 and Rule R657-23;

(b) possesses the appropriate license, permit and tag;

(c) obtains a Certificate of Registration from the division authorizing the companion to take protected wildlife for the blind, upper extremity disabled or quadriplegic person; and

(d) is accompanied by a companion who has satisfied the hunter education requirements provided in Section 23-19-11 and Rule R657-23.

(2) A person who is blind may obtain a Certificate of Registration from the Division by submitting a signed statement by a licensed ophthalmologist, optometrist or physician verifying that the applicant is blind as defined in Section R657-12-2(2)(a).

(3)(a) A person who is upper extremity disabled or quadriplegic may obtain a Certificate of Registration from the division upon submitting evidence of the disability.

(b) The division shall accept the following as evidence of an applicant's disability:

(i) obvious physical disability demonstrating the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d); or

(ii) a signed statement by a licensed physician verifying that the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d).

(4) The hunting or fishing companion must be accompanied by the blind, upper extremity disabled or quadriplegic person at all times while hunting or fishing, at the time of take, and while transporting the protected wildlife.

R657-12-6. Special Season Extension for Disabled Persons - Limited Entry Hunts.

(1) A person may obtain a Certificate of Registration from a division office requesting an extension of 30 days for any limited entry hunt, provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit, and tag.

(2) The division shall not issue a Certificate of Registration for a 30-day extension on any limited entry hunt where the extension will violate federal law.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-7. Special Season Extension for Disabled Persons - General Deer and Elk Hunts.

(1) A person may obtain a Certificate of Registration from a division office to hunt an extended general deer or elk season as provided in Subsection (2), provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit and tag.

(2)(a) The extended general deer season may occur five days prior to the general season deer hunt date published in the proclamation of the Wildlife Board for taking big game.

(b) The extended general spike bull elk season may occur five days after the general season spike bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(c) The extended general any bull elk season may occur concurrently with the general youth any bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-8. Crossbows.

(1)(a) A person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be unable to use conventional archery equipment may receive a certificate of registration to use a crossbow to hunt big game, cougar, bear, turkey, waterfowl or small game during the respective archery or any weapon hunting seasons as provided in the applicable proclamations of the Wildlife Board for taking protected wildlife.

(b) The division shall accept the following as evidence of eligibility to use a crossbow:

(i) obvious physical disability, as provided in Subsection (1)(a), demonstrating the applicant is eligible to use a crossbow; or

(ii) provides a physician's statement confirming the disability as defined in Subsection (1)(a).

(2)(a) Any crossbow used to hunt big game, cougar, bear, turkey, waterfowl or small game must have:

(i) a stock that is at least 18 inches long;

(ii) a minimum draw weight of 125 pounds for big game, bear and cougar, or 60 pounds for turkey, waterfowl and small game;

(iii) a draw length that is at least 18 inches from the front of the crossbow to the back of the string in a cocked position; and

(iv) a positive safety mechanism.

(b) Arrows or bolts used must be:

(i) at least 18 inches long; and

(ii) must have a broadhead with two or more sharp cutting edges that cannot pass through a 7/8 inch ring for big game, cougar, bear or turkey.

(3) The following equipment or devices may not be used:

(a) arrows with chemically treated or explosive arrowheads; or

(b) a bow with an attached electronic range finding device or a magnifying aiming device.

(4) Arrows or bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(5) A cocked crossbow may not be carried in or on a vehicle.

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R657. Natural Resources, Wildlife Resources.
R657-22. Commercial Hunting Areas.
R657-22-1. Purpose and Authority.

Under authority of Section 23-17-6, this rule provides the procedures and requirements for establishing, maintaining, and operating a CHA.

R657-22-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "CHA" means Commercial Hunting Area.

(b) "Commercial hunting area" means a parcel of land where pen-raised or propagated game birds are released for the purpose of allowing hunters to take them for a fee.

(c) "Game bird" means, for the purpose of this rule only, all species of partridge, pheasant, and quail authorized for release on a CHA.

(d) "Operator" means a person, group, or business entity, including their agents, employees and contractors, that manages, owns, administers, or oversees the activities and operations of a CHA. Operator further includes any person, group or business entity that employs or contracts another to serve or act as an operator.

R657-22-3. Application for a Certificate of Registration.

(1)(a) A certificate of registration is required before any person may operate a CHA.

(b) An application for a CHA certificate of registration must be completed and returned to the regional office where the proposed CHA is located by May 1.

(2)(a) Any application that does not clearly and legibly verify ownership or lease by the applicant as required in Subsection (3), of all property for which the application applies shall be returned to the applicant.

(b) Discovery of property after issuance of the CHA certificate of registration, which is not approved by its owner or lessee to be included in the CHA, shall immediately void the CHA certificate of registration.

(3)(a) The application must be accompanied by:

(i) County Recorder Plat maps, or equivalent maps, dated by receipt of purchase within 30 days of submitting the CHA application, depicting boundaries and ownership of all property within the CHA; and

(ii) U.S. Geological Survey topographical maps, no smaller scale than 7 1/2 minutes, with the proposed boundaries clearly marked;

(iii) evidence of ownership of the property, such as a copy of a title, deed, or tax notice that provides evidence the applicant is the owner of the property described; or

(iv) a lease agreement for the period of the CHA certificate of registration, listing the name, address and telephone number of the lessor, that provides evidence the applicant is the lessee of the hunting or shooting rights of the property described;

(v) the address of any propagation or game bird holding facility not located on the CHA property; and

(vi) the annual CHA certificate of registration fee for the first year of operation.

(4) The division may return any application that is incomplete, completed incorrectly, or that is not accompanied by the information required in Subsection (3).

(5)(a) Review and processing of the application may require up to 45 days.

(b) More time may be required to process an application if the applicant requests authorization from the Wildlife Board for a variance to this rule.

(6) Applications are not accepted for a CHA that is within 1/4 mile of any existing state wildlife or waterfowl management area without requesting a variance from the Wildlife Board.

(7) The division may deny any application or impose provisions on the CHA certificate of registration that are more restrictive than this rule in the interest of wildlife or wildlife habitat.

(8) Commercial Hunting Area certificates of registration are effective from the date issued through June 30 of the third consecutive year.

(9) The annual CHA certificate of registration fee for the second and third years of operation must be submitted when invoiced.

(10) Rights granted by a CHA certificate of registration are not transferable or assignable.

R657-22-4. Renewal of Certificate of Registration.

(1) A certificate of registration may be renewed by completing a renewal application and paying a CHA certificate of registration renewal fee.

(2)(a) Renewal applications must be completed and submitted to the division regional office in which the CHA is located by May 1 immediately prior to the June 30 expiration date identified on the current CHA certificate of registration.

(b) Any application that does not clearly and legibly verify ownership or lease by the applicant as required in Subsection (3), of all property for which the application applies shall be returned to the applicant.

(c) Discovery of property during the CHA certificate of registration period, which is not approved by its owner or lessee to be included in the CHA, shall immediately void the CHA certificate of registration.

(3)(a) The renewal application must be accompanied by:

(i) a lease agreement extending through the period of the CHA certificate of registration being applied for listing the name, address and telephone number of the lessor, that provides evidence the applicant is the lessee of the hunting or shooting rights of the property described;

(ii) an annual report as provided in Subsection R657-22-6(2); and

(iii) any change in property ownership differing from ownership identified in the CHA certificate of registration immediately preceding the current application, including updated maps as provided in Subsection R657-22-3(3)(a) if the CHA boundaries change.

R657-22-5. Conditions for Approval Initial and Renewal Applications.

(1) Initial and renewal applications may be denied by the division if the applicant or operator, or any of its agents or employees:

(a) violated any provision of this rule , the Wildlife Resources Code, a CHA certificate of registration, or the CHA application;

(b) obtained or attempted to obtain a CHA certificate of registration by fraud, deceit, falsification, or misrepresentation;

(c) is employed, contracted through writing or verbal agreement, assigned, or requested to apply and act as the operator by a person, group, or business entity that will directly or indirectly benefit from the CHA, but would otherwise be ineligible under this rule or by virtue of suspension under Section 23-19-9 to operate a CHA if they applied directly as the operator; or

(d) engaged in conduct that results in the conviction of, a plea of no contest to, a plea held in abeyance, or a diversion agreement to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CHA operator bears a reasonable relationship to the operator's or applicant's ability to safely and responsibly operate a CHA.

(2) If an application is denied, the division shall state the reasons in writing within 30 days of denial.

R657-22-6. Records and Reports -- Annual Report.

(1) The operator of a CHA shall maintain complete and accurate records of:

(a) the number, species, and source of any game birds purchased or propagated;

(b) health certificates for all game birds purchased from outside the state of Utah;

(c) the number, species and date the game birds are released; and

(d) the number, species and date of game birds taken within the CHA boundary, including wild game birds; and

(e) copies of the bill of sale issued to hunters and any other person who purchases game birds.

(2) Each operator must submit an annual report on a form provided by the division within 30 days of the close of the season or at the time of renewal, including:

(a) the number of game birds by species that were released and the total number of game birds taken by hunters or sold;

(b) the date, source, and number of the game birds purchased; and

(c) the number of game birds by species held in possession on April 15.

(3) All records must be maintained on the hunting premises or the principal place of business for three years and must be available for inspection by the division.

(4) Falsifying or fabricating any record or report is prohibited and may result in forfeiture of CHA opportunities.

R657-22-7. Boundary Marking.

(1) The CHA area must be posted:

(a) at least every 300 feet along the outer boundary of all hunted areas; and

(b) on all corners, streams, rivers, drainage divides, roads, gates, trails, rights-of-way, dikes, canals, and ditches crossing the boundary lines.

(2) Each sign used to post the property must be at least 8-1/2 by 11 inches and must clearly state:

(a) the name of the CHA as designated on the CHA certificate of registration;

(b) the words "No Trespassing"; and

(c) wording indicating the sign is located on the CHA boundary.

(3)(a) If the CHA operator fails to renew a CHA certificate of registration or a renewal application is denied, all signs shall be immediately removed.

(b) The division may remove and dispose of any signs that are not removed within 30 days after the termination of the CHA certificate of registration.

(4) Commercial hunting area activities may only be conducted on property properly posted and specifically authorized in the CHA certificate of registration.

(5) Commercial hunting area operators may not post or otherwise restrict public access on public roads, right-of-ways, or easements within the CHA.

R657-22-8. Acreage Requirements.

(1)(a) The minimum acreage accepted for a CHA is 160 acres in a single, connected tract.

(b) The maximum acreage accepted for a CHA is 1,920 acres in a single, connected tract.

(2) A CHA may not be established closer than 1/4 mile of a wildlife management area, or waterfowl management area, unless otherwise allowed by a variance of the Wildlife Board.

(3) The Wildlife Board may allow a variance to the acreage requirements provided in Subsection (1) if no more than 1,920 acres are to be used for hunting at any one time.

R657-22-9. Bill of Sale Required.

(1) The operator of a CHA shall issue a bill of sale to each person who has taken a game bird from the CHA.

(2) The bill of sale shall be issued prior to the transportation of any bird from the CHA.

(3) The bill of sale must include:

(a) the person's name;

(b) the date the game birds were taken or purchased;

(c) the species, number of game birds, and sex of the game birds; and

(d) the name of the CHA where the game birds were taken or purchased.

R657-22-10. Importation.

(1) A CHA certificate of registration allows the importation of live game birds provided the operator first obtains a valid certificate of veterinary inspection covering each imported game bird, and further receives an import permit from the Utah Department of Agriculture and Food consistent with the requirements of Rule R58-1.

(2) The health certificate must contain an entry permit number from the Department of Agriculture as provided in Section R58-1-4.

R657-22-11. Disease Protocol.

(1) The division may:

(a) investigate any reported disease and take any necessary action to control a contagious or infectious disease affecting domestic animals, wildlife, or public health; or

(b) order a veterinarian or certified pathologist's report of a suspected disease at the operator's expense, and may order quarantine, immunization, testing, or other sanitary measures.

(2)(a) The division may order the destruction and disposal of any game bird found to have an untreatable disease which poses a potential threat or health risk to domestic poultry, humans, or wildlife, as determined by the division, the Department of Agriculture, or the Department of Health.

(b) Actions taken pursuant to Subsection (a) shall be:

(i) at the operator's expense; and

(ii) accomplished by following procedures acceptable to the division that ensure the disease is not transmitted to wildlife, domestic animals, or humans.

(3)(a) Commercial hunting area operators must take reasonable precautions to prevent and control the spread of infectious diseases among pen-raised game birds under their control including the requirements as provided in Subsection (b) and Section R657-22-10.

(b) Commercial hunting area operators must obtain a statement from a veterinarian that the birds have been tested for Salmonella pullorum or come from a source flock that participates in the National Poultry Improvement Plan (NPIP).

(c) Commercial hunting area operators who have a current CHA certificate of registration must comply with the requirement in Subsection (b) within six months from the effective date of this rule.

R657-22-12. Authorized Species.

The only game birds that may be released or propagated under the authority of a CHA certificate of registration are species of partridge, pheasant, or quail, including any subspecies.

R657-22-13. Inspection of Game Birds, Premises, and Records.

(1)(a) Certificates of registration are issued upon the express condition that the operator agrees to permit the division and public health and safety officials to enter and inspect the premises, facilities, and all required records and health certificates to ensure the CHA is in compliance with this rule and other applicable laws.

(b) Commercial hunting area operators must allow the division and public health and safety officials reasonable access

to conduct the inspections authorized in Subsection (1)(a).

(2) Inspections shall be made during reasonable hours.

R657-22-14. Restrictions on Release and Harvest.

(1)(a) Except as provided in Subsection R657-22-16(2)(e), game birds raised or held in possession under this rule may be released only on the CHA property.

(b) Each game bird released must be healthy, capable of flight, and free of disease.

(c) A person may not retard or restrict a game bird's ability to fly or run by clipping, brailling, blinding, pinioning, harnessing, or drugging.

(2) At least 100 game birds of each authorized species, or as approved by the Wildlife Board, or otherwise stated on the CHA certificate of registration, shall be released on the CHA during the current operating year.

(3)(a) Operators may not allow the harvest of more than 85% of each species released, except as provided in Subsection (b).

(b) There is no limit to the percentage of game birds that may be harvested that are not, in the opinion of the division, established as a wild population in the vicinity of the CHA. Any variance to Subsection (a) shall be indicated on the CHA certificate of registration.

(4) Only those game birds obtained from the following sources may be released or held in possession on a CHA:

(a) an aviculturist, certified as provided in Rule R657-4;

(b) a CHA, certified under this rule; or

(c) a source located outside of Utah provided the game birds are imported as provided in Rule R58-1.

(5) Protected wildlife not authorized for release on the CHA may be hunted only during their respective seasons as provided in the rules and proclamations of the Wildlife Board.

R657-22-15. Recapture.

(1)(a) Trapping game birds alive or retrapping game birds that have been released is permitted only:

(i) within the CHA area boundaries;

(ii) from September 1 through April 2; and

(iii) for wild species listed on the CHA certificate of registration as not established in the area.

(b) Any game bird that escapes from the CHA becomes the property of the state of Utah and may not be recaptured.

(2) Any game bird trapped alive may not be recounted or added to the total number of birds released when computing the number which may be taken as provided in Subsection R657-22-14(3).

R657-22-16. Propagation.

(1) The CHA certificate of registration allows the propagation of those species of game birds held in possession as indicated on the CHA certificate of registration.

(2) Any game birds held in possession under this rule must be released on the CHA or may be sold:

(a) to a private wildlife farm, certified as provided in Rule R657-4;

(b) a CHA, certified under this rule;

(c) to a person located outside of Utah;

(d) to a person for consumption; or

(e) for use in training dogs or the sport of falconry as provided in Rule R657-46.

(3)(a) If a CHA game bird is held in possession at any location other than that listed on the application or transferred alive to any other location, prior authorization must be obtained from the division or must be authorized on the CHA certificate of registration.

(b) Authorization for the possession of live game birds for any primary purpose other than being released to allow hunters to take them for a fee may be obtained under the provisions of Rule R657-4 or Rule R657-46.

R657-22-17. Season Dates.

(1)(a) Hunting on CHA areas is permitted from September 1 through March 31.

(b) The Wildlife Board may authorize a variance to the dates provided in Subsection (a) if:

(i) wild game birds do not nest within the location of the CHA or surrounding areas; and

(ii) there are no detrimental effects to other species of wildlife.

(2) If September 1 falls on a Sunday, the season will open on August 31.

(3) The director may extend the season up to fifteen days, provided wild nesting game birds are not adversely affected.

R657-22-18. Hunting Hours and Hunter Requirements.

(1) Game birds may be taken on a CHA only one-half hour before sunrise through one-half hour after sunset, except on a CHA located adjacent to a state wildlife or waterfowl management area, game birds may be taken one-half hour before sunrise through sunset.

(2) Any person hunting within the state on any CHA must meet hunter education requirements as provided in Section 23-17-6.

R657-22-19. Suspension.

The division may suspend a CHA certificate of registration for a CHA as authorized under Section 23-19-9 and Rule R657-26.

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R657. Natural Resources, Wildlife Resources.
R657-27. License Agent Procedures.
R657-27-1. Purpose and Authority.

Under Section 23-19-15, this rule provides the application procedures, standards, and requirements for wildlife license agents.

R657-27-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Agent hunting and fishing licenses online" means the web application that allows an license agent to print wildlife documents on license paper.

(b) "Bond" means a surety bond to remain in full force and effect continuously and indefinitely, until canceled.

(c) "Computer hardware" means electronic equipment the division deems necessary to perform the minimum required functions of the division's online license sales application system that may include a central processing unit, cables, or router.

(d) "Deactivated license agent or deactivated" means a license agent that holds license agent status but is temporarily precluded from selling wildlife documents for failure to comply with this rule or any other laws or agreements regulating license agent activity.

(e) "License agent" means a person authorized by the division to sell wildlife documents.

(f) "License Agent Application" means a written request to be authorized by the division to sell wildlife documents.

(g) "License Agent Authorization" means an agreement between the division and a license agent, allowing a license agent to sell wildlife documents.

(h) "License paper" means paper designated by the division for the sole purpose of printing specified licenses or permits through the agent hunting and fishing licenses online sales system.

(i) "Location" means the building or structure from which a license agent is authorized to sell wildlife documents.

(j) "Presiding officer" means the hearing officer designated by the director of the division.

(k) "Remuneration" means money that a license agent receives for each wildlife document sold as provided in Section 23-19-15.

(l) "Wildlife documents" means licenses, permits and tags preprinted by the division or printed by the license agent on license paper.

R657-27-3. License Agent Application.

(1) License agent applications may be obtained from the Licensing Section in the Salt Lake Office or downloaded from the division's website.

(2) License agent applications shall be considered from any person located within Utah or in close proximity to Utah.

(3) Applications shall be processed within 30 business days.

(4) The applicant must:

(a) complete and return the application to the Licensing Section in the Salt Lake Office; and

(b) pay a non refundable application fee.

(5) A separate application and application fee must be submitted for each location where wildlife documents will be sold.

(6) The division may provide assistance to new and existing license agents as provided in Subsection R657-27-4(1)(b),(1)(c) or (1)(d).

R657-27-4. License Agent Eligibility - Reasons for Application Denial - Term of Authorization.

(1) A new license agent must meet the criteria provided in Subsection (a), except as provided in Subsection (b) or (c).

(a) A license agent must:

(i) successfully complete a division-sponsored training session;

(ii) provide and maintain approved computer hardware capable of processing and printing licenses and permits in a permanent, clear, and a legible manner; and

(iii) sign a supplemental wildlife documents sales agreement as provided in Section R657-27-16.

(b) The division may provide a printer as required in Subsection (a)(ii) provided the license agent's projected sales is estimated to be at least one-thousand dollars per year or a satisfactory volume per year as determined by the division.

(c) The division may provide assistance up to one-thousand dollars for computer hardware required in Subsection (a)(ii) provided:

(i) there is not a current, eligible license agent within 45 miles, or a convenient distance as determined by the division, of the proposed license agent location; and

(ii) the estimated sales revenue from the proposed location will recover the cost of the computer hardware within six months of providing the computer hardware.

(d) The division may provide assistance for a data line connection and the associated ongoing expense of the data line connection provided:

(i) there is not a current, eligible license agent within 45 miles, or a convenient distance as determined by the division, of the proposed license agent location; and

(ii) the division anticipates the monthly cost for the data line connection to be less than 20 percent of the estimated monthly collection from the license agent.

(e) The division shall annually review the ongoing expenses for a data line connection to ensure the license agent is eligible for the assistance allowed in Subsection (d).

(f) A license agent must remain a license agent for the division for at least six months to retain the computer hardware or printer as provided in Subsections (b) or (c).

(2) Use of the agent hunting and fishing licenses online system must be used in compliance with the users manual provided by the division.

(3) The division shall send the applicant a written notice stating the reason for denial.

(4) If the division approves the license agent application, a license agent authorization shall be sent to the applicant.

(5) The license agent authorization is not effective until:

(a) it is signed and notarized by the applicant; and

(b) signed by the director.

(6)(a) The license agent authorization must be received by the Licensing Section in the Salt Lake Office within 30 business days of being mailed to the applicant.

(b) A separate application, application fee, and license agent authorization is required for each location where wildlife documents will be sold.

(7) Each license agent authorization shall be established for a term of five years.

(8) The division may deny a license agent application for any of the following reasons:

(a) A sufficient number of license agents already exist in the area;

(b) The applicant does not have adequate security including a safe or locking cabinet in which to store wildlife documents or license paper;

(c) The applicant has previously been authorized to sell wildlife documents or possess license paper and the applicant:

(i) failed to comply with the license agent authorization or any provision of statute or rule governing license agents; or

(ii) was deactivated or revoked by the division as a license agent;

(d) The applicant provided false information on the license

agent application;

(e) The applicant has been convicted of a wildlife related violation; or

(f) The applicant has been convicted, pleaded guilty, pleaded no contest, or entered into a plea in abeyance to a criminal offense that bears a reasonable relationship to the license agent's ability to competently and responsibly perform the functions of a license agent.

R657-27-5. Bond Requirement.

(1) After approval, but before the license agent authorization is executed, the division may require the applicant to post a reasonable bond payable to the division in an amount determined by the division.

(2) The division may require any existing license agent to obtain a reasonable bond in an amount determined by the division after providing the license agent 30 business days written notice.

(3) The division may require a reasonable increase in the amount of the bond after providing the license agent 30 business days written notice.

R657-27-6. License Agent Obligations.

(1) Each license agent must:

(a) comply with the requirement and provisions provided in Section 23-19-15;

(b) keep wildlife documents or license paper secure and out of the public view during business hours;

(c) keep wildlife documents or license paper in a safe or locked cabinet after business hours;

(d) display all signs and distribute proclamations provided by the division;

(e) have all sales clerks and management staff available for sales training;

(f) maintain a License Agent Manual provided by the division and make it available to the license agent's staff, including supplemental manuals and addendums; and

(g) retain agent copies of licenses and permits for 12 months following the month of sale, at which time agent copies of licenses and permits must be destroyed by burning, shredding or submitting to the division.

(2) If a license agent becomes delinquent on reporting or remission of proceeds Subsection (2)(a), (2)(b) or (2)(c) shall apply.

(a) The license agent must immediately submit all reports when due along with the remission of required proceeds.

(b) If the license sales report is submitted in accordance with Subsection (1)(a) but funds are not submitted with the report then the following applies:

(i) A repayment plan may be structured in an agreement that will allow repayment in equal monthly installments for up to six months at a payment level that will provide repayment of the principal along with an annual percentage interest rate (APR) of 12 percent. This APR shall be calculated back to the date that the payment should have been received in accordance with Subsection (1)(a);

(ii) If the ongoing monthly report and proceed submissions are not received for the future months, from the month of the agreement in accordance with Subsection (1)(a), then any agreement made in Subsection (2)(b)(i) may be terminated and all outstanding balances and accrued interest shall become due immediately, along with a penalty of 20 percent of the unpaid balance. Interest shall continue to accumulate on any unpaid balance, including the penalty, at the APR;

(iii) Activate the bond and collect all remaining funds in accordance with Section R657-27-5 and hold any remaining unpaid balances of penalty, ongoing interest, and principle amounts as a receivable from the license agent; or

(iv) If the license agent enters into an agreement with the division as provided in Subsection (2)(b)(i), and then violates the terms of that agreement, the division may begin the revocation process in accordance with Section R657-27-11.

(c) Nothing in this rule shall be construed as requiring the division to offer a repayment agreement to a license agent delinquent on report submissions or proceeds remissions before taking action to revoke license agent status.

(d) If the license agent does not submit a monthly report as provided in Subsection (1)(a), or if the license agent does not immediately pay the delinquent funds or fails to execute and abide by the terms of a repayment agreement as provided in Subsection (2)(b), the division may:

(i) change the license agent's status to deactivated;

(ii) withhold issuing additional wildlife document inventory;

(iii) withhold access to the agent hunting and fishing licenses online sales system;

(iv) collect the license agent's inventory of wildlife documents and license paper, and determine unaccounted inventory of wildlife documents and license paper;

(v) assess a monetary penalty for each wildlife document and piece of license paper unaccounted for as provided in Subsection R657-27-7(2);

(vi) take action to revoke license agent status;

(vii) create a receivable from the license agent that equals the amount due as determined in Subsection (1)(a) and charge a 20 percent late penalty on the entire balance, and accumulate the unpaid balance, included penalties, at a 12 percent APR from the due date of the earliest date in which a license agent failed to submit a report in accordance with Subsection (1)(a); or

(viii) activate the bond and collect all available funds remaining in accordance with Section R657-27-5 and hold any remaining unpaid balances of penalty, ongoing interest, and principle amounts as a receivable from the license agent.

(e) A deactivated license agent that has not been revoked may regain active status by paying all due balances in full, and providing a bond, provided the license agent is otherwise in compliance with this rule or any other laws or agreements regulating license agent activity.

R657-27-7. Lost or Stolen Wildlife Documents or License Paper.

(1) The license agent must act as bailee for purposes of safeguarding all wildlife documents or license paper issued to the license agent by the division.

(2)(a) The license agent must remit full payment, less remuneration, to the division for any wildlife documents lost, stolen, or unaccounted for unless otherwise relieved for good cause by the director.

(b) The license agent must remit full payment for lost, stolen, or unaccounted license paper in the amount of $10 per sheet of license paper.

(c) Payments made to the division for any wildlife documents or license paper that are lost or unaccounted may be refunded if the wildlife documents or license paper are returned to the Licensing Section in the Salt Lake office by June 30 of the current state fiscal year.

R657-27-8. Audits.

(1) License agents are subject to an audit without prior notification anytime during normal business hours to assess financial and procedural compliance with statute, rule, and the terms of the license agent authorization.

(2) The division shall provide a written report to the license agent of any finding of noncompliance within five days of the completion of the audit.

R657-27-9. Checks Returned for Non-sufficient Funds.

If a check from a license agent is returned to the division for non-sufficient funds, the division may:

(1) require a license agent to remit payment for wildlife documents in the form of a cashiers check or money order;

(2) change the license agent status to deactivated;

(3) activate the bond; or

(4) submit the license agent's account to the Utah Office of Debt Collection for collection activity.

R657-27-10. Change of Business Ownership.

(1) License agent authorizations are nontransferable.

(2) The license agent must notify the division of any anticipated change of ownership of the license agent's business at least 30 business days prior to the change of ownership.

(3) Prior to change of ownership, unless otherwise directed by the division in writing, the license agent must:

(a) remit payment for all wildlife documents sold minus remuneration; and

(b) return all unsold wildlife documents or license paper to the division.

R657-27-11. Revocation of License Agent Authorization.

(1) The presiding officer may revoke a license agent authorization pursuant to Chapter 46b, Title 63, Utah Administrative Procedures Act, if the presiding officer determines that the license agent or the license agent's employee:

(a) violated the terms of the license agent authorization;

(b) violated the terms of any supplemental wildlife document sales agreements with the division;

(c) fails to maintain a bond in accordance with Section R657-27-5;

(d) is found to have committed fraud regarding wildlife documents or license paper;

(e) violated any provision of Title 23, Wildlife Resources Code;

(f) violated any rule promulgated under Title 23, Wildlife Resources Code; or

(g) has been convicted, pleaded guilty, pleaded no contest, or entered into a plea in abeyance to a criminal offense that bears a reasonable relationship to the license agent's ability to competently and responsibly perform the functions of a license agent.

(2) The presiding officer may hold a hearing to determine matters relating to the license agent revocation if the license agent makes a written request for a hearing within 20 days after the notice of agency action is issued.

R657-27-12. Termination of License Agent Authorization by the License Agent.

(1) A license agent may terminate a license agent authorization by submitting a written request to the Licensing Section in the Salt Lake Office.

(2) Any request for termination must state the requested date of termination.

(3) On or before the effective date of termination the license agent must:

(a) discontinue selling wildlife documents;

(b) return all unsold wildlife documents or license paper to the division; and

(c) return to the division any signs, proclamations or other information provided by the division.

(4) On or before the 10th day of the month following the date of termination the license agent must remit payment for all wildlife documents minus remuneration to the division.

R657-27-13. Renewal Application of a License Agent Authorization.

(1) At the end of the five-year term of authorization to sell wildlife documents, the division shall provide a renewal notice and renewal application to the license agent.

(2)(a) The license agent must complete and return the renewal application to the Licensing Section in the Salt Lake Office within 30 business days of being mailed to the license agent.

(b) The division will not charge a renewal application fee.

(3) If the license agent fails to return the renewal application within 30 business days of being mailed, the division may:

(a) confiscate wildlife document inventories;

(b) not provide new wildlife document inventories; or

(c) interrupt use of the agent hunting and fishing licenses online system.

(2) The division may deny a license agent renewal application for any of the reasons provided in Section R657-27-4(1).

R657-27-14. Violation.

It is unlawful for a license agent to sell wildlife documents in violation of:

(1) the License Agent Authorization; or

(2) any supplemental wildlife document sales agreements executed with the division.

R657-27-15. Distribution of Preprinted Licenses and Permits.

(1) The division shall determine, in its sole discretion, the types and numbers of preprinted licenses and permits issued to a license agent.

(2) Certain licenses or permits may not be available for sale by a license agent.

R657-27-16. Supplemental Wildlife Document Sales Agreement.

(1) Upon approval of a license agent authorization, the division may enter into a supplemental wildlife document sales agreement with the license agent.

(2)(a) The license agent must:

(i) complete all information indicated in the agreement; and

(ii) sign and date the agreement.

(b) The agreement must be returned by mail or hand-delivery to any division office and must be received no later than the date indicated under the terms on the agreement form. Facsimiles will not be accepted.

(c) Agreements received after the date indicated on the agreement form may be returned.

(4)(a) The division may not enter into an agreement with any license agent who was given reasonable notice of the time period for entering into the agreement and fails to return a complete agreement to the division.

(b) The division may notify a license agent who has made an error in completing the agreement form and may afford an opportunity for correction. However, if the division is unable to contact the license agent within two weeks following the filing date indicated on the agreement and correct the error, the agreement shall be void and the license agent may not receive authorization to sell the wildlife documents covered by the supplemental agreement.

(5) By signing the agreement, the license agent agrees to abide by the terms of the agreement.

R657-27-17. License Agent Authorization and Supplemental Agreements Subject to Change.

(1) A license agent authorization or supplemental agreement issued or renewed by the division under this rule is a privilege and not a right. The license agent authorization or supplemental agreement authorizes the license agent to sell

wildlife documents subject to all present and future conditions, restrictions, and regulations imposed on such activities by the division, the Wildlife Board, or the State of Utah.

(2) A license agent authorization or supplemental agreement does not guarantee or otherwise legally entitle the license agent to any of the following:

(a) a minimum number of wildlife documents;

(b) a particular type or types of wildlife documents;

(c) access to any particular wildlife document distribution system; or

(d) any other right or opportunity advantageous to the license agent.

(3) The procedures, processes and opportunities outlined in this rule regulating license agents and the distribution of wildlife documents are all subject to future change, including discontinuation, by the division and the Wildlife Board.

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R657. Natural Resources, Wildlife Resources.
R657-29. Government Records Access Management Act.
R657-29-1. Purpose and Authority.

(1) This rule prescribes where and to whom requests for information shall be directed and provides procedures for access to division records as allowed under Subsection 63-2-204(2).

(2) Specific procedures for requesting division records are provided in Chapter 2, Title 63, Government Records Access and Management Act.

R657-29-2. Definitions.

(1) Terms used in this rule are defined in Section 63-2-103.

(2) In addition:

(a) "Department" means the Department of Natural Resources.

(b) "Division" means the Division of Wildlife Resources

(c) "Records officer" means the individual located in the Salt Lake division office designated by the director of the division to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

R657-29-3. Allocation of Responsibility Within the Division.

The division is considered a governmental entity and the director of the division is considered the head of the governmental entity.

R657-29-4. Requesting Information.

(1) A person making a request for any private, controlled or protected record shall furnish the division with a written request as provided in Subsection 63-2-204(1) on a form provided by the division.

(2)(a) A request for any record shall be made only to the records officer in the Salt Lake division office located at 1594 West North Temple, Salt Lake City, Utah 84114.

(b) Response to a request submitted to any person other than the records officer in the Salt Lake division office may be delayed.

(3)(a) The records officer shall respond to each request according to Section 63-2-204.

(b) Under authority of Subsection 63-2-201(5)(b) the director may, in his discretion, disclose records that are private under Subsection 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in Section 63-2-202 or 63-2-206 if he determines there is no interest in restricting access to the record, or that the interests favoring access outweighs the interest favoring restriction of access.

R657-29-5. Requests for Access for Research Purposes.

(1) Access to private or controlled records for research purposes is allowed under Section 63-2-202(8).

(2) Requests for access to private or controlled records for research purposes may be made to the records officer in the Salt Lake division office.

R657-29-6. Intellectual Property Records.

(1) The division may duplicate and distribute an intellectual property right that is owned by the division in accordance with Section 63-2-201(10).

(2) Decisions with regard to these rights shall be made by the records officer in the Salt Lake division office.

(3) Any request regarding the duplication and distribution of such materials shall be made in writing to the records officer in the Salt Lake division office.

R657-29-7. Fees.

(1) The division, pursuant to Section 63-2-203, may charge a reasonable fee to cover the actual cost of duplicating a record or compiling a record in a form other than that maintained by the division.

(2) The division shall establish fees in accordance with Subsection 63-38-3.2.

(3) Fees must be paid at the time of the request or before the records are provided to the requester.

(4) The records officer may fulfill a record request without charge according to the guidelines established in Subsection 63-2-203(3).

(5) Requests for a fee waiver may be made to the records officer in the Salt Lake division office.

R657-29-8. Denials.

(1) If the records officer denies a request in whole or in part, he shall send a notice of denial to the requester either in person or by sending the notice to the requester's address.

(2) The notice of denial shall contain the information required in Subsection 63-2-205(2).

R657-29-9. Appeal of Access Determination.

(1) Any person aggrieved by an access determination made by the records officer, including a person not a party to the division proceeding may, within 30 days after the determination, appeal the determination by submitting a notice of appeal in writing to the department executive director.

(2) The notice of appeal shall contain the information provided in Subsection 63-2-401(2).

(3) Upon receiving the notice of appeal, the department executive director shall make a determination according to the guidelines and within the time periods specified in Section 63-2-401.

R657-29-10. Appeal of Request to Amend a Record.

(1) Any individual contesting the accuracy or completeness of any public, private, or protected record concerning him may request the division amend the record according to the guidelines specified in Subsection 63-2-603(2).

(2) The request to amend shall be considered a request for agency action as prescribed in Subsection 63-46b-3 and the adjudicative proceeding shall be conducted informally according to the procedures prescribed in Section 63-46b-5 and R657-2, Adjudicative Proceedings.

(3) Any request to amend a record must be made to the records officer in the Salt Lake division office on a form provided by the division.

KEY: government documents, freedom of information, public records
July 3, 2002 63-2-204
Notice of Continuation May 3, 2007

R657. Natural Resources, Wildlife Resources.
R657-30. Fishing License for the Terminally Ill.
R657-30-1. Purpose and Authority.

Under Section 23-19-36, this rule provides the procedures for a terminally ill person to obtain a free fishing license.

R657-30-2. Procedures for Obtaining a Free Fishing License.

(1) A resident may receive a fishing license free of charge upon providing the following information to a division office:

(a) Verification signed by a physician stating the applicant:

(i) is terminally ill; and

(ii) has less than five years to live; and

(b) One of the following documents stating the person is receiving assistance under a low income public assistance program administered by the Department of Human Services:

(i) A Medicaid identification card for the current month;

(ii) A food stamp identification card for the current year; or

(iii) A document stating the person is receiving Supplemental Security Income.

(2) If a person is not a recipient of a public assistance program administered by the Department of Human Services or is unable to produce one of the documents required under Subsection (b), the person must provide the division with an affidavit signed by the Office of Family Support stating that he qualifies for a low income public assistance program.

KEY: wildlife, licensing, terminally ill*, fishing, rules and procedures
1992 23-19-36
Notice of Continuation May 7, 2007

R657. Natural Resources, Wildlife Resources.
R657-44. Big Game Depredation.
R657-44-1. Purpose and Authority.

Under authority of Section 23-16-2, 23-16-3, 23-16-3.1, 23-16-3.2 and 23-16-4, this rule provides:

(1) the procedures, standards, requirements, and limits for assessing big game depredation; and

(2) mitigation procedures for big game depredation.

R657-44-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-16-1.1.

(2) In addition:

(a) "Alternate drawing list" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Cleared and planted land" means private land or privately leased state or federal land used to produce a cultivated crop for commercial gain and the cultivated crop is routinely irrigated or routinely mechanically or manually harvested, or is crop residue that has forage value for livestock.

(c) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner's livelihood.

(d) "Damage incident period" means 90 days, or some longer period as approved in writing by the division, during which the division shall take action to prevent further depredation and during which compensation for damage will be calculated.

(e) "Irrigated" means the controlled application of water for agricultural purposes through man-made systems to supply water not satisfied by rainfall.

(f) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(g) "Mitigation permit voucher" means a document issued to a landowner or lessee, allowing the landowner or lessee to designate who may obtain a big game mitigation permit.

(h) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

R657-44-3. Damage to Cultivated Crops, Fences, or Irrigation Equipment by Big Game Animals.

(1) If big game animals are damaging cultivated crops on cleared and planted land, or fences or irrigation equipment on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action by notifying a division representative in the appropriate regional office pursuant to Section 23-16-3(1).

(2) Notification may be made:

(a) orally to expedite a field investigation; or

(b) in writing to a division representative in the appropriate division regional office.

(3)(a) The regional supervisor or division representative shall contact the landowner or lessee within 72 hours after receiving notification to determine the nature of the damage and take appropriate action for the extent of the damage experienced or expected during the damage incident period.

(b) The division shall consider the big game population management objectives as established in the wildlife unit management plan approved by the Wildlife Board.

(c) Division action shall include:

(i) removing the big game animals causing depredation; or

(ii) implementing a depredation mitigation plan pursuant to Sections 23-16-3(2)(b) through 23-16-3(2)(f) and approved in writing by the landowner or lessee.

(4)(a) The division mitigation plan may incorporate any of the following measures:

(i) sending a division representative onto the premises to control or remove the big game animals, including:

(A) herding;

(B) capture and relocation;

(C) temporary or permanent fencing; or

(D) removal, as authorized by the division director or the division director's designee;

(ii) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;

(iii) scheduling a depredation hunter pool hunt in accordance with Sections R657-44-7, R657-44-8, or R657-44-9;

(iv) issuing permits to the landowner or lessee for the harvest of big game animals causing depredation during a general or special season hunt authorized by the Wildlife Board, of which:

(A) the hunting area for big game animals may include a buffer zone established by the division that surrounds, or is adjacent to, the lands where depredation is occurring;

(B) the landowner or lessee may retain no more than five antlerless deer, five doe pronghorn, and two antlerless elk; or

(v) issuing big game mitigation permit vouchers for use on the landowner's or lessee's private land during a general or special hunt authorized by the Wildlife Board.

(b) The mitigation plan may describe how the division will assess and compensate for damage pursuant to Section 23-16-4.

(c) The landowner or lessee and the division may agree upon a combination of mitigation measures to be used pursuant to Subsections (4)(a)(i) through (4)(a)(v), and a payment of damage pursuant to Section 23-16-4.

(d) The agreement pursuant to Subsection (4)(c) must be made before a claim for damage is filed and the mitigation measures are taken.

(5) Vouchers may be issued in accordance with Subsection (4)(a)(v) to:

(a) the landowner or lessee; or

(b) a landowner association that:

(i) applies in writing to the division;

(ii) provides a map of the association lands;

(iii) provides signatures of the landowners in the association; and

(iv) designates an association representative to act as liaison with the division.

(6) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(7) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, or the Wildlife Resources Code.

(8)(a) The options provided in Subsections (4)(a)(i) through (4)(a)(v) are for antlerless animals only.

(b) Deer and pronghorn hunts may be August 1 through December 31, and elk hunts may be August 1 through January 31.

(9)(a) The division director may approve mitigation permits or mitigation permit vouchers issued for antlered animals.

(b) A big game mitigation permit may be issued to the landowner or lessee for personal use, provided the division and the landowner or lessee desire the animals to be permanently removed.

(c) A mitigation permit voucher may be issued to the landowner or lessee, provided:

(i) the division has determined that the big game animals in the geographic area significantly contribute to the wildlife management units;

(ii) the landowner or lessee agrees to perpetuate the animals on their land; and

(iii) the damage, or expected damage, to the cultivated crop is comparable with the expected value of the mitigation permit voucher on that private land within the wildlife unit.

(10)(a) If the landowner or lessee and the division are unable to agree on the assessed damage, they shall designate a third party pursuant to Subsection 23-16- 4(3)(d).

(b) Additional compensation shall be paid above the value of any mitigation permits or vouchers granted to the landowner or lessee if the damage exceeds the value of the mitigation permits or vouchers.

(11)(a) The landowner or lessee may revoke approval of the mitigation plan agreed to pursuant to Subsection (4)(c).

(b) If the landowner or lessee revokes the mitigation plan, the landowner or lessee must request that the division take action pursuant to Section 23-16-3(1)(a).

(c) Any subsequent request for action shall start a new 72-hour time limit as specified in Section 23-16-3(2)(a).

(12) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

(13) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Section 23-16-3(5).

R657-44-4. Landowner or Lessee Authorized to Kill Big Game Animals.

(1) The landowner or lessee is authorized to kill big game animals damaging cultivated crops on cleared and planted land pursuant to Section 23-16-3.1.

(2) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

R657-44-5. Compensation for Damage to Crops, Fences, or Irrigation Equipment on Private Land.

(1) The division may provide compensation to landowners or lessees for damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land caused by big game animals pursuant to Section 23-16-4.

(2) For purposes of compensation, all depredation incidents end on June 30 annually, but may be reinstated July 1.

R657-44-6. Damage to Livestock Forage on Private Land.

(1)(a) If big game animals are damaging livestock forage on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action to alleviate the depredation problem pursuant to Section 23-16-3, and as provided in Subsections R657-44-3(1) through R657-44-3(4)(a)(v), and R657-44-3(5) and R657-44-3(8)(a).

(b) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(c) Damage to livestock forage is not eligible for monetary compensation from the division.

(2)(a) Antlerless deer and doe pronghorn hunts may occur August 1 through December 31, and antlerless elk hunts may occur August 1 through January 31.

(b) Antlerless permits shall not exceed ten percent of the animals on the private land, with a maximum of twenty permits per landowner or lessee, except where the estimated population for the management unit is significantly over objective.

(c) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, or the Wildlife Resources Code.

(3) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Subsection 23-16-3(5).

(4) Permits and vouchers for antlered animals using livestock forage on private land are issued only through the provisions provided in Rule R657-43.

R657-44-7. Depredation Hunts for Buck Deer, Bull Elk or Buck Pronghorn.

(1)(a) Buck deer, bull elk, or buck pronghorn depredation hunts, that are not published in the proclamation of the Wildlife Board for taking big game, may be held.

(b) Buck deer, bull elk, or buck pronghorn depredation hunts may be held when the buck deer, bull elk, or buck pronghorn are:

(i) causing damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land;

(ii) a significant public safety hazard; or

(iii) causing a nuisance in urban areas.

(2) The depredation hunts may occur on short notice, involve small areas, and be limited to only a few hunters.

(3) Pre-season depredation hunters shall be selected using:

(a) hunters possessing a limited entry buck deer, bull elk, or buck pronghorn permit for that limited entry unit;

(b) hunters from the alternate drawing list for that limited entry unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry unit.

(4) Post-season depredation hunters shall be selected using:

(a) hunters from the alternate drawing list for that limited entry unit;

(b) hunters from the alternate drawing list from the nearest adjacent limited entry unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry unit.

(5) A person may participate in the depredation hunter pool, for depredation hunts pursuant to Subsections (3)(c) and (4)(c), as provided in Section R657-44-9.

(6)(a) Hunters who are selected for a limited entry buck deer, bull elk, or buck pronghorn depredation hunt must possess an unfilled, valid, limited entry buck deer, bull elk, or buck pronghorn permit for the species to be hunted, or must purchase the appropriate depredation permit before participating in the depredation hunt.

(b) Hunters who are selected for a general buck deer or bull elk depredation hunt must possess an unfilled, valid, general buck deer or bull elk permit, respectively.

(7) The buck deer, bull elk, or buck pronghorn harvested during a depredation hunt must be checked with the division within 72 hours of the harvest.

(8) If a hunter is selected from the alternate drawing list for a depredation hunt in a limited entry unit and harvests a trophy animal, that person shall lose their bonus points and incur the appropriate waiting period as provided in Rule R657-5.

(9)(a) Hunters with depredation permits for buck deer, bull elk, or buck pronghorn may not possess any other permit for those species, except as provided in the proclamation of the Wildlife Board for taking big game and Rule R657-5.

(b) A person may not take more than one buck deer, bull elk, or buck pronghorn in one calendar year.

R657-44-8. Depredation Hunts for Antlerless Deer, Elk or Doe Pronghorn.

(1) When deer, elk, or pronghorn are causing damage to cultivated crops on cleared and planted land, or livestock forage, fences or irrigation equipment on private land, antlerless hunts not listed in the proclamation of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Depredation hunters shall be selected using:

(a) hunters possessing an antlerless deer, elk, or doe pronghorn permit for that unit;

(b) hunters from the alternate drawing list for that unit; or

(c) the depredation hunter pool pursuant to Section R657-44-9.

(3) The division may contact hunters to participate in a depredation hunt prior to the general or limited entry hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, or doe pronghorn permit may purchase an appropriate permit.

(4) Hunters with depredation permits for antlerless deer, elk, or doe pronghorn may not possess any other permit for those species, except as provided in the proclamation of the Wildlife Board for taking big game and Rule R657-5.

R657-44-9. Depredation Hunter Pool.

(1) When deer, elk or pronghorn are causing damage, hunts not listed in the proclamation of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters shall be selected pursuant to Subsections R657-44-7(3), R657-44-7(4), and R657-44-8(2).

(3) A hunter pool application does not affect eligibility to apply for any other big game permit. However, hunters who participate in any deer, elk, or pronghorn depredation hunt may not possess an additional permit for that species during the same year, except as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(4) Applications must be sent to the appropriate regional division office for the area requested.

(5)(a) Applications must be received by the date published in the proclamation of the Wildlife Board for taking big game.

(b) Applications received after the date published in the proclamation of the Wildlife Board for taking big game may be used if adequate numbers of applicants are not available to satisfy depredation situations.

(6) Hunters who have not obtained the appropriate deer, elk, or pronghorn permit may purchase an appropriate permit.

R657-44-10. Appeal Procedures.

(1) Upon the petition of an aggrieved party to a final division action relative to big game depredation and this rule, a qualified hearing examiner shall take evidence and make recommendations to the Wildlife Board, who shall resolve the grievance in accordance with Rule R657-2.

KEY: wildlife, big game, depredation

May 8, 2007	**23-16-2**
Notice of Continuation July 3, 2002	**23-16-3**
	23-16-3.5

R657. Natural Resources, Wildlife Resources.
R657-53. Amphibian and Reptile Collection, Importation, Transportation and Possession.
R657-53-1. Purpose and Authority.

(1) Under Title 23, Wildlife Resources Code of Utah, this rule governs the collection, importation, transportation, possession, and propagation of amphibians and reptiles.

(2) Nothing in this rule shall be construed as superseding the provisions set forth in Title 23, Wildlife Resources Code of Utah. Any provision of this rule setting forth a criminal violation that overlaps a section of that title is provided in this rule only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

(3) In addition to this rule, additional regulation is provided in R657-40. Where a more specific provision has been adopted, that provision shall control.

(4) Specific dates, species, areas, number of pre-authorized certificates of registration, limits and other administrative details which may change annually are published in the proclamation of the Wildlife Board for amphibians and reptiles.

(5) Amphibians and reptiles lawfully collected from wild populations in Utah and thereafter possessed remain the property of the state for the life of the animal pursuant to Section 23-13-3. The state does not assert ownership interest in lawfully possessed, captive-bred amphibians and reptiles, but does retain jurisdiction to regulate the importation, possession, propagation and use of such animals pursuant to Title 23 of the Utah Code and this rule.

(6) This rule does not apply to division employees acting within the scope of their assigned duties.

R657-53-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and Subsection (2) through Subsection (29).

(2) "Amphibian" means animals from the Class of Amphibia, including hybrid species or subspecies of amphibians and viable embryos or gametes of species or subspecies of amphibians.

(3) "Captive-bred" means any legally-obtained amphibian or reptile, for which fertilization and birth occurred in captivity, has spent its entire life in captivity, and is the offspring of legally obtained progenitors.

(4) "Certificate of registration" means a document issued under the Wildlife Resources Code, or any other rule or proclamation of the Wildlife Board granting authority to engage in activities not covered by a license, permit or tag.

(5) "Certificate of veterinary inspection" means an official health authorization issued by an accredited veterinarian required for the importation of an amphibian or reptile, as provided in Rule R58-1.

(6) "Collect" means to take, catch, capture, salvage, or kill any free-roaming amphibian or reptile within Utah.

(7) "Commercial use" means any activity through which a person in possession of an amphibian or reptile:

(a) receives any consideration for the amphibian or reptile or for a use of the amphibian or reptile, including nuisance control; or

(b) expects to recover all or any part of the cost of keeping the amphibian or reptile through selling, bartering, trading, exchanging, breeding, or other use, including displaying the amphibian or reptile for entertainment, advertisement, or business promotion.

(8) "Controlled species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses a possible significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is required.

(9) "Den" means any place where reptiles congregate for winter hibernation or brumation.

(10) "Educational use" means the possession and use of an amphibian or reptile for conducting educational activities concerning wildlife and wildlife-related activities.

(11) "Entry permit number" means a number issued by the state veterinarian's office to a veterinarian signing a certificate of veterinary inspection authorizing the importation of an amphibian or reptile into Utah.

(12) "Export" means to move or cause to move any amphibian or reptile from Utah by any means.

(13) "Import" means to bring or cause an amphibian or reptile to be brought into Utah by any means.

(14) "Legally obtained" means to acquire through collection, trade, barter, propagation or purchase with supporting written documentation, such as applicable certificate of registration, collection permit, license, or sales receipt in accordance with applicable laws. Documentation must include the date of the transaction; the name, address and phone number of the person or organization relinquishing the animal; the name, address and phone number of the person or organization obtaining the animal; the scientific name of the animal acquired; and a description of the animal.

(15) "Native species" means any species or subspecies of amphibian or reptile that historically occurred in Utah and has not been introduced by humans or migrated into Utah as a result of human activity.

(16) "Naturalized species" means any species or subspecies of amphibian or reptile that is not native to Utah but has established a wild, self-sustaining population in Utah.

(17) "Noncontrolled species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses no significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is not required, unless otherwise specified.

(18) "Nonnative species" means a species or subspecies of amphibian or reptile that is not native to Utah and has not established a wild, self-sustaining population in Utah.

(19) "Personal use" means the possession and use of an amphibian or reptile for a hobby or for its intrinsic pleasure and where no consideration for the possession or use of the animal is received by selling, bartering, trading, exchanging, breeding, or any other use.

(20) "Possession" means to physically retain or to exercise dominion or control over an amphibian or reptile.

(21) "Pre-authorized certificate of registration" means a certificate of registration that:

(a) meets the criteria established in Subsection R657-53-11(1)

(b) has been approved by the division; and

(c) is available for issuance.

(22) "Prohibited species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses a significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration shall only be issued in accordance with Sections R657-53-23(1)(a) or R657-53-19.

(23) "Propagation" means the mating of a male and female amphibian or reptile in captivity.

(24) "Reptile" means animals from the Class of Reptilia, including hybrid species or subspecies of reptiles and viable embryos or gametes of species or subspecies of reptiles.

(25) "Scientific use" means the possession and use of an amphibian or reptile for conducting bona fide scientific research that is directly or indirectly beneficial to wildlife or the general public.

(26) "Transport" means to be moved or cause to be moved,

any amphibian or reptile within Utah by any means.

(27) "Turtle" means all animals commonly known as turtles, tortoises and terrapins, and all other animals of the Order Testidunata, Class Reptilia.

(28) "Wild population" means native or naturalized amphibians or reptiles living in nature including progeny from a gravid female where fertilization occurred in the wild and birth occurred within six months of collection.

(29) "Wildlife Registration Office" means the division office in Salt Lake City responsible for processing applications and issuing certificates of registration.

R657-53-3. Liability.

(1)(a) Any person who accepts a certificate of registration assumes all liability and responsibility for the collection, importation, transportation, and possession of the authorized amphibian or reptile and for any other activity authorized by the certificate of registration.

(b) To the extent provided under the Utah Governmental Immunity Act, the division shall not be liable in any civil action for:

(i) any injury, disease, or damage caused by or to any animal, person, or property as a result of any activity authorized under this rule or a certificate of registration; or

(ii) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any certificate of registration or similar authorization.

(2) It is the responsibility of any person who obtains a certificate of registration to read, understand and comply with this rule and all other applicable federal, state, county, city, or other municipality laws, regulations, and ordinances governing amphibians or reptiles.

R657-53-4. Animal Welfare.

(1) Any amphibian or reptile held in possession under the authority of a certificate of registration shall be maintained under humane and healthy conditions, including humane handling, care, confinement, transportation, and feeding of the amphibian or reptile.

(2) Adequate measures must be taken for the protection of the public when handling, confining, or transporting any amphibian or reptile.

R657-53-5. Collection, Importation, and Possession of Threatened and Endangered Species.

(1) Any amphibian or reptile listed by the U.S. Fish and Wildlife Service as endangered or threatened pursuant to the federal Endangered Species Act is prohibited from collection, importation, possession, or propagation except:

(a) The division may authorize the collection, importation, possession, or propagation of a threatened or endangered species under the criteria set forth in this rule for controlled species where the U.S Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity; or

(b) A person may import, possess, transfer, or propagate captive-bred eastern indigo snakes (Drymarchon couperi) without a certificate of registration where the U.S. Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity.

R657-53-6. Release of an Amphibian or Reptile to the Wild -- Capture or Disposal of Escaped Wildlife.

(1) Pursuant to Section 23-13-14, a person may not release from captivity any amphibian or reptile without first obtaining authorization from the division.

(2)(a) Any peace officer, division representative, or authorized animal control officer may seize or dispose of any live amphibian or reptile that escapes from captivity.

(b) The division may retain custody of any recaptured amphibian or reptile until the costs of recapture or care have been paid by its owner or keeper.

R657-53-7. Inspection of Documentation.

A conservation officer or any other peace officer may require any person engaged in activities covered by this rule to exhibit any documentation related to activities covered by this rule, including certificates of registration, permits, certificates of veterinary inspection, certification, bills of sale, or proof of ownership or legal possession.

R657-53-8. Certificate of Registration Required.

(1)(a) A person shall obtain a certificate of registration before collecting, importing, transporting, possessing, or propagating any amphibian or reptile or their parts as provided in rule and the proclamations of the Wildlife Board for amphibians and reptiles, except as otherwise provided by the Wildlife Board or rules of the Wildlife Board.

(b) A certificate of registration is not required:

(i) to collect, import, transport, or possess any amphibian or reptile classified as noncontrolled, except as provided in Subsections R657-53-26(1)(c), R657-53-27(5) and R657-53-28(7); or

(ii) to export any species or subspecies of amphibian or reptile from Utah, provided that the amphibian or reptile is held in legal possession and importation into the destination state is lawful.

(c) An application for an amphibian or reptile classified as prohibited shall not be accepted by the division without providing written justification describing how the applicant's proposed collection, importation, or possession of the amphibian or reptile meets the criteria provided in Subsections R657-53-23(1)(a), R657-53-24(c)(i) or R657-53-19.

(d) Pre-authorized certificates of registration may be issued for collection and the resulting possession of amphibians and reptiles classified as controlled for collection pursuant to R657-53-13.

(2)(a) Certificates of registration expire as designated on the certificate of registration.

(b) Certificates of registration are not transferable.

(c) If the holder of a certificate of registration is a representative of an institution, organization, business, or agency, the certificate of registration shall end upon the representative's discontinuation of association with that entity.

(d) Certificates of registration do not provide the holder with any rights of succession and any certificate of registration issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(3) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(4) In addition to this rule, the division may impose specific requirements on the holder of the certificate of registration necessary for the safe and humane handling and care of the amphibian or reptile.

(5)(a) Upon or before the expiration date of a certificate of registration, the holder must renew an existing or apply for a new certificate of registration to continue the activity.

(b) The division shall use the criteria provided in Section R657-53-11 in determining whether to issue a certificate of registration.

(c) If an application is not made by the expiration date, a live or dead amphibian or reptile held in possession under the expired certificate of registration shall be considered unlawfully held.

(d) If an application for a new certificate of registration is submitted before the expiration date, the existing certificate of

registration shall remain valid while the application is pending.

(6) Failure to submit timely, accurate, or valid reports as required under this rule or the certificate of registration may disqualify a person from obtaining a new certificate of registration.

(7) A certificate of registration may be suspended as provided in Section 23-19-9 and Rule R657-26.

R657-53-9. Application Procedures -- Fees.

(1)(a) Applications for certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City or any regional division office.

(b) The application may require up to 45 days for review and processing.

(c) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be returned to the applicant.

(2)(a) Legal tender in the correct amount must accompany the application.

(b) The certificate of registration fee includes a nonrefundable handling fee.

(c) Fees may be waived for wildlife rehabilitation, educational or scientific activities, or for state or federal agencies upon request if, in the opinion of the division, the activity is significantly beneficial to the division, wildlife, or wildlife management.

R657-53-10. Retroactive Effect on Possession.

(1) A person lawfully possessing an amphibian or reptile prior to the effective date of any species reclassification may receive a certificate of registration from the division for the continued possession of that amphibian or reptile where the amphibian or reptile's classification has changed hereunder from noncontrolled to controlled or prohibited, or from controlled to prohibited.

(2) The certificate of registration shall be obtained within six months of the reclassification, or possession of the amphibian or reptile thereafter shall be unlawful.

(3) The certificate of registration for a species where the classification has changed from noncontrolled to controlled shall be issued for the life of the animal.

(4) The certificate of registration for a species where the classification has changed from noncontrolled or controlled to prohibited shall be renewed annually for the life of the animal.

(5) The division may require annual reporting.

R657-53-11. Issuance Criteria.

(1) The following factors shall be considered before the division may issue a certificate of registration:

(a) the health, welfare, and safety of the public;

(b) the health, welfare, safety, and genetic integrity of wildlife and other animals; and

(c) ecological and environmental impacts.

(2) In addition to the criteria provided in Subsection (1), the division shall use the following criteria for the issuance of a certificate of registration for a scientific use of an amphibian or reptile:

(a) the validity of the objectives and design;

(b) the likelihood the project will fulfill the stated objectives;

(c) the applicant's qualifications to conduct the research, including the requisite education or experience;

(d) the adequacy of the applicant's resources to conduct the study; and

(e) whether the scientific use is in the best interest of the amphibian or reptile, wildlife management, education, or the advancement of science without unnecessarily duplicating previously documented scientific research.

(3) In addition to the criteria provided in Subsection (1), the division may use the following criteria for the issuance of a certificate of registration for an educational use of an amphibian or reptile:

(a) the objectives and structure of the educational program; and

(b) whether the applicant has written approval from the appropriate official if the activity is conducted in a school or other educational facility.

(4) The division may deny issuing or reissuing a certificate of registration to any applicant, if:

(a) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a certificate of registration, an order of the Wildlife Board or any other law that, when considered with the functions and responsibilities of collecting, importing, possessing or propagating an amphibian or reptile, bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant has previously been issued a certificate of registration and failed to submit any report or information required by this rule, the division, or the Wildlife Board; or

(c) the applicant misrepresented or failed to disclose material information required in connection with the application.

(d) The division may deny issuing or renewing a certificate of registration to an applicant where holding the amphibian or reptile at the proposed location violates federal, state or local laws.

(5) If an application is denied, the division shall provide the applicant with written notice of the reasons for denial.

(6) An appeal of the denial of an application may be made as provided in Section R657-53-20.

R657-53-12. Amendment to Certificate of Registration.

(1)(a) If material circumstances change, requiring a modification of the terms of the certificate of registration, the holder may request an amendment by submitting written justification and supporting information.

(b) The division may amend the certificate of registration or deny the request based on the criteria for initial applications provided in Section R657-53-11, and, if the request for an amendment is denied, shall provide the applicant with written notice of the reasons for denial.

(c) The division may charge a fee for amending the certificate of registration.

(d) An appeal of a request for an amendment may be made as provided in Section R657-53-20.

(2) The division reserves the right to amend any certificate of registration for good cause upon notification to the holder and written findings of necessity.

(3)(a) Each holder of a certificate of registration shall notify the division within 30 days of any change in mailing address.

(b) An amphibian or reptile or activities authorized by a certificate of registration may not be held at any location not specified on the certificate of registration without prior written permission from the division.

R657-53-13. Pre-authorized Certificates of Registration for Personal Use.

(1) Pre-authorized certificates of registration may only be issued for collection and the resulting possession for personal use of amphibians and reptiles classified as controlled for collection, as provided in this rule and the proclamation of the Wildlife Board.

(2) Pre-authorized certificates of registration shall be held to all conditions established in R657-53-8.

(3)(a) The criteria established in R657-53-11(1) shall be

utilized to determine if pre-authorized certificates of registration shall be approved and issued.

(b) The criteria shall be applied to all amphibians and reptiles classified as controlled for collection.

(c) Pre-authorized certificates of registration shall be approved and issued only when the R657-53-11(1) criteria have been evaluated by the division and issuance found consistent with the criteria.

(4)(a) Applications for pre-authorized certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City.

(i) Applications for pre-authorized certificates of registration shall be accepted during the second full week of January and must be received by the Salt Lake Office by 5 p.m. Friday of that week.

(ii) Applications received before the second full week in January will not be accepted.

(iii) If necessary, a drawing will be held for those species that have more applications than available pre-authorized certificates of registration.

(iv) Remaining pre-authorized certificates of registration will be available after the second full week of January on a first-come, first-served basis.

(v) A person may not apply for or obtain more than one pre-authorized certificate of registration for each available species in a calendar year.

(vi) If available, pre-authorized certificates of registration shall be issued within five business days beginning the Monday after the second full week in January.

(vii) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be rejected.

(b)(i) Legal tender in the correct amount must accompany the application.

(ii) The pre-authorized certificate of registration fee includes a nonrefundable handling fee.

(c) Applications for pre-authorized certificates of registration may be denied as provided in R657-53-11(4).

(5)(a) Pre-authorized certificates of registration are not transferable, nor may they be amended to change collection area, species, bag limits, or dates.

(b) A holder of a pre-authorized certificate of registration shall notify the division within 30 days of any change in mailing address.

(c) An amphibian or reptile, or activities authorized by a certificate of registration may not be held or conducted at any location not specified on the certificate of registration without prior written permission from the division.

(6) Specific dates, species, areas, number of pre-authorized certificates of registration approved, and bag limits shall be published in the proclamation of the Wildlife Board for amphibians and reptiles.

(7)(a) Holders of a pre-authorized certificate of registration must report collection success or lack thereof to the division before the expiration date of the pre-authorized certificate of registration.

(b) The division shall issue a possession certificate of registration for the amphibian or reptile collected under the pre-authorized certification of registration for the life of the animal.

(c) Annual reporting to the division on the status of the animal is required or the possession certificate of registration becomes invalid.

R657-53-14. Records and Reports.

(1)(a) From the date of issuance of the certificate of registration, the holder shall maintain complete and accurate records of any taking, possession, transportation, propagation, sale, purchase, barter, or importation pursuant to applicable sections of this rule or the certificate of registration.

(b) Records must be kept current and shall include the names, phone numbers, and addresses of persons with whom any amphibian or reptile has been sold, bartered, or otherwise transferred or received, and the dates of the transactions.

(c) The records required under this section must be maintained for five years from the expiration date of the certificate of registration.

(2) Reports of activity must be submitted to the Wildlife Registration Office as specified on the certificate of registration.

R657-53-15. Transfer of Possession.

(1) Any person who lawfully possesses an amphibian or reptile classified as prohibited or controlled may transfer possession of that amphibian or reptile only to a person who has first applied for and obtained a certificate of registration for that amphibian or reptile from the division, except as provided in Subsection (3).

(2) The division may issue a certificate of registration granting the transfer and possession of an amphibian or reptile only if the applicant/transferee meets the issuance criteria provided in Section R657-53-11.

(3) Upon the death of a certificate of registration holder, a legally-obtained and possessed amphibian or reptile may pass to a successor, and a certificate of registration will be issued to the successor provided the amphibian or reptile poses no detrimental impact to community safety and the successor is qualified to handle the amphibian or reptile.

R657-53-16. Violations.

(1) Any violation of this rule is a class C misdemeanor, as provided in Section 23-13-11.

(2) Nothing in this rule shall be construed to supersede any provision of Title 23, Wildlife Resources Code of Utah which establishes a penalty greater than a class C misdemeanor. Any provision of this rule which overlaps a provision of that title is intended only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

R657-53-17. Certification Review Committee.

(1) The division shall establish a Certification Review Committee which shall be responsible for:

(a) reviewing:

(i) petitions to reclassify species and subspecies of amphibians or reptiles;

(ii) appeals of certificates of registration; and

(iii) requests for variances to this rule; and

(b) making recommendations to the Wildlife Board.

(2) The committee shall consist of the following individuals:

(a) the director or the director's designee who shall represent the director's office and shall act as chair of the committee;

(b) the chief of the Aquatic Section;

(c) the chief of the Wildlife Section;

(d) the chief of the Administrative Services Section;

(e) the chief of the Law Enforcement Section;

(f) the state veterinarian or his designee; and

(g) a person designated by the Department of Health.

(3) The division shall require a fee for the submission of a request provided in Section R657-53-18 and R657-53-19.

R657-53-18. Request for Species Reclassification.

(1) A person may make a request to change the classification of a species or subspecies of amphibian or reptile provided in this rule.

(2) A request for reclassification must be made to the Certification Review Committee by submitting an application for reclassification.

(3)(a) The application shall include:
(i) the petitioner's name, address, and phone number;
(ii) the species or subspecies for which the application is made;
(iii) the name of all interested parties known by the petitioner;
(iv) the current classification of the species or subspecies;
(v) a statement of the facts and reasons forming the basis for the reclassification; and
(vi) copies of scientific literature or other evidence supporting the change in classification.
(b) In addition to the information required under Subsection (a), the petitioner must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.
(4)(a) The committee shall, within a reasonable time, consider the request for reclassification and shall submit its recommendation to the Wildlife Board.
(b) The committee shall send a copy of its recommendation to the petitioner and other interested parties specified on the application.
(5)(a) At the next available Wildlife Board meeting the Wildlife Board shall:
(i) consider the committee recommendation; and
(ii) any information provided by the petitioner or other interested parties.
(b) The Wildlife Board shall approve or deny the request for reclassification based on the issuance criteria provided in Section R657-53-11(1).
(6) A change in species classification shall be made in accordance with Title 63, Chapter 46a, Administrative Rulemaking Act.
(7) A request for species reclassification shall be considered a request for agency action as provided in Subsection 63-46b-3(3) and Rule R657-2.

R657-53-19. Request for Variance.
(1) A person may make a request for a variance to this rule for the collection, importation, propagation, or possession of an amphibian or reptile classified as prohibited under this rule by submitting a request for variance to the Certification Review Committee.
(2)(a) A request for variance shall include the following:
(i) the name, address, and phone number of the person making the request;
(ii) the species or subspecies of the amphibian or reptile and associated activities for which the request is made; and
(iii) a statement of the facts and reasons forming the basis for the variance.
(b) In addition to the information required under Subsection (a), the person making the request must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.
(3) The committee shall, within a reasonable time, consider the request and shall submit its recommendation to the Wildlife Board.
(4) At the next available Wildlife Board meeting the Wildlife Board shall:
(a) consider the committee recommendation; and
(b) any information provided by the person making the request.
(5)(a) The Wildlife Board shall approve or deny the request based on the issuance criteria provided in Section R657-53-11.
(b) If the request applies to a broad class of persons and not to unique circumstances of the applicant, the Wildlife Board shall consider changing the species classification before issuing a variance to this rule.
(6)(a) If the request is approved, the Wildlife Board may impose any restrictions on the person making the request considered necessary for that person to maintain the standards upon which the variance is made.
(b) Any restrictions imposed on the person making the request shall be included in writing on the certificate of registration which shall be signed by the person making the request.
(7) A request for variance shall be considered a request for agency action as provided in Subsection 63-46b-3(3) and Rule R657-2.

R657-53-20. Appeal of Certificate of Registration Denial.
(1) A person may appeal the division's denial of a certificate of registration by submitting an appeal request to the Certification Review Committee.
(2) The request must be made within 30 days after the date of the denial.
(3) The request shall include:
(a) the name, address, and phone number of the petitioner;
(b) the date the request was mailed;
(c) the species or subspecies of the amphibian or reptile and the activity for which the application was made; and
(d) supporting facts and other evidence applicable to resolving the issue.
(4) The committee shall review the request within a reasonable time after it is received.
(5) Upon reviewing the application and the reasons for its denial, the committee may:
(a) overturn the denial and approve the application; or
(b) uphold the denial.
(6) The committee may overturn a denial if the denial was:
(a) based on insufficient information;
(b) inconsistent with prior action of the division or the Wildlife Board;
(c) arbitrary or capricious; or
(d) contrary to law.
(7)(a) Within a reasonable time after making its decision, the committee shall mail a notice to the petitioner specifying the reasons for its decision.
(b) The notice shall include information that a person may seek Wildlife Board review of that decision.
(8)(a) If the committee upholds the denial, the petitioner may seek Wildlife Board review of the decision by submitting a request for Wildlife Board review within 30 days after its issuance.
(b) The request must include the information provided in Subsection (3).
(9)(a) Upon receiving a request for Wildlife Board review, the Wildlife Board shall, within a reasonable time, hold a hearing to consider the request.
(b) The Wildlife Board may:
(i) overturn the denial and approve the application; or
(ii) uphold the denial.
(c) The Wildlife Board shall provide the petitioner with a written decision within a reasonable time after making its decision.
(10) An appeal contesting initial division determination of eligibility for a certificate of registration shall be considered a request for agency action as provided in Subsection 63-46b-3(3) and Rule R657-2.

R657-53-21. Prohibited Collection Methods.
(1) Amphibians and reptiles may not be collected using any method prohibited in this rule and the proclamations of the Wildlife Board except as provided by a certificate of registration or the Wildlife Board.
(a) Lethal methods of collection are prohibited except as provided in Subsections R657-53-27(6) and (7) and R657-53-28(6), (8),and (9).

(b) The destruction of habitats such as breaking apart of rocks, logs or other shelters in or under which amphibians or reptiles may be found is prohibited.

(c) The use of winches, auto jacks, hydraulic jacks, crowbars and pry bars are prohibited.

(d) The use of gasoline or other potentially toxic substance is prohibited.

(e) The use of firearms, airguns or explosives is prohibited.

(f) The use of electrical or mechanical devices, or smokers is prohibited except as provided in Subsection (2)(b).

(g) The use of traps including pit fall traps, can traps, or funnel traps is prohibited.

(h) The use of fykes, seines, weirs, or nets of any description are prohibited except as provided in Subsection (2)(b).

(2)(a) Any logs, rocks, or other objects turned over or moved must be replaced in their original position.

(b) Dip nets less than 24 inches in diameter, snake sticks, and lizard nooses may be used.

R657-53-22. Personal Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) A person may collect and possess a live amphibian or reptile for personal use only as provided in Subsection (a), (b) or (c).

(a) Certificates of registration are not issued for the collection and possession of any live amphibian or reptile classified as prohibited for collection and possession, except as provided in R657-53-19.

(b) A certificate of registration is required for collection and possession of any live amphibian or reptile classified as controlled for collection and possession, except as otherwise provided by the Wildlife Board.

(c) A certificate of registration is not required for collection and possession of any live amphibian or reptile classified as noncontrolled for collection and possession, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(2) A person may collect and possess a dead amphibian or reptile or its parts for personal use only as provided in Subsections (a), (b) or (c).

(a) A person may collect and possess a dead amphibian or reptile or its parts classified as controlled for collection and possession without a certificate of registration as provided in Subsections (i) and (ii).

(i) The specimen must be frozen and submitted to the division by appointment within 30 days of collection; and

(ii) The specimen must be labeled with the species name, salvage date, salvage location, Universal Transverse Mercator (UTM) location coordinates and name of person collecting the dead amphibian or reptile.

(b) A certificate of registration is required for collection and possession of a dead amphibian or reptile or its parts classified as controlled for collection and possession where the dead amphibian or reptile or its parts remains in personal possession, except as otherwise provided by the Wildlife Board.

(i) A certificate of registration is not required for collection and possession of any dead amphibian or reptile classified as noncontrolled for collection and possession, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(ii) Collection and possession of any dead amphibian or reptile or its parts classified as noncontrolled for collection and possession, which remain in personal possession will count against collection and possession limits.

(c) A dead amphibian or reptile or its parts classified as prohibited for collection and possession may not be collected and possessed without a certificate of registration issued by the division for collection and possession of the specimen.

(3) A person may temporarily handle for personal use live amphibians or reptiles classified as noncontrolled and controlled for collection and possession without a certificate of registration only as provided in Subsections (a) through (d).

(a) An amphibian or reptile may be held for up to 15 minutes in a non-harmful way for the purpose of photography, noninvasive data collection and moving out of harm's way;

(i) For the purposes of this Subsection, noninvasive data collection means the collection of external measurements, specimen weights, external meristics, and sex determination which does not involve the use of probes or other instruments which enter the body of the animal;

(b) The amphibian or reptile cannot be moved more than 60 feet from the location found;

(c) The amphibian or reptile can be placed in any container, bag or device which confines the animal so it may be transported; and

(d) The amphibian or reptile must be released immediately when directed to do so by a division employee.

(4) A certificate of registration is required for a person to handle live amphibians or reptiles classified as prohibited for collection and possession.

(5) A person may import and possess a live or dead amphibian or reptile or its parts for personal use only as provided in subsection (b), (c) and (d).

(a) Certificates of registration are not issued for the importation and possession of any live or dead amphibian or reptile or its parts classified as prohibited for importation and possession, except as provided in Subsection (d) and R657-53-19.

(b) A certificate of registration is required for importation and possession of any live or dead amphibian or reptile or its parts classified as controlled for importation and possession, except as otherwise provided by the Wildlife Board and subsection (i).

(i) Prior to importation, a certificate of registration shall be issued for the importation and the resulting possession of any live amphibian or reptile for personal use that is legally obtained from outside the state of Utah, is a species native to Utah, and is classified as controlled for importation and possession.

(ii) Legal documentation of the acquisition of the amphibian or reptile shall be maintained as determined in the certificate of registration.

(iii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iv) Imported native and naturalized species shall not count toward the possession limit.

(c) A certificate of registration is not required for importation and possession of any live or dead amphibian or reptile or its parts classified as noncontrolled for importation and possession.

(i) Legal documentation of the acquisition of the amphibian or reptile shall be maintained for the life of the animal or the time the animal is in possession.

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

(d) Notwithstanding subsection (5)(a) or (b), a person may import and possess any dead amphibian or reptile or its parts classified as prohibited or controlled, except as provided in Section R657-53-5, for personal use without obtaining a certificate of registration, provided the animal was legally taken, is held in legal possession, and a valid license, permit, tag,

certificate of registration, bill of sale, or invoice is available for inspection upon request.

R657-53-23. Scientific, or Educational Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) A person may collect and possess or import and possess a live or dead amphibian or reptile or its parts for scientific or educational use only as provided in Subsections (a), (b) and (c) and R657-53-19.

(a) The division may issue a certificate of registration to a university, college, governmental agency, bona fide nonprofit educational or scientific institution, or a person involved in wildlife research through an eligible institution to collect and possess or import and possess a live or dead amphibian or reptile classified as prohibited for collection and possession or importation and possession if, in the opinion of the division, the scientific or educational use is beneficial to wildlife and significantly benefits the general public without material detriment to wildlife.

(b) A certificate of registration is required for the collection and possession or importation and possession of any live or dead amphibian or reptile or its parts classified as controlled for collection and possession or importation and possession for scientific or educational use, except as otherwise provided by the Wildlife Board.

(i) Prior to importation, a certificate of registration shall be issued for the importation and resulting possession of any live amphibian or reptile for scientific or educational use that is legally obtained from outside the state of Utah, is a species native to Utah, and is classified as controlled for importation and possession.

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

(c)(i) A certificate of registration is not required for the collection and possession or importation and possession of any live or dead amphibian or reptile or its parts classified as noncontrolled for collection and possession or importation and possession for scientific or educational use, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

R657-53-24. Commercial Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect and possess a live amphibian or reptile for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in this rule or a certificate of registration.

(2) A person may collect and possess or import and possess a live or dead amphibian or reptile or its parts for commercial use only as provided in Subsections (a), (b) and (c) and R657-53-19.

(a)(i) A person may import and possess a live amphibian or reptile classified as non-controlled for importation and possession for a commercial use or a commercial venture, except as provided in subsection (ii)

(ii) A native or naturalized species or subspecies of amphibian or reptile may not be sold or traded unless it originated from a captive-bred population.

(iii) Complete and accurate records for native or naturalized species must be maintained and available for inspection for five years from the date of the transaction, documenting the date, name, address, and telephone number of the person from whom the amphibian or reptile has been obtained.

(iv) Complete and accurate records must be maintained and available for inspection for five years from the date of the transfer, documenting the date, name, address and certificate of registration number if applicable of the person receiving the amphibian or reptile.

(b)(i) A person may not import and possess a live amphibian or reptile classified as controlled for importation and possession for a commercial use or commercial venture without first obtaining a certificate of registration.

(ii) A certificate of registration will not be issued to sell or trade a native or naturalized species of amphibian or reptile unless it originates from a captive-bred population.

(iii) It is unlawful to transfer a live amphibian or reptile classified as controlled for collection and possession or importation and possession to a person who does not have a certificate of registration to possess the amphibian or reptile, except as follows:

(A) the amphibian or reptile is captive-bred;

(B) the transferee is not domiciled in Utah;

(C) the transferee is exporting the amphibian or reptile out of Utah; and

(D) the transferee follows the transport provisions in Section R657-53-25.

(iv) Complete and accurate records must be maintained by the buyer and the seller for five years from the date of the transaction or transfer, documenting the date, and the name, address, and telephone number of the person from whom the amphibian or reptile has been obtained and the person receiving the amphibian or reptile.

(v) The records indicated in Subsection (iv) must be made available for inspection upon request of the division.

(c)(i) A certificate of registration will not be issued for importation and possession of a live amphibian or reptile, classified as prohibited for importation and possession for a commercial use or commercial venture, except as provided in Subsection (ii) or R657-53-19.

(ii) The division may issue a certificate of registration to a zoo, circus, amusement park, aviary, or film company to import and possess a live amphibian or reptile classified as prohibited for importation and possession if, in the opinion of the division, the importation and possession for a commercial use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

(iii) The division's authority to issue a certificate of registration to a zoo, circus, amusement park, or aviary under this Subsection is restricted to those facilities that keep the prohibited amphibian or reptile in a park, building, cage, enclosure or other structure for the primary purpose of public exhibition or viewing.

(3) It is unlawful to sell or trade any turtle, including tortoises, less than 4" in carapace length (Referenced Federal Register 21 CFR 1240.62).

(4)(a) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect and possess or import and possess any dead amphibian or reptile or its parts for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in the rules and proclamations of the Wildlife Board, or a memorandum of understanding with the division.

(b) The restrictions in Subsection (a) do not apply to importation and possession of a dead amphibian or reptile sold or traded for educational use.

R657-53-25. Transporting a Live Amphibian or Reptile Through Utah.

A certificate of veterinary inspection is required from the state of origin as provided in Utah Department of Agriculture Rule R58-1 and proof of legal possession must accompany the zoological animal

(1) Any controlled or prohibited amphibian or reptile may be transported through Utah without a certificate of registration if:

(a) the amphibian or reptile remains in Utah no more than 72 hours; and

(b) the amphibian or reptile is not sold, transferred, exhibited, displayed, or used for a commercial venture while in Utah.

(2) Proof of legal possession must accompany the amphibian or reptile.

(3) If delays in transportation arise, an extension of the 72 hours may be requested by contacting the Wildlife Registration Office in Salt Lake City.

R657-53-26. Propagation of Amphibians or Reptiles.

(1) A person may propagate native amphibians or reptiles that are legally collected in Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any native amphibian or reptile collected in Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any native amphibian or reptile collected in Utah and classified as controlled for propagation, except as otherwise provided by the Wildlife Board.

(i) All progeny shall be marked as determined in the certificate of registration;

(ii) A report shall be submitted yearly as specified in the certificate of registration;

(iii) Records of the progeny as determined in the certificate of registration shall be kept for the life of the animal or time in possession; and

(iv) Progeny shall not count toward possession limits.

(c) A certificate of registration is required for propagating native amphibians or reptiles collected in Utah and classified as noncontrolled for propagation.

(i) A report shall be submitted yearly as specified in the certificate of registration;

(ii) Records of the progeny as determined in the certificate of registration shall be kept for the life of the animal or time in possession; and

(iii) Progeny shall not count toward possession limits.

(2) A person may propagate naturalized amphibians or reptiles that are legally collected in Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any naturalized amphibian or reptile collected in Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is not required for propagating any naturalized amphibian or reptile collected in Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(c) A certificate of registration is not required for propagating naturalized amphibians or reptiles collected in Utah and classified as noncontrolled for propagation.

(i) Progeny shall not count toward possession limits.

(3) A person may propagate native amphibians or reptiles that are legally imported into Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any native amphibian or reptile imported into Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is not required for propagating any native amphibian or reptile imported into Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(c) A certificate of registration is not required for propagating native amphibians or reptiles imported into Utah and classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(4) A person may propagate nonnative or naturalized amphibians or reptiles that are legally imported into Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any nonnative or naturalized amphibian or reptile imported into Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is not required for propagating any nonnative or naturalized amphibian or reptile imported into Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(c) A certificate of registration is not required for propagating nonnative or naturalized amphibians or reptiles imported into Utah and classified as noncontrolled for propagation.

(i) Progeny shall not count toward possession limits.

(5) Certificates of registration may be denied to an applicant who:

(a) is a non-resident of Utah;

(b) fails to provide and maintain suitable, disease-free facilities and to humanely hold and maintain amphibians or reptiles in good condition;

(c) has been judicially or administratively found guilty of violating the provisions of this rule;

(d) has been convicted of, pleaded no contest to, or entered into a plea in abeyance to any criminal offense that bears a reasonable relationship to the applicant's ability to safely and responsibly collect, import, transport or possess amphibians or reptiles; or

(e) fails to maintain the propagation records and file the annual reports required in this section.

(6) Legally-obtained amphibians or reptiles and their progeny and descendants born in captivity, which are held in possession under the authority of a certificate of registration, remain property of the holder, but are subject to regulation by the division in accordance with the needs for public health, welfare, and safety, and impacts on wildlife.

R657-53-27. Classification and Specific Rules for Amphibians.

(1) Common and scientific nomenclature recognized and adopted by the Society for the Study of Amphibians and Reptiles (2003) will be utilized in Subsection (2).

(2) Amphibians are classified as follows:

(a) Frogs are classified as follows:

(i) American bullfrog, Ranidae Family (Rana catesbeiana) is

(A) prohibited for collection, possession and propagation

of individuals from wild populations in Utah, except as provided in Subsection (7);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Canyon treefrog, Hylidae Family (Hyla arenicolor) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Clawed frog, Pipidae Family (Xenopus) (All species) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Columbia spotted frog, Ranidae Family (Rana luteiventris) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Green frog, Ranidae Family (Rana clamitans) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (7);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Lowland leopard frog, Ranidae Family (Rana yavapaiensis) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(vii) Northern leopard frog, Ranidae Family (Rana pipiens) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Pacific treefrog, Hylidae Family (Pseudacris regilla) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Relict leopard frog, Ranidae Family (Rana onca) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Western chorus frog, Hylidae Family (Psedacris triseriata) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(b) Spadefoots are classified as follows:

(i) Great basin spadefoot, Pelobatidae Family (Spea intermontana) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Mexican spadefoot, Pelobatidae Family (Spea multiplicata) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Plains spadefoot, Pelobatidae Family (Spea bombifrons) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(c) Salamanders are classified as follows:

(i) Tiger salamander, Ambystomatidae Family (Ambystoma tigrinum) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah, except as provided in Subsection (6);

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(d) Toads are classified as follows:

(i) Arizona toad, Bufonidae Family (Bufo microscaphus) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Cane (marine) toad, Bufonidae Family (Bufo marinus) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Great plains toad, Bufonidae Family (Bufo cognatus) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Red-spotted toad, Bufonidae Family (Bufo punctatus) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Western toad, Bufonidae Family (Bufo boreas) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(t) Woodhouse's toad, Bufonidae Family (Bufo woodhousii) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah.

(3)(a) Amphibians classified at the genus or family taxonomic level include all species and subspecies.

(b) Amphibians classified at the species taxonomic level include all subspecies.

(c) Amphibians classified at the subspecies taxonomic level do not include any other related subspecies.

(4) All species or subspecies of amphibians not listed in Subsection (2) are classified as noncontrolled for collection, importation, possession and propagation.

(5)(a) A person must obtain a certificate of registration to collect and possess more than three amphibians of each species or subspecies classified as noncontrolled for collection and possession within a calendar year, except as provided in Subsection (6).

(b) A person must obtain a certificate of registration to

possess more than nine amphibians in aggregate classified as noncontrolled for collection and possession and collected within Utah, except as provided in Subsection (6).

(6) A person may collect and possess for personal use up to 50 Tiger salamanders (Ambystoma tigrinum) without a certificate of registration.

(7) A person may collect and possess any number of American bullfrogs (Rana catesbeiana) or Green frogs (Rana clamitans) without a certificate of registration provided they are either killed or released immediately. A person may not transport a live bullfrog or green frog from the point of capture without first obtaining a certificate of registration.

R657-53-28. Classification and Specific Rules for Reptiles.

(1)(i) Common and scientific nomenclature recognized and adopted by the Society for the Study of Amphibians and Reptiles (2003) shall be utilized in Subsection (2) for North American species found north of Mexico.

(ii) Common and scientific nomenclature recognized and adopted by C. Mattison in The Encyclopedia of Snakes (1999) shall be utilized for all other snakes found in Subsection (2).

(iii) Common and scientific nomenclature recognized and adopted by O'Shea and Halliday in Smithsonian Handbooks: Reptiles and Amphibians (2002) shall be utilized for the Gharial found in subsection (2).

(2) Reptiles are classified as follows:

(a) Crocodiles are classified as follows:

(i) Alligators and caimans, Alligatoridae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Crocodiles, Crocdylidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah; and

(iii) Gharial, Gavialidae Family (Gavialis gangeticus) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah.

(b) Lizards are classified as follows:

(i) Beaded lizard, Helodermatidae Family, (Heloderma horridum) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Chuckwalla, Iguanidae Family (Sauromalus) (All species) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation and possession and prohibited for propagation of individuals legally obtained outside of Utah;

(iii) Common lesser earless lizard, Phrynosomatidae Family (Holbrookia maculata) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Common side-blotched lizard, Phrynosomatidae Family (Uta stansburiana) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (8);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Desert horned lizard, Phrynosomatidae Family (Phrynosoma platyrhinos) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Desert iguana, Iguanidae Family (Dipsosaurus dorsalis) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation and possession, and prohibited for propagation of individuals legally obtained outside of Utah;

(vii) Desert spiny lizard, Phrynosomatidae Family (Sceloporus magister) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Eastern collared lizard, Crotaphytidae Family (Crotaphytus collaris) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Gila monster, Helodermatidae Family (Heloderma suspectum) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Great Basin collared lizard, Crotaphytidae Family (Crotaphytus bicinctores) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xi) Great Basin fence lizard, Phrynosomatidae Family (Sceloporus occidentalis longipes) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xii) Great Basin skink, Scincidae Family (Eumeces skiltonianus utahensis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiii) Great Basin Whiptail, Teiidae Family (Aspidoscelis tigris tigris) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiv) Greater short-horned lizard, Phrynosomatidae Family (Phrynosoma hernandesi) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xv) Long-nosed leopard lizard, Crotaphytidae Family (Gambelia wislizenii) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvi) Northern plateau lizard, Phrynosomatidae Family (Sceloporus undulatus elongatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvii) Northern sagebrush lizard, Phrynosomatidae Family (Sceloporus graciosus graciosus) is

(A) noncontrolled for collection, possession and

propagation of individuals from wild populations in Utah, except as provided in Subsection (5);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xviii) Ornate tree lizard, Phrynosomatidae Family (Urosaurus ornatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xix) Plateau striped whiptail, Teiidae Family (Aspidoscelis velox) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xx) Plateau tiger whiptail, Teiidae Family (Aspidoscelis tigris septentrionalis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxi) Southern plateau lizard, Phrynosomatidae Family (Sceloporus undulatus tristichus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxii) Utah banded gecko, Gekkonidae Family (Coleonyx variegatus utahensis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiii) Utah night lizard, Xantusiidae Family (Xantusia vigilis utahensis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiv) Variable (many-lined) skink, Scincidae Family (Eumeces multivirgatus epipleurotus)

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxv) Western zebra-tailed lizard, Phrynosomatidae Family (Callisaurus draconoides rhodostictus) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah; and

(xxvi) Yucca night lizard, Xantusiidae Family (Xantusia vigilis vigilis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah.

(c) Snakes are classified as follows:

(i) Bird Snake, Colubridae Family (Thelotornis) (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Boomslang, Colubridae Family (Dispholidus typus) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Burrowing asps, Atractaspidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) California kingsnake, Colubridae Family (Lampropeltis getula californiae) is

(A) controlled for collection, possession and noncontrolled for propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Desert glossy snake, Colubridae Family (Arizona elegans eburnata) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Desert nightsnake, Colubridae Family (Hypsiglena torquata deserticola) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vii) Desert striped whipsnake, Colubridae Family (Masticophis taeniatus taeniatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Desert gophersnake, Colubridae Family (Pituophis catenifer deserticola) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Great Basin rattlesnake, Viperidae Family (Crotalus oreganus lutosus) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (6);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Great Plains ratsnake, Colubridae Family (Elaphe emoryi) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xi) Groundsnake, Colubridae Family (Sonora semiannulata) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xii) Keelback, Colubridae Family (Rhabdophis) (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiii) Midget faded rattlesnake, Viperidae Family (Crotalus oreganus concolor) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiv) Mojave rattlesnake, Viperidae Family (Crotalus scutulatus) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xv) Mojave patch-nosed snake, Colubridae Family (Salvadora hexalepis mojavensis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvi) Painted desert glossy snake, Colubridae Family (Arizona elegans philipi) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvii) Pit vipers, Viperidae Family (All species) are

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xviii) Prairie rattlesnake, Viperidae Family (Crotalus viridis) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xix) Proteroglyphous snakes, Australian spp., cobras, coral snakes, kraits, and their allies, Elapidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xx) Red racer (Coachwhip), Colubridae Family (Masticophis flagellum piceus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxi) Regal ring-necked snake, Colubridae Family (Diadophis punctatus regalis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxii) Rubber boa, Boidae Family (Charina bottae) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiii) Sidewinder, Viperidae Family (Crotalus cerastes) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiv) Smith's black-headed snake, Colubridae Family (Tantilla hobartsmithi) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxv) Smooth greensnake, Colubridae Family (Opheodrys vernalis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxvi) Sonoran lyresnake, Colubridae Family (Trimorphodon biscutatus lambda) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxvii) Speckled rattlesnake, Viperidae Family (Crotalus mitchellii) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxviii) Spotted leaf-nosed snake, Colubridae Family (Phyllorhynchus decurtatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxix) Utah milksnake, Colubridae Family (Lampropeltis triangulum taylori) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxx) Utah mountain kingsnake, Colubridae Family (Lampropeltis pyromelana infralabialis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxi) Utah threadsnake, Leptotyphlopidae Family (Leptotyphlops humilis utahensis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxii) Valley gartersnake, Colubridae Family (Thamnophis sirtalis fitchi) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxiii) Wandering gartersnake, Colubridae Family (Thamnophis elegans vagrans) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (8);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxiv) Western black-necked gartersnake, Colubridae Family (Thamnophis cyrtopsis cyrtopsis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxv) Western long-nosed snake, Colubridae Family (Rhinocheilus lecontei lecontei) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah; and

(xxxvi) Western yellow-bellied racer, Colubridae Family (Coluber constrictor mormon) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(d) Turtles are classified as follows:

(i) Alligator snapping turtle, Chelydridae Family (Macrochelys temminckii) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Common snapping turtle, Chelydridae Family (Chelydra serpentine) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Desert tortoise, Testudinidae Family (Gopherus agassizii) is

(A) prohibited for collection, and propagation and controlled for possession of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Painted turtle, Emydidae Family (Chrysemys picta) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(v) Red-eared slider, Emydidae Family (Trachemys scripta elegans) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(vi) Spiny softshell, Trionychidae Family (Apalone spinifera) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(3)(a) Reptiles classified at the genus or family taxonomic level include all species and subspecies.

(b) Reptiles classified at the species taxonomic level include all subspecies.

(c) Reptiles classified at the subspecies taxonomic level do not include any other related subspecies.

(4) All species or subspecies of reptiles not listed in Subsection (2) are classified as noncontrolled for collection, importation, possession and propagation.

(5) A person may not:

(a) knowingly disturb the den of any reptile or kill, capture, or harass any reptile within 100 yards of a reptile den without first obtaining a certificate of registration from the division; or

(b) indiscriminately kill any reptile.

(6)(a) Great Basin rattlesnakes, Crotalus oreganus lutosus, may be killed without a certificate of registration only for reasons of human safety.

(b) The carcass or its parts of a Great Basin rattlesnake killed pursuant to Subsection (a) may be retained for personal use or possessed.

(7)(a) A person must obtain a certificate of registration to collect more than three reptiles of each species or subspecies classified as noncontrolled for collection and possession within a calendar year, except as provided in Subsection (8).

(b) A person must obtain a certificate of registration to possess more than nine reptiles of each species or more than 56 in aggregate which are classified as noncontrolled for collection and possession and collected within Utah, except as provided in Subsection (8).

(8) In a calendar year, a person may collect and possess for personal use 25 common side-botched lizards (Uta stansburiana), 25 northern sagebrush lizards (Sceloporus graciosus graciosus), and 25 wandering gartersnakes (Thamnophis elegans vagrans), without obtaining a certificate of registration or counting against the aggregate possession limit.

(9)(a) A person may collect and possess any number of common snapping turtles (Chelydra serpentina), alligator turtles (Macrochelys temminckii) or spiny softshell (Apalone spinifera) turtles without a certificate of registration provided they are either killed or released immediately upon removing them from the point of capture.

(b) A person may not transport a live common snapping turtle, alligator turtle or spiny softshell turtle from the point of capture from which it was collected without first obtaining a certificate of registration.

KEY: wildlife, import restrictions, amphibians, reptiles
May 22, 2007 **23-14-18**
23-14-19
23-20-3
23-13-14

R710. Public Safety, Fire Marshal.
R710-1. Concerns Servicing Portable Fire Extinguishers.
R710-1-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those concerns that service Portable Fire Extinguishers.

There is adopted as part of these rules the following code which is incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 10, Standard for Portable Fire Extinguishers, 2007 edition, except as amended by provisions listed in R710-1-8, et seq.

1.2 A copy of the above mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

1.3 Validity.

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.4 Order of Precedence.

In the event of any difference between these rules and any adopted reference material, the text of these rules shall govern. When a specific provision varies from a general provision, the specific provision shall apply.

R710-1-2. Definitions.

2.1 "Annual" means a period of one year or 365 calendar days.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

2.6 "Employee" means those persons who work for a licensed concern, and may include, but shall not be limited to, those persons who work on a contractual basis.

2.7 "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing portable fire extinguishers.

2.8 "NFPA" means National Fire Protection Association.

2.9 "Repair" means any work performed on, or to, any portable fire extinguisher, and not defined as charging, recharging, or hydrostatic testing.

2.10 "SFM" means State Fire Marshal or authorized deputy.

2.11 "UCA" means Utah State Code Annotated 1953 as amended.

2.12 "USDOT" means the United States Department of Transportation.

R710-1-3. Licensing.

3.1 License Required.

No person or concern shall engage in the servicing of portable fire extinguishers without a license issued by the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

3.2 Application.

3.2.1 Application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

3.2.2 The application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

3.3 Signature of Application.

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

3.4 Equipment Inspection.

The applicant or licensee shall allow the SFM, and any of his properly authorized deputies to enter, examine, and inspect any premise, building, room, establishment, or vehicle, used by the applicant in servicing portable fire extinguishers to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager will be given a minimum of 24 hours notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained. The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of portable fire extinguishers.

3.5 Issuance.

Following receipt of the properly completed application, and compliance with the provision of the statute and these rules, the SFM shall issue a license.

3.6 Original License and Inspection.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals shall be valid for one year from issuance. No original license shall be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

3.7 Renewal License and Inspection.

Application for renewal shall be made as directed by the SFM. The failure to renew the license will cause the license to become invalid. No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM. Beginning March 4, 2003, through February 29, 2004, renewal dates for licensed concerns will be based upon the inspection date and valid for a one-year period of time. Renewal license fees shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal license fee.

3.8 Refusal to Renew.

The SFM may refuse to renew any license in the same manner, and for any reason, that he is authorized, pursuant to Section 9 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Section 9 of these rules to an applicant for an original license which has been denied by the SFM.

3.9 Change of Address.

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

3.10 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.11 List of Licensed Concerns.

The SFM shall make available, upon request and without cost, to the chief fire official of each local fire authority, the name, address, and license number of each concern that is licensed pursuant to these rules. Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.12 Inspection.

The holder of any license shall submit such license for inspection upon request of the SFM, or any of his properly authorized deputies, or any local fire official.

3.13 SFM Notification and Certification of Registration.

Every licensed concern shall, within thirty (30) days of employment, and within thirty (30) days of termination of any employee, report to the SFM, the name, address, and certificate of registration number, of every person performing any act of servicing portable fire extinguishers for such licensed concern in writing.

3.14 Type.

3.14.1 Every license shall be identified by type. The type of license issued shall be determined on the basis of the act or acts performed by the licensee or by any of the employees. Every licensed concern shall be staffed by qualified personnel, and shall be properly equipped to perform the act or acts for the type of license issued.

3.14.2 Licenses shall authorize any one, or any combination of the following types of activities:

3.14.2.1 Type 1 - Conducting of all activities, as per (2), (3), and (4) below, or

3.14.2.2 Type 2 - Conducting hydrostatic tests of fire extinguisher cylinders using the water jacket or ultrasonic test methods after receiving a Retesters Identification Number (RIN) issued by the United States Department of Transportation (USDOT), or

3.14.2.3 Type 3 - Conducting hydrostatic tests of fire extinguisher cylinders using the proof pressure test method after receiving a Retesters Identification Number (RIN) issued by the United States Department of Transportation (USDOT), or

3.14.2.4 Type 4 - Servicing, inspecting, and maintaining all types of extinguishers, excluding hydrostatic testing.

3.14.3 No licensed concern shall be prohibited from taking orders for the performance of any act or acts for which the concern has not been licensed to perform. Such orders shall be consigned to another licensed concern that is authorized to perform such act or acts.

3.15 Examination.

Every person who performs any act or acts within the scope of the license shall pass an examination in accordance with the provisions of section 4 of these rules.

3.16 Duplicate License.

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the SFM. Such statement shall attest to the fact that the license has been lost or destroyed.

3.17 Employer Responsibility.

Every concern shall be responsible for the acts of its employees insofar as such acts apply to the marketing, sale, distribution, and servicing of any portable fire extinguisher.

3.18 Minimum Age.

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

3.19 Restrictive Use.

3.19.1 No license shall constitute authorization for any licensee, or any of his employees, to enter upon, or into, any property or building other than by consent of the owner or manager.

3.19.2 No license shall constitute authorization for any licensee, or any of his employees, to enforce any provision, or provisions, of this rule, or the International Fire Code.

3.20 Non-Transferable.

No license issued pursuant to this section shall be transferred from one concern to another.

3.21 Registration Number.

3.21.1 Every license shall be identified by a number, delineated as E-(number). Such number may be transferred from one concern to another only when approved by the SFM.

3.22 Minimum Materials and Equipment Required.

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

3.22.1 Type 4 license:

3.22.1.1 Nitrogen tank.

3.22.1.2 Nitrogen regulator and hose assembly.

3.22.1.3 Minimum of twelve (12) recharge adapters.

3.22.1.4 Valve cleaning brush.

3.22.1.5 Scoop.

3.22.1.6 Funnel for A:B:C.

3.22.1.7 Funnel for B:C.

3.22.1.8 A closed receptacle for dry chemical.

3.22.1.9 Fifty pound scale.

3.22.1.10 A scale for cartridges.

3.22.1.11 'O' Ring lubricant.

3.22.1.12 Tag hole Punch.

3.22.1.13 Approved seals maximum fourteen (14) pound break strength.

3.22.1.14 A copy of NFPA Standard 10 (1998 Edition), statute, and these rules.

3.22.1.15 Minimum parts:

3.22.1.15.1 A supply of O rings needed for standard service.

3.22.1.15.2 A supply of valve stems for standard service.

3.22.1.15.3 A supply of nozzles and hoses for standard extinguishers.

3.22.1.15.4 Pressure gauges for extinguisher types: 100, 150, 175, 195, 240 lbs.

3.22.1.15.5 Carry handles and replacement handles for extinguishers.

3.22.1.15.6 Rivets or steel roll pins for handles and levers.

3.22.1.15.7 Dry chemical cartridges as required by manufacture specifications, to include 4 lb., 10 lb., 20 lb. and 30 lb.

3.22.1.15.8 Inspection light for cylinders.

3.22.1.15.9 A variety of pull pins to secure handle.

3.22.1.15.10 Carbon Dioxide continuity tester for hoses.

3.22.1.16.11 Halon closed recovery system.

3.22.2 Type 3 License:

3.22.2.1 Approved testing pump with a current calibration certificate for the attached gauges.

3.22.2.2 Test cage or suitable safety barrier.

3.22.2.3 Approved hydro test labels.

3.22.2.4 Hydrostatic test adapters or approved equal.

3.22.2.5 Heater which produces a heated air or dry air for drying cylinders, or other approved dryer not to exceed 150 degrees Far. (66 degrees C).

3.22.3 Type 2 License:

Current registration number from the United States Department of Transportation (USDOT), verifying the concern as a qualified cylinder requalification facility under the provisions of the Code of Federal Regulations, 49 CFR, Section 173.34, shall be maintained for all concerns holding a type 1 or 2 license. A copy of the certification letter must be submitted to the SFM. All equipment required to perform the functions allowed as a qualified cylinder requalification facility, shall be maintained in good working order and available for inspection by the SFM.

3.22.4 Type 1 License:

All of the equipment, provisions, and numbers as required in License types 2, 3, and 4 shall be required for a Type 1 License.

3.23 Records.

Accurate records shall be maintained for five years back by the licensee of all service work performed. These records shall include the name and address of all servicing locations, and the date and name of the person performing the work. These records shall be made available to the SFM, or authorized deputies, upon request.

R710-1-4. Certificates of Registration.

4.1 Required Certificates of Registration.

No person shall service any portable fire extinguisher without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts. The provisions of this section apply to the state, universities, a county, city, district, public authority, and any other political subdivision or public corporation in this State.

4.2 Exemptions.

The provisions of this section shall not apply to any person servicing any portable fire extinguisher owned by such person, when the portable fire extinguisher is not required by any statute, rule, or ordinance, to be provided or installed.

4.3 Application.

Application for a certificate of registration to service portable fire extinguishers shall be made in writing to the SFM on forms provided by him. The application shall be signed by the applicant.

4.4 Examination.

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests, when deemed necessary, to determine the applicant's knowledge of servicing portable fire extinguishers. Picture identification of the applicant for a certificate of registration may be requested by the SFM or his deputies. Examinations will be given according to the following schedule:

4.4.1 On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment shall be made to take an examination at least 24 hours in advance of the examination date.

4.4.2 Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

4.5 Issuance.

Following receipt of the properly completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

4.6 Original and Renewal Valid Date.

Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance. The holder of an invalid certificate of registration shall not perform any work on portable fire extinguishers.

4.7 Renewal Date.

Application for renewal shall be made as directed by the SFM. The failure to renew will cause the certificate of registration to become invalid. Beginning March 4, 2003 through February 29, 2004, renewal dates for certification of registrations will be based upon the license inspection date and valid for a one-year period of time. Renewal certificate of registrations shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal fee.

4.8 Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every five years, from date of original certificate, to comply with the provisions of Section 4.4 of these rules as follows:

4.8.1 The re-examination to comply with the provisions of Section 4.4 of these rules shall consist of one 25 question open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.8.2 The 25 question re-examination will consist of questions that focus on changes in the last five years to NFPA 10, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

4.8.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

4.8.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

4.9 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 10, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 10 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

4.10 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the SFM, any of his properly authorized deputies, or any local fire official.

4.11 Type.

4.11.1 Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.11.2 No person holding a valid certificate of registration shall be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.12 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within thirty (30) days of such change. Such change shall also be made on the reverse side of the certificate of registration by the holder.

4.13 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the SFM from the certified person. Such statement shall attest to the certificate having been lost or destroyed.

4.14 Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

4.15 Restrictive Use.

4.15.1 A certificate of registration may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.2 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

4.16 Contents of Examination.

4.16.1 The examination required under the provisions of Section 3.14, shall include a written test of the applicant's knowledge of the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

4.16.2 Examinations shall, in the opinion of the SFM, be compatible with the type of work to be performed by the applicant and with the equipment with which he will function.

4.16.3 The written portion of the examination shall be divided into the following groups:

4.16.3.1 Provisions relating to these Rules Governing Concerns Servicing Portable Fire Extinguishers.

4.16.3.2 Hydrostatic testing of fire extinguisher cylinders that are listed with the USDOT.

4.16.3.3 Hydrostatic testing of fire extinguisher cylinders which are not listed with the USDOT.

4.16.3.4 Accepted servicing and inspection practices of portable fire extinguishers as required in NFPA, Standard 10.

4.17 Right to Contest.

4.17.1 Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

4.17.2 Every contention as to the validity of individual questions of an examination shall be made in writing within 48 hours after taking said examination. Contentions shall state the reason for the objection.

4.17.3 The decision as to the action to be taken on the submitted contention shall be by the SFM, and such decision shall be final.

4.17.4 The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.18 Passing Grade.

To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination shall be separately graded.

4.19 Non-Transferable.

Certificates of Registration shall not be transferable. Individual certificates of registration shall be carried by the person to whom issued.

4.20 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination.

4.21 Certificate Identification.

Every certificate shall be identified by a number, delineated as EE-(number). Such number shall not be transferred from one person to another.

R710-1-5. Seal of Registration.

5.1 Description.

The official seal of registration of the SFM shall consist of the following:

5.1.1 The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

5.1.1.1 The top portion of the outer ring shall have the wording "Utah State".

5.1.1.2 The Bottom portion of the outer ring shall have the wording "Fire Marshal".

5.1.2 Appending above the top portion and in a centered position, shall be a box provided for displaying the type of license.

5.1.3 Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the license number assigned to the concern.

5.2 Use of Seal.

No person or concern shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

5.3 Permissive Use.

Licensed concerns shall use the Seal of Registration on every service tag conforming to section 10.

5.4 Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the concern's license.

5.5 Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-1-6. Service Tags.

6.1 Size and Color.

Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width.

6.2 Attaching Tag.

One service tag shall be attached to each portable fire extinguisher in such a position as to be conveniently inspected.

6.3 Tag Information.

6.3.1 Service tags shall bear the following information:

6.3.1.1 Provisions of Section 6.7.

6.3.1.2 Type of license.

6.3.1.3 Approved Seal of Registration of the SFM.

6.3.1.4 License registration "E" number.

6.3.1.5 Certificate of registration "EE" number of individual who performed or supervised the service or services performed.

6.3.1.6 Signature of individual whose certificate of registration number appears on the tag.

6.3.1.7 Concern's name.

6.3.1.8 Concern's address.

6.3.1.9 Type of service performed.

6.3.1.10 Type of extinguisher serviced.

6.3.1.11 Date service is performed.

6.3.2 The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

6.4 Legibility.

6.4.1 The certificate of registration number required in Section 6.3(5), and the signature required in Section 6.3(6), shall be printed or written distinctly.

6.4.2 All information pertaining to date, type of servicing, and type of extinguisher serviced shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

6.5 Format.

Subject to the use requirements of Section 6.4, the following format shall be used for all service tags:

EXAMPLE OF SERVICE TAG

Exception: Service tags may be printed or otherwise established for any number of years not in excess of five (5) years. ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

6.6 New Tag.

A new service tag shall be attached to the extinguisher each time a service is performed.

6.7 Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

6.8 Removal.

No person or persons shall remove a service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar, except when further service is performed. At that time the expired tag, label or collar shall be removed and a new tag, label or collar shall replace the expired one. No person or persons shall deface, modify, or alter any service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar that is required to be attached to any portable fire extinguisher.

6.9 Restrictive Use.

6.9.1 Portable fire extinguishers which do not conform

with the minimum rules, shall be permanently removed from service, and shall not be tagged.

6.9.2 Any extinguisher which fails a hydrostatic test shall be condemned, and so stamped or etched into the cylinder or shell.

6.9.3 Extinguishers, other than one which has failed a hydrostatic test, may be provided with a tag stating the extinguisher is "Condemned" or "Rejected". Such tags shall be red in color, and shall be not less, in size, than that of an approved service tag.

6.9.4 Service tags shall only be placed on portable fire extinguishers and wheeled units as allowed in these rules.

R710-1-7. Portable Fire Extinguisher Rated Classification Labels.

7.1 Use of Label.

Any label bearing the rated classification and listing shall not be placed upon any extinguisher unless specifically authorized by the manufacturer. Any extinguisher, other than carbon dioxide, without this manufacturer's label shall not be serviced.

7.2 Labels Prohibited.

Company labels or advertisement stickers other than those required herein shall not be affixed to fire extinguishers.

R710-1-8. Amendments and Additions.

8.1 Restricted Service.

Any extinguisher requiring a hydrostatic test as required, shall not be serviced until such extinguisher has been subjected to, and passed the required hydrostatic test.

8.2 Service.

At the time of installation, and at each annual inspection, all servicing shall be done in accordance with the manufacturer's instructions, adopted statutes, and these rules. Extinguishers shall be placed in an operable condition, free from defects which may cause malfunctions. Nozzles and hoses shall be free of obstructions or substances which may cause an obstruction.

8.3 Seals or Tamper Indicator.

Seals or tamper indicators shall be constructed of approved plastic or non-ferrous wire which can be easily broken, and so arranged that removal cannot be accomplished without breakage. Such seals or tamper indicators shall be used to retain the locking pin in a locked position. Seals or tamper indicators shall be removed annually to ensure that the pull pin is free.

8.4 New Extinguishers

A new extinguisher that has the date of manufacture printed on the label by the manufacturer, or date of manufacture stamped on the extinguisher by the manufacturer, does not require a service tag attached to the extinguisher until one year after the date of manufacture.

8.5 Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-B, and specifically placed for protection of commercial food heat-processing equipment, may remain in the kitchen to be used for other applications, except the protection of commercial food heat-processing equipment using vegetable or animal oils or fat cooking media.

R710-1-9. Adjudicative Proceedings.

9.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

9.2 The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing portable fire extinguishers commits any of the following violations:

9.2.1 The person or applicant is not the real person in interest.

9.2.2 The person or applicant provides material misrepresentation or false statement on the application.

9.2.3 The person or applicant refuses to allow inspection by the SFM, or his duly authorized deputies.

9.2.4 The person or applicant for a license or certificate of registration does not have the proper facilities and equipment to conduct the operations for which application is made.

9.2.5 The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination and/or practical tests pursuant to Section 4.15 of these rules.

9.2.6 The person or applicant fails to place a verification of service collar when required on the valve assembly of any fire extinguisher when the following occurs:

9.2.6.1 re-charge;

9.2.6.2 required maintenance.

9.2.7 The person or applicant refuses to take the examination required by Section 4.3 and Section 3.14 of these rules.

9.2.8 The person or applicant has been convicted of one or more federal, state or local laws.

9.2.9 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

9.2.10 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration.

9.2.11 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing portable fire extinguishers.

9.3 A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

9.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

9.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

9.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

9.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

9.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

9.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.

R710-1-10. Fees.

10.1 Fee Schedule.

10.1.1 Licenses and Certificates of Registration (new and renewals):
10.1.1.1 License (any type) $300.00
10.1.1.2 Branch office license 150.00
10.1.1.3 Certificate of registration 40.00
10.1.1.4 Duplicate 40.00
10.1.1.5 License Transfer 50.00
10.1.1.6 Application for exemption 150.00
10.1.2 Examinations:
10.1.2.1 Initial examination. 30.00
10.1.2.2 Re-examination 30.00
10.1.2.3 Five year examination. 30.00

10.2 Payment of Fees.

The required fee shall accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

10.3 Late Renewal Fees.

10.3.1 Any license or certificate of registration not renewed before January 1st will be subject to an additional fee equal to 10% of the required inspection fee.

10.3.2 When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial examination fees.

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R710. Public Safety, Fire Marshal.
R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.
R710-4-1. Adoption of Fire Codes.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or day care center, or any similar institutional type occupancy of any capacity; and in any place of assemblage where fifty (50) or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education. The requirements listed in this rule text are in addition to the requirements listed in R710-9, Rules Pursuant to the Utah Fire Prevention Law.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 2006 edition, except as amended by provisions listed in R710-4-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 18 - New Health Care Occupancies; Chapter 19 - Existing Health Care Occupancies; Chapter 20 - New Ambulatory Health Care Occupancies; Chapter 21 - Existing Ambulatory Health Care Occupancies; Chapter 22 - New Detention and Correctional Occupancies; Chapter 23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the "International Building Code".

1.2 International Building Code (IBC), 2006 edition, as published by the International Code Council, Inc. (ICC), and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.3 International Mechanical Code (IMC), 2006 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.4 International Fuel Gas Code (IFGC), 2006 edition, as published by the International Code Council, and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.5 International Plumbing Code (IPC), 2006 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.6 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-4-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

2.4 "Fire Chief or Chief of the Department" means the AHJ.

2.5 "Fire Department" means the AHJ.

2.6 "Fire Marshal" means the AHJ.

2.7 "Fire Officer" means the State Fire Marshal, the state fire marshal's deputies, the fire chief or fire marshal of any county, city, or town fire department, the fire officer of any fire district or special service district organized for fire protection purposes is the AHJ.

2.8 "IBC" means International Building Code.

2.9 "ICC" means International Code Council, Inc.

2.10 "IFC" means International Fire Code.

2.11 "IFGC" means International Fuel Gas Code.

2.12 "IMC" means International Mechanical Code.

2.13 "IPC" means International Plumbing Code.

2.14 "LSC" means Life Safety Code.

2.15 "NEC" means National Electric Code.

2.16 "NFPA" means National Fire Protection Association.

2.17 "SFM" means State Fire Marshal.

2.18 "UCA" means Utah State Code Annotated 1953 as amended.

R710-4-3. Amendments and Additions.

3.1 Fire Drills

3.1.1 IFC, Chapter 4, Section 405.2, Table 405.2, is amended to add the following footnotes:

e. Secondary schools in Group E occupancies shall have a fire drill conducted at least every two months, to a total of four fire drills during the nine-month school year. The first fire drill shall be conducted within 10 days of the beginning of classes.

f. A-3 occupancies in academic buildings of institutions of higher learning are required to have one fire drill per year, provided the following conditions are met:

1. The building has a fire alarm system in accordance with Section 907.2.

2. The rooms classified as assembly, shall have fire safety floor plans as required in Section 404.3.2(4) posted.

3. The building is not classified a high-rise building.

4. The building does not contain hazardous materials over the allowable quantities by code.

3.2 Door Closures

3.2.1 IFC, Chapter 7, Section 703.2. Add the following: Exception: In Group E Occupancies, where the corridor serves an occupant load greater than 30 and the building does not have an automatic fire sprinkler system installed, the door closures may be of the friction hold-open type on classrooms doors with a rating of 20 minutes or less only.

3.3 Fire Protection Systems

3.3.1 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

3.3.2 Water Supply Analysis

3.3.2.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall provide an engineer's water supply analysis evaluating the available water supply.

3.3.2.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed construction.

3.3.2.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Annex A.15.2.1.

3.3.3 Fire Alarm Systems

3.3.3.1 Required Installations

3.3.3.1.1 All state-owned buildings, college and university buildings, other than institutional, with an occupant load of 300 or more, all schools with an occupant load of 50 or more, shall have an approved fire alarm system with the following features:

3.3.3.1.1.1 Automatic detection devices that detect smoke shall be installed throughout all corridors and spaces open to the corridor at the maximum prescribed spacing of thirty feet on center and no more than fifteen feet from the walls or smoke detectors shall be installed as required in NFPA, Standard 72, Section 5.3.

3.3.3.1.1.2 Where structures are not protected or partially protected with an automatic fire sprinkler system, approved automatic detectors shall be installed in accordance with the complete coverage requirements of NFPA, Standard 72.

3.3.3.1.1.3 Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

3.3.3.2 Main Panel

3.3.3.2.1 An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

3.3.3.2.2 The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

3.3.3.3 System Wiring, Class and Style

3.3.3.3.1 Fire alarm system wiring shall be designated and installed as follows:

3.3.3.3.1.1 The initiating device circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

3.3.3.3.1.2 The notification appliance circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

3.3.3.3.1.3 Signaling line circuits shall be designated and installed Style 6 or 7 as defined in NFPA, Standard 72.

3.3.3.4 Fan Shut Down

3.3.3.4.1 Fan shut down shall be as required in IMC, Chapter 6, Section 606.

3.3.3.4.2 Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

3.3.3.5 Nuisance Alarms

3.3.3.5.1 IFC, Chapter 9, Section 907.20.5 is amended to add the following sentences: Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.

3.4 Time Out and Seclusion Rooms

3.4.1 Time Out and Seclusion Rooms are allowed in occupancies protected by an automatic fire alarm system.

3.4.2 A vision panel shall be provided in the room door for observation purposes.

3.4.3 Time Out and Seclusion Room doors may not be fitted with a lock unless it is a self-releasing latch that releases automatically if not physically held in the locked position by an individual on the outside of the door.

3.4.4 Time Out and Seclusion Rooms shall be located where a responsible adult can maintain visual monitoring of the person and room.

R710-4-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-4-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

R710-4-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

R710-4-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

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R710. Public Safety, Fire Marshal.
R710-7. Concerns Servicing Automatic Fire Suppression Systems.
R710-7-1. Adoption of Codes.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah State Fire Prevention Board adopts rules to provide regulation to those concerns that service Automatic Fire Suppression Systems. These rules do not apply to standpipe systems, deluge systems, or automatic fire sprinkler systems.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association, Standard 12, Standard on Carbon Dioxide Extinguishing Systems, 2005 edition; N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 2004 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition; N.F.P.A., Standard 17, Standard for Dry Chemical Extinguishing Systems, 2002 edition; N.F.P.A., Standard 17A, Standard for Wet Chemical Extinguishing Systems, 2002 edition; N.F.P.A., Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition; N.F.P.A., Standard 2001, Clean Agent Fire Extinguishing Systems, 2004 edition. The definitions contained in these pamphlets shall pertain to these regulations.

1.2 Validity

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.3 Systems Prohibited

No person shall market, distribute, sell, install or service any automatic fire suppression system in this state, unless it meets the following:

1.3.1 It complies with these rules.

1.3.2 It has been tested by, and bears the label of a testing laboratory which is accepted by the SFM as qualified to test automatic fire suppression systems.

1.3.3 All existing automatic fire suppression systems using dry chemical shall be removed and replaced with a UL300 listed system by January 1, 2006 or before that date when any of the following occurs:

1.3.3.1 Six year internal maintenance service;

1.3.3.2 Recharge;

1.3.3.3 Hydrostatic test date as indicated on the manufacturer date of the cylinders;

1.3.3.4 Reconfiguration of the system piping.

1.3.4 All existing wet chemical automatic fire suppression systems not UL300 listed shall be removed, replaced or upgraded to a UL300 listed system by January 1, 2006 or before that date when any of the following occurs:

1.3.4.1 Six year internal maintenance service;

1.3.4.2 Recharge;

1.3.4.3 Hydrostatic test date as indicated on the manufacturer date of the cylinders;

1.3.4.4 Reconfiguration of the system piping.

1.4 Copies of the above listed codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-7-2. Definitions.

2.1 "Annual" means a period of one year or 365 days.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

2.6 "Employee" means those persons who work for a licensed concern which may include but are not limited to assigned agents and others who work on a contractual basis with a licensee using service tags of the licensed concern.

2.7 "Hydrostatic Test" means subjecting any cylinders requiring periodic pressure testing procedures specified in these rules.

2.8 "Inspection Authority" means the local fire authority, or the SFM, and their authorized representatives.

2.9 "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing automatic fire suppression systems.

2.10 "N.F.P.A." means National Fire Protection Association.

2.11 "Recognized Testing Laboratory" means a State Fire Marshal list of acceptable labs.

2.12 "Service" means a complete check of an automatic fire suppression system which includes the required service procedures set forth by a manufacturer of an approved system or the minimum service requirements as provided as set forth in adopted N.F.P.A. standards.

2.13 "System" means an Automatic Fire Suppression System.

2.14 "SFM" means Utah State Fire Marshal or authorized deputy.

2.15 "UCA" means Utah State Code Annotated, 1953 as amended.

R710-7-3. Licensing.

3.1 License Required

No person or concern shall engage in the business of selling, installing, servicing, repairing, testing or modifying any automatic fire suppression system without obtaining a license from the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

3.2 Type of License

3.2.1 Every license shall be identified by type. The type of license shall be determined on the basis of the act or acts performed by the licensee or any of the employees. Every licensed concern shall be staffed by qualified personnel and shall be properly equipped to perform the act or acts for the type of license issued.

3.2.2 Licenses shall be any one, or combination of the following:

3.2.2.1 Class H1 - A licensed concern which is engaged in the installation, modification, service, or maintenance of engineered and/or pre-engineered automatic fire suppression systems.

3.2.2.2 Class H2 - A licensed concern which is engaged in service and maintenance only of automatic fire suppression systems to include hydrostatic testing.

3.3 Application

3.3.1 Application for a license to conduct business as an automatic fire suppression system concern, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

3.3.2 The application for a license to conduct business as an automatic fire suppression system concern, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

3.4 Signature of Applicant

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

3.5 Equipment Inspection

The applicant or licensee shall allow the SFM and any of his authorized deputies to enter, examine, and inspect any premises, building, room or vehicle used by the applicant in the service of automatic fire suppression systems to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager shall be given a minimum of 24 hours notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained. The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of automatic fire suppression systems.

3.6 Issuance and Posting of License

Following receipt of the properly completed application, and compliance with the provisions of the statute and these rules, the SFM shall issue a license. Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed concern.

3.7 Original License and Inspection

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals shall be valid for one year from issuance. No original license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

3.8 Renewal License and Inspection

Application for renewal shall be made as directed by the SFM. The failure to renew the license will cause the license to become invalid. No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM. Beginning March 4, 2003 through February 29, 2004, renewal dates for licensed concerns will be based upon the inspection date and valid for a one-year period of time. Renewal license fees shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal license fee.

3.9 Duplicate License

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon request.

3.10 Refusal to Renew

SFM may refuse to renew any license that is authorized, pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original license which has been denied by the SFM.

3.11 Change of Address

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of address or location of business.

3.12 Under Another Name

No licensee shall conduct the licensed business under a name other than the name or names which appears on the license.

3.13 Hiring and Termination

Every licensed concern shall, within thirty (30) days of employment or termination of an employee or contracted agent shall notify the SFM of the name, address, and certification number of that person.

3.14 Minimum Age

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

3.15 Employer Responsibility

Every concern is responsible for the acts of its employees or assigned agents relating to installation and servicing of automatic fire suppression systems.

3.16 Restrictive Use

No license shall constitute authorization for any licensee, or any of the employees or contracted agents, to enter upon, or into, any property, building, or machinery without the consent of the owner or manager. No license shall grant authorization to enforce the Uniform Fire Code or these rules.

3.17 Non-Transferable

No license issued pursuant to this section shall be transferred from one concern to another.

3.18 Registration Number

Every license shall be identified by a number, delineated as H-(number). Such number may only be transferred from one concern to another when approved by the SFM.

3.19 Minimum Materials and Equipment Required

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

3.19.1 Calibrated scales with ability to:

3.19.1.1 Weigh gas cartridges to within 1/4 ounce of manufacturers specifications.

3.19.1.2 Weigh cylinders accurately for systems being serviced.

3.19.2 Nitrogen Pressure Filling Equipment

3.19.2.1 Nitrogen Supply

3.19.2.2 Pressure Regulator - 750 p.s.i. minimum

3.19.2.3 Filling Adapters

3.19.3 Dry Chemical Systems

3.19.3.1 Extinguishing agents, compatible with systems serviced

3.19.3.2 Fusible links

3.19.3.3 Safety pins

3.19.3.4 An assortment of gaskets and "O" Rings compatible with systems serviced

3.19.3.5 Gas cartridges as required according to manufacture's specifications

3.19.3.6 Current reference manuals, to include manufacture's service manuals

3.19.3.7 Cocking or Lockout Tool

3.19.4 Halon and CO2 Systems

3.19.4.1 Have access to, or meet the requirements for a U.L. approved filling station.

3.19.4.2 Have available in inventory, or have immediate access to, detectors compatible with systems serviced.

3.19.4.3 Calibration equipment such as electrical testers and detector testers.

3.19.4.4 Control panel components

3.19.4.5 Release valves

3.19.4.6 Current reference manuals

This list does not, however, include all items that may be necessary in order to conduct a complete system installation, modification or service.

3.20 Records

Accurate records shall be maintained for five years back by the licensee of all service work performed. These records shall be made available to the SFM, or authorized deputies, upon request. These records shall include the following:

3.20.1 The name and address of all serviced locations

3.20.2 Type of service performed

3.20.3 Date and name of person performing the work

R710-7-4. Certificates of Registration.

4.1 Required Certificates of Registration

No person shall service any automatic fire suppression system without a certificate of registration issued by the SFM

pursuant to these rules expressly authorizing such person to perform such acts.

4.2 Application

Application for a certificate of registration to work on automatic fire suppression systems shall be made in writing to the SFM on forms provided by the SFM. The application shall be signed by the applicant.

4.3 Examination

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests to determine the applicant's knowledge to work on automatic fire suppression systems. Pictured identification of the applicant for a certificate of registration may be requested by the SFM or his deputies. Examinations will be given according to the following schedule:

4.3.1 On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment will be made to take an examination at least 24 hours in advance of the examination date.

4.3.2 Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

4.4 Examination - Passing Grade

To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken.

4.5 Contents of Examination

The examination required shall include a written test of the applicant's knowledge of the work to be performed, the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

4.6 Right to Contest

Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination. Every contention as to the validity of individual questions of the examination shall be made in writing within 48 hours after taking said examination. The decision of the SFM shall be final.

4.7 Issuance

Following receipt of the completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

4.8 Original and Renewal Valid Date

Original certificates of registration will be valid for one year from the date of application. Thereafter, each certificate of registration will be renewed annually and renewals will be valid for one year from issuance. The failure to renew a certificate of registration will cause the certificate of registration to become invalid. The holder of an invalid certificate of registration shall not perform any work on automatic fire suppression systems.

4.9 Renewal Date

Application for renewal will be made as directed by the SFM. Beginning March 4, 2003 through February 29, 2004, renewal dates for certification of registrations will be based upon the license inspection date and valid for a one-year period of time. Renewal certificate of registrations shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal fee.

4.10 Re-examination

Every holder of a valid certificate of registration will take a re-examination every five (5) years, from the date of original certificate, to comply with the provisions of Section 4.3 of these rules as follows:

4.10.1. The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of one 25 question open book examination to be mailed to the certificate holder at least 60 days before the renewal date.

4.10.2 The 25 question re-examination will consist of questions that focus on changes in the last five years to the NFPA standards, the statute, and adopted practices of concerns noted by the Board or SFM,.

4.10.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

4.10.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

4.11 Refusal to Renew

The SFM may refuse to renew any certificate of registration for the reasons that is authorized pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

4.12 Inspection

The holder of a certificate of registration will submit such certificate for inspection, upon request of the SFM, any authorized deputies, or any local fire official.

4.13 Change of Address

Any change of address of any holder of a certificate of registration will be reported by the registered person to the SFM within thirty (30) days of such change. Such change will also be made by the holder of the certificate of registration on the reverse side of the certificate of registration card.

4.14 Duplicate

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed.

4.15 Minimum Age

No certificate of registration shall be issued to any person who is under eighteen (18) years of age.

4.16 Restrictive Use

4.16.1 No certificate of registration will constitute authorization for any person to enter upon or into any property or building.

4.16.2 No certificate of registration will constitute authorization for any person to enforce any provisions of these rules or the Uniform Fire Code.

4.16.3 Regardless of the acts authorized to be performed by the licensed concern, only those acts for which the applicant for a certificate of registration has qualified will be permissible by such applicant.

4.17 Non-Transferable

Certificates of registration will not be transferable. Individual certificates of registration will be carried by the person to whom issued.

4.18 Limited Issuance

No certificate of registration will be issued to any person unless that person is a licensee or an employee of a licensed concern.

4.19 New Employees

New employees of a licensed concern may perform the various acts while under the direct supervision of a person holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment.

4.20 Certificate Identification

Every certificate will be identified by a number, delineated as HE-(number).

R710-7-5. Service Tags and Labels.

5.1 Size and Color

Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width. Tags may be

any color except red.

5.2 Attaching Tag

One service tag will be attached to each automatic fire suppression system in such a position as to be conveniently inspected

5.3 Signature and Certificate Number

5.3.1 The signature and certificate of registration number of the person performing the work shall be signed legibly on the service tag.

5.3.2 All information pertaining to complete date, type of servicing, and type of system will be indicated on the tag by perforations in the appropriate space provided.

5.4 New Tag

A new service tag will be attached to a properly functioning system each time service is performed. A system not in compliance shall not receive a service tag, but shall receive a non-compliance tag as required in Section 5.8.

5.5 Tag Warning

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

5.6 Removal

No person shall deface, modify, alter or remove any active service label or tag attached to or required to be attached to any automatic fire suppression system.

5.7 Service Tag Information

All service tags shall be designed as required by the SFM.

5.8 Six Year Maintenance and Hydrostatic Test Labels

5.8.1 Six year maintenance and hydrostatic test labels will be affixed by a heatless process. The labels will be applied only when the system is recharged or undergoes six year maintenance servicing or hydrostatic testing.

5.8.2 Six year maintenance and hydrostatic test labels shall be durable to withstand the effects of weather and adverse conditions.

5.8.3 Six year maintenance and hydrostatic test labels will be designed as shown below:

EXAMPLE OF SIX YEAR AND HYDROSTATIC TEST LABEL

5.9 Non-Compliance Tags

5.9.1 Non-compliance tags will be affixed to any system failing to meet service specifications and will be placed in a conspicuous location on that system.

5.9.2 Non-compliance tags shall be red in color.

5.9.3 A system shall receive a non-compliance tag, when the system fails to fully comply with manufactures specifications or these rules.

5.9.4 After placing the non-compliance tag on the system, the service person shall notify the local fire chief or his authorized representative. The service person shall also furnish a copy of the service report to the authority having jurisdiction.

5.9.5 Non-compliance tags will be designed as required by the SFM.

R710-7-6. Requirements For All Approved Systems.

6.1 Service

6.1.1 Maintenance will be conducted on extinguishing systems at least every six months or immediately after use or activation.

6.1.2 When fusible links are a required portion of the system, fusible links will be replaced yearly or as required by the manufacturer of the system.

6.1.3 Fusible links will show the date when installed by year only.

6.1.4 Fusible links will not be used after February 1 of the next year showing a previous years date.

6.2 Interchanging of Parts

Interchanging of parts from different manufactured systems is prohibited. Parts shall be specifically listed and compatible for use with the designed system.

6.3 Return of parts

All replaced parts to the system serviced will be returned to the system owner or manager after completion of the service. Parts that are required to be returned to the manufacturer due to warranty are exempt.

6.4 Restricted Service

Any system requiring a hydrostatic test, will not be serviced until such system has been subjected to, and passed, the required test. A non-compliance tag will not be accepted to meet the requirements of this section.

6.5 Service

At the time of installation, and during any service, all servicing will be done in accordance with the manufacturers instructions, adopted statutes, and these rules. Systems will be placed and remain in an operable condition, free from defects which may cause malfunctions. Discharge nozzles and piping will be free of obstructions or substances.

R710-7-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing automatic fire suppression systems commits any of the following violations:

7.2.1 The person or applicant is not the real person in interest.

7.2.2 The person or applicant provides material misrepresentation or false statement on the application.

7.2.3 The person or applicant refuses to allow inspection by the SFM, his duly authorized deputies.

7.2.4 The person or applicant for a license or certificate of registration does not have the proper facilities and equipment, to conduct the operations for which application is made.

7.2.5 The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application was made, as evidenced by failure to pass the examination and practical tests pursuant to Section 4.2 of these rules.

7.2.6 The person or applicant has been convicted of one or more federal, state or local laws.

7.2.7 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

7.2.8 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration.

7.2.9 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire suppression systems.

7.3 A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

7.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

7.6 The Board shall direct the SFM to issue a signed order

to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

7.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-7-8. Fees.

8.1 Fee Schedule

8.1.1 Licenses (New and Renewals)

8.1.1.1 Type H1 (Marketing and Installation) . . . $300.00

If the concern currently is licensed to service portable fire extinguishers the fee is $150.00.

8.1.1.2 Type H2 (Service Only) $150.00

If the concern currently is licensed to service portable fire extinguishers the fee is $75.00.

8.1.1.3 Branch Office License. $150.00

8.1.2 Certificates of Registration (New and Renewals)

8.1.2.1 Certificate of Registration. $40.00

If the individual currently is certified as a portable fire extinguisher technician the fee is $10.00

8.1.3 License Transfer $50.00

8.1.4 Examinations

8.1.4.1 Initial Examination. $30.00

8.1.4.2 Re-Examination $30.00

8.1.4.3 Five (5) Year Examination. $30.00

8.2 Payment of Fees

The required fee will accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

8.3 Late Renewal Fees

8.3.1 Any license or certificate of registration not renewed before January 1 will be subject to an additional fee equal to 10% of the required inspection fee.

8.3.2 When a certificate of registration has expired for more than one year, an application will be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial fees.

KEY: fire prevention, systems
September 7, 2006 53-7-204
Notice of Continuation May 31, 2007

R710. Public Safety, Fire Marshal.
R710-9. Rules Pursuant to the Utah Fire Prevention Law.
R710-9-1. Title, Authority, and Adoption of Codes.

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, procedures to amend incorporated references, establishing amendments and additions to the adopted codes, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, and deputizing Special Deputy State Fire Marshals.

1.4 There is adopted as part of these rules the following code which is incorporated by reference:

1.4.1 International Fire Code (IFC), 2006 edition, excluding appendices, as promulgated by the International Code Council, Inc., except as amended by provisions listed in R710-9-6, et seq.

1.5 There is further adopted as part of these rules the following codes which are also incorporated by reference and supercede the adopted standards listed in the International Fire Code, 2006 edition, Chapter 45, Referenced Standards, as follows:

1.5.1 National Fire Protection Association (NFPA), NFPA 10, Standard for Portable Fire Extinguishers, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.2 National Fire Protection Association (NFPA), NFPA 13, Standard for Installation of Sprinkler Systems, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.3 National Fire Protection Association (NFPA), NFPA 13D, Standard for the Installation of Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.4 National Fire Protection Association (NFPA), NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.5 National Fire Protection Association (NFPA), NFPA 70, National Electric Code, 2005 edition, as adopted by the Uniform Building Standards Act, Title 58. Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code R156-56-701. Wherever there is a section, figure or table in the International Fire Code (IFC) that references "ICC Electrical Code", that reference shall be replaced with "National Electric Code".

1.5.6 National Fire Protection Association (NFPA), NFPA 72, National Fire Alarm Code, 2007 edition, except as amended in provisions listed in R710-9-6, et seq.

1.5.7 National Fire Protection Association (NFPA), NFPA 101, Life Safety Code, 2006 edition, except as amended in provisions listed in R710-9-6, et seq. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the "International Building Code".

1.5.8 National Fire Protection Association (NFPA), NFPA 160, Standard for Flame Effects Before an Audience, 2006 edition, except as amended by provisions listed in R710-9-6, et seq.

1.6 National Fire Protection Association (NFPA), NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition, except as amended by provisions listed in R710-9-6, et seq.

R710-9-2. Definitions.

2.1 "Appreciable Depth" means a depth greater than 1/4 inch.

2.2 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Division" means State Fire Marshal.

2.5 "ICC" means International Code Council, Inc.

2.6 "IFC" means International Fire Code.

2.7 "Institutional occupancy" means asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health care facilities, children's homes or institutions, or any similar institutional occupancy.

2.8 "LFA" means Local Fire Authority.

2.9 "NFPA" means National Fire Protection Association.

2.10 "Place of assembly" means where 50 or more people gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.

2.11 "SFM" means State Fire Marshal or authorized deputy.

2.12 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.13 "UCA" means Utah Code Annotated, 1953.

R710-9-3. Conduct of Board Members and Board Meetings.

3.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

3.2 A quorum shall be required to approve any action of the Board.

3.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

3.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less that 21 days before the regularly scheduled Board meetings.

3.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

3.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

3.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

R710-9-4. Deputizing Persons to Act as Special Deputy State Fire Marshals.

4.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

4.2 Pursuant to Section 53-7-101 et seq., special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

4.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

4.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

4.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-5. Procedures to Amend the International Fire Code.

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

R710-9-6. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board for application statewide:

6.1 International Fire Code - Administration

6.1.1 IFC, Chapter 1, Section 105.6.16 is amended to add the following section: 11. The owner of an underground tank that is out of service for longer than one year, shall receive a Temporary Closure Notice from the Department of Environmental Quality and a copy shall be given to the AHJ.

6.1.2 IFC, Chapter 1, Section 109.2 is amended as follows: On line three after the words "is in violation of this code," add the following "or other pertinent laws or ordinances".

6.2 International Fire Code - Definitions

6.2.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

6.2.2 IFC, Chapter 2, Section 202, Institutional Group I, Group I-1 is amended to add the following: On line ten add "Type 1" in front of the words "Assisted living facilities".

6.2.3 IFC, Chapter 2 Section 202, Institutional Group I, Group I-2 is amended as follows: On line four delete the word "five" and replace it with the word "three". On line eleven after the words "Detoxification facilities" delete the rest of the section, and add the following: "Ambulatory surgical centers with two or more operating rooms where care is less than 24 hours, outpatient medical care facilities for ambulatory patients (accommodating more than five such patients in each tenant space) which may render the patient incapable of unassisted self-preservation, and Type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

6.2.4 IFC, Chapter 2, Section 202, Institutional Group I, Group I-4, day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

6.2.5 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-1 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.2.6 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-2 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.3 International Fire Code - General Precautions Against Fire

6.3.1 IFC, Chapter 3, Section 304.1.2 is amended as follows: Delete the current line six and add the following in it's place: "the Utah Administrative Code, R652-122-200, Minimum Standards for Wildland Fire Ordinance."

6.3.2 IFC, Chapter 3, Section 311.1.1 is amended as follows: On line ten delete the words "International Property Maintenance Code and the" from this section.

6.3.3 IFC, Chapter 3, Section 311.5 is amended as follows: On line two delete the word "shall" and replace it with the word "may".

6.3.4 IFC, Chapter 3, Section 315.2.1 is amended to add the following: Exception: Where storage is not directly below the sprinkler heads, storage is allowed to be placed to the ceiling on wall mounted shelves that are protected by fire sprinkler heads in occupancies meeting classification as light or ordinary hazard.

6.4 International Fire Code - Emergency Planning and Preparedness

6.4.1 IFC, Chapter 4, Section 404.2(7) is amended as follows: After the word "buildings" add "to include sororities and fraternity houses".

6.5 International Fire Code - Building Services and Systems

6.5.1 IFC, Chapter 6, Section 607.3 is deleted and rewritten as follows: Firefighter service keys shall be kept in a "Supra - Stor-a-key" elevator key box or similar box with corresponding key system that is adjacent to the elevator for immediate use by the fire department. The key box shall contain one key for each elevator, one key for lobby control, and any other keys necessary for emergency service.

6.5.2 IFC, Chapter 6, Section 609.1 is amended to add the following: On line three after the word "Code" add the words "and NFPA 96".

6.6 International Fire Code - Fire Protection Systems

6.6.1 IFC, Chapter 9, Section 901.2 is amended to add the following: The code official has the authority to request record drawings ("as builts") to verify any modifications to the previously approved construction documents.

6.6.2 IFC, Chapter 9, Section 902.1 Definitions, RECORD DRAWINGS is deleted and rewritten as follows: Drawings ("as builts") that document all aspects of a fire protection system as installed.

6.6.3 IFC, Chapter 9, Section 901.6 is amended to add the following:

The owner or administrator of each building shall insure

the inspection and testing of water based fire protection systems as required in Rule R710-5, Automatic Fire Sprinkler System Inspecting and Testing.

6.6.4 IFC, Chapter 9, Section 903.2.1.2 is amended to add the following subsection: 4. An automatic fire sprinkler system shall be provided throughout Group A-2 occupancies where indoor pyrotechnics are used.

6.6.5 IFC, Chapter 9, Section 903.2.3(2) is deleted and rewritten as follows: Where a Group F-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.6 IFC, Chapter 9, Section 903.2.6(2) is deleted and rewritten as follows: Where a Group M fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.7 IFC, Chapter 9, Section 903.2.7 Group R, is amended to add the following: Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) constructed in accordance with the International Residential Code for one- and two-family dwellings.

6.6.8 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

6.6.9 IFC, Chapter 9, Section 903.2.8(2) is deleted and rewritten as follows: A Group S-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.10 IFC, Chapter 9, Section 903.2.9 is deleted and rewritten as follows: Group S-2. An automatic sprinkler system shall be provided throughout buildings classified as parking garages in accordance with Section 406.2 or where located beneath other groups.

6.6.10.1 Exception 1: Parking garages of less than 5,000 square feet (464m2) accessory to Group R-3 occupancies.

6.6.10.2 Exception 2: Open parking garages not located beneath other groups if one of the following conditions are met:

6.6.10.2.1 a. Access is provided for fire fighting operations to within 150 feet (45 720mm) of all portions of the parking garage as measured from the approved fire department vehicle access, or

6.6.10.2.2 b. Class I standpipes are installed throughout the parking garage.

6.6.11 IFC, Chapter 9, Section 903.2.9.1 is deleted and rewritten as follows: Commercial parking garages. An automatic sprinkler system shall be provided throughout buildings used for storage of commercial trucks or buses.

6.6.12 IFC, Chapter 9, Section 903.3.5 is amended by adding the following at the end of the section: The potable water supply to automatic fire sprinkler systems and standpipe systems shall be protected against backflow in accordance with the International Plumbing Code as amended in the Utah Administrative Code, R156-56-707, Utah Uniform Building Standard Act Rules.

6.6.13 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.2 Group A-2 occupancies. An automatic fire sprinkler system shall be provided throughout existing Group A-2 occupancies where indoor pyrotechnics are used.

6.6.14 IFC, Chapter 9, Section 904.11 is deleted and rewritten as follows: Commercial Cooking Systems. The automatic fire extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and exhaust systems. Pre-engineered automatic extinguishing systems shall be tested in accordance with UL300 and listed and labeled for the intended application. The system shall be installed in accordance with this code, its listing and the manufacturer's installation instructions. The Exception in Section 904.11 is not deleted and shall remain as currently written in the IFC.

6.6.15 IFC, Chapter 9, Sections 904.11.3 and 904.11.3.1 is deleted and rewritten as follows:

6.6.15.1 Existing automatic fire extinguishing systems used for commercial cooking that use dry chemical is prohibited and shall be removed from service.

6.6.15.2 Existing wet chemical fire extinguishing systems used for commercial cooking that are not UL300 listed and labeled are prohibited and shall be either removed or upgraded to a UL300 listed and labeled system.

6.6.16 IFC, Chapter 9, Section 904.11.4 is amended to add the following subsection: 904.11.4.2. Existing automatic fire sprinkler systems protecting commercial cooking equipment, hood, and exhaust systems that generate appreciable depth of cooking oils shall be replaced with a UL300 system that is listed and labeled for the intended application.

6.6.17 IFC, Chapter 9 Section 904.11.6.4 is amended to add the following: Automatic fire extinguishing systems located in occupancies where usage is limited and less than six consecutive months, may be serviced annually if the annual service is conducted immediately before the period of usage, and approval is received from the AHJ.

6.6.18 IFC, Chapter 9, Section 905.11 is deleted.

6.6.19 IFC, Chapter 9, Section 907.2.10.1.4 is created as follows: Carbon monoxide alarms. Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit or sleeping unit in Groups R-2, R-3, R-4, and I-1 equipped with fuel burning appliances.

6.6.20 IFC, Chapter 9, Section 907.2.10.2 is amended as follows: On line two, line five, and line one of the Exception, the word "smoke" is deleted.

6.6.21 IFC, Chapter 9, Section 907.2.10.3 is amended as follows: On line two and line five, the word "smoke" is deleted. On line nine after the word "closed", add the following sentence: "Approved combination smoke and carbon monoxide detectors shall be permitted."

6.6.22 IFC Chapter 9, Section 907.2.10.4 is amended as follows: On line five after "NFPA 72" add "and NFPA 720, as applicable".

6.6.23 IFC, Chapter 9, Section 907.3 is deleted and rewritten as follows: An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.

6.6.24 IFC, Chapter 9, Sections 907.3.1, 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.5, 907.3.1.6, 907.3.1.7, and 907.3.1.8 are deleted.

6.6.25 IFC, Chapter 9, Section 907.3.2 is amended to add the following: On line three after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.6.26 IFC, Chapter 9, Section 907.3.2.3 is amended to add the following: On line one after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.6.27 IFC, Chapter 9, Section 907.20.5 is amended to add the following sentences: Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.

6.7 International Fire Code - Means of Egress

6.7.1 IFC, Chapter 10, Section 1008.1.8.3 is amended to add the following:

6.7.1.1 5. Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require specialized security measures for their safety, approved access controlled egress may be installed when all the following are met:

6.7.1.1.1 5.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or the automatic fire detection system.

6.7.1.1.2 5.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.

6.7.1.1.3 5.3 The controlled egress doors shall unlock upon loss of power.

6.7.1.1.4 5.4 The secure area or unit with controlled egress doors shall be located at the level of exit discharge in Type V construction.

6.7.1.2 6. Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require approved, listed delayed egress locks, they shall be installed on doors as allowed in IFC, Section 1008.1.8.6. The secure area or unit with delayed egress locks shall be located at the level of exit discharge in Type V construction.

6.7.2 IFC, Chapter 10, Section 1009.3 is amended as follows: On line five of Exception 4 delete "7.75" and replace it with "8". On line seven of Exception 4 delete "10" and replace it with "9".

6.7.3 IFC, Chapter 10, Section 1009.10, is amended to add the following exception: 6. In occupancies in Group R-3, as applicable in Section 101.2 and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, handrails shall be provided on at least one side of stairways consisting of four or more risers.

6.7.4 IFC, Chapter 10, Section 1012.3 is amended to add the following: Exception: Non-circular handrails serving an individual unit in a Group R-1, Group R-2 or Group R-3 occupancy with a perimeter greater than 6 1/4 inches (160mm) shall provide a graspable finger recess area on both sides of the profile. The finger recess shall begin within a distance of 3/4 inch (19mm) measured vertically from the tallest portion of the profile and achieve a depth of at least 5/16 inch (8mm) within 7/8 inch (22mm) below the widest portion of the profile. This required depth shall continue for at least 3/8 inch (10mm) to a level that is not less than 1 3/4 inches (45mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be 1 1/4 inches (32mm) to a maximum of 2 3/4 inches (70mm). Edges shall have a minimum radius of 0.01 inch (0.25mm).

6.7.5 IFC, Chapter 10, Section 1013.2 is amended to add the following exception: 3. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, guards shall form a protective barrier not less than 36 inches (914mm).

6.7.6 IFC, Chapter 10, Section 1015.2.2 is amended to add the following sentence at the end of the section: Additional exits or exit access doorways shall be arranged a reasonable distance apart so that if one becomes blocked, the others will be available.

6.7.7 IFC, Chapter 10, Section 1028.2 is amended to add the following: On line six after the word "fire" add the words "and building".

6.8 International Fire Code - Explosives and Fireworks

6.8.1 IFC, Chapter 33, Section 3301.1.3, Exception 4 is amended to add the following sentence: The use of fireworks for display and retail sales is allowed as set forth in UCA 53-7-220 and UCA 11-3-1.

6.9 International Fire Code - Flammable and Combustible Liquids

6.9.1 IFC, Chapter 34, Section 3401.4 is amended to add the following at the end of the section: The owner of an underground tank that is out of service for longer than one year, shall receive a Temporary Closure Notice from the Department of Environmental Quality and a copy shall be given to the AHJ.

6.9.2 IFC, Chapter 34, Section 3406.1 is amended to add the following special operation: 8. Sites approved by the AHJ.

6.9.3 IFC, Chapter 34, Section 3406.2 is amended to add the following: On line five after the words "borrow pits" add the words "and sites approved by the AHJ".

6.10 International Fire Code - Liquefied Petroleum Gas

6.10.1 IFC, Chapter 38, Section 3809.12, is amended as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721 - 2,500, the currently stated "5" is deleted and replaced with "10".

6.10.2 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete 20 from line three and replace it with 10.

6.11 National Fire Protection Association

6.11.1 NFPA 72, Chapter 2, Section 2.2 is amended to add the following NFPA standard: NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2007 edition.

6.11.2 NFPA 72, Chapter 4, Section 4.3.2.2(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.11.3 NFPA 72, Chapter 4, Section 4.3.3(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.11.4 NFPA 72, Chapter 4, Section 4.4.3.7.2 is amended to add the following sentence: When approved by the AHJ, the audible notification appliances may be deactivated during the investigation mode to prevent unauthorized reentry into the building.

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6.11.5.1 NFPA 72, Chapter 4, Section 4.4.5, Exception No. 1: When ambient conditions prohibit installation of automatic smoke detection, automatic heat detection shall be permitted.

6.11.6 NFPA 72, Chapter 6, Section 6.8.5.9 is amended to add the following section: 6.8.5.9.3 Automatic fire pumps shall be supervised in accordance with NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, and the AHJ.

6.11.7 NFPA 72, Chapter 7, Section 7.4.1.2 is amended as follows: On line three delete "110dBA" and replace it with "120dBA".

6.11.8 NFPA 72, Chapter 8, Section 8.3.4.7 is amended as follows: On line two, after the word "notified" insert the words "without delay".

6.11.9 NFPA 72, Chapter 10, Section 10.2.2.5.1 is deleted and rewritten as follows: Service personnel shall be qualified and experienced in the inspection, testing and maintenance of fire alarm systems. Qualified personnel shall meet the certification requirements stated in Utah Administrative Code, R710-11-3, Fire Alarm System Inspecting and Testing.

R710-9-7. Fire Advisory and Code Analysis Committee.

7.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

7.2 The committee shall serve in an advisory position to

the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

7.2.1 A representative from the State Fire Marshal's Office.

7.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

7.2.3 A fire marshal or fire inspector from a local fire department or fire district.

7.2.4 A representative from the Department of Health.

7.2.5 The Chief Elevator Inspector from the Utah Labor Commission.

7.2.6 A representative from the Department of Human Services.

7.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

7.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

7.5 The Council shall select one of it's members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

7.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

R710-9-8. Enforcement of the Rules of the State Fire Marshal.

8.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

8.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

8.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

8.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

8.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

8.4.2 Public and private schools.

8.4.3 Privately owned colleges and universities.

8.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

8.4.5 Places of assembly as defined in Section 9-2 of this rule.

8.5 The Board shall require prior to approval of a grant the following:

8.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

8.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

R710-9-9. Fire Prevention Board Budget and Amendment Sub-Committees.

9.1 There is created two Fire Prevention Board Sub-Committees known as the Budget Subcommittee and the Amendment Subcommittee. The subcommittees membership shall be appointed from members of the Board.

9.2 Membership on the Sub-Committee shall be by appointment of the Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

9.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

R710-9-10. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-9-11. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-12. Adjudicative Proceedings.

12.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

12.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the Board to act as the board of appeals.

12.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

12.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63-46b-3.

12.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

12.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

12.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

12.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, law
May 8, 2007 **53-7-204**
Notice of Continuation June 12, 2002

R710. Public Safety, Fire Marshal.
R710-11. Fire Alarm System Inspecting and Testing.
R710-11-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those who inspect and test fire alarm systems.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, 2007 edition, except as amended by provisions listed in R710-11-6, et seq.

1.2 International Fire Code (IFC), 2006 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-11-6, et seq.

1.3 A copy of the above-mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-11-2. Definitions.

2.1 "Annual" means a period of one year or 365 calendar days.

2.2 "Authority Having Jurisdiction (AHJ) means the State Fire Marshal, his duly authorized deputies, the local fire enforcement authority, and building officials.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "Inspecting and Testing" means work completed to ensure that the system operates properly as required in Section 1.2 of these rules.

2.6 "NFPA" means National Fire Protection Association.

2.7 "NICET" means National Institute for Certification in Engineering Technologies.

2.8 "SFM" means State Fire Marshal or authorized deputy.

2.9 "Service" means inspecting and testing of fire alarm systems.

2.10 "UCA" means Utah State Code Annotated 1953 as amended.

R710-11-3. Certificates of Registration.

3.1 Required Certificates of Registration.

No person shall engage in the inspecting and testing of fire alarm systems without first receiving a certificate of registration issued by the SFM. The following groups are exempted from the requirements of this part:

3.1.1 The AHJ that is performing the initial installation acceptance testing of the fire alarm system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules.

3.1.2 The building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section 6.2 of these rules, to satisfy requirements set by company policy, insurance, or risk management.

3.2 Application.

3.2.1 Application for a certificate of registration to inspect and test fire alarm systems shall be made in writing to the SFM on forms provided by the SFM. The applicant shall sign the application. The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

3.2.2 The applicant shall indicate on the application which of the three technician levels the applicant will apply for:

3.2.2.1 Basic Fire Alarm Technician

3.2.2.2 Fire Alarm Technician

3.2.2.3 Master Fire Alarm Technician

3.2.3 The application for a certificate of registration shall be accompanied with proof of public liability insurance from the certificate holder or employing concern. A public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage shall issue the public liability insurance. The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is not longer in effect for any reason.

3.3 Technician Examination.

The SFM shall require all applicants for a certificate of registration as a technician to complete the following:

3.3.1 Basic Fire Alarm Technician shall pass a written examination on basic testing of fire alarm systems or shall be certified as a NICET I. The Basic Fire Alarm Technician shall complete the manipulative skills task book. Work as a Basic Fire Alarm Technician shall be performed under direct supervision of a Fire Alarm Technician or Master Fire Alarm Technician.

3.3.2 Fire Alarm Technician shall pass all the requirements listed for Basic Fire Alarm Technician, and shall pass a written examination on basic testing and maintenance of fire alarm systems limited up to and including four story buildings or shall be certified as a NICET II.

3.3.3 Master Fire Alarm Technician shall pass all the requirements listed for Basic Fire Alarm Technician and Fire Alarm Technician, and shall pass a written examination on fire alarm systems in buildings over four stories, voice alarm/evacuation systems, and smoke control systems or shall be certified as a NICET III or as NICET IV.

3.4 To successfully complete the written examination the applicant must obtain a minimum score of seventy percent (70%) in each examination taken. To successfully complete the manipulative skills task book, all required skill tasks shall be signed as completed by a person duly qualified or certified in that skill.

3.5 As required in 3.3 of these rules, those applicants that have successfully completed the requirements and are certified by NICET in the skills that correspond to the work to be performed by the applicant, shall have the requirement for written examination waived, after appropriate documentation is provided to the SFM by the applicant.

3.6 Issuance.

Following receipt of the properly completed application, compliance with Section 3.3 of these rules, the SFM shall issue a certificate of registration.

3.7 Original and Renewal Valid Date.

Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance.

3.8 Renewal Date.

Application for renewal shall be made as directed by the SFM.

3.9 Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every three years, from date of original certificate, to comply with the provisions of Section 3.3 of these rules as follows:

3.9.1 The re-examination to comply with the provisions of Section 3.3 of these rules, shall consist of an examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date.

3.9.2 The re-examination will consist of questions that focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

3.9.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

3.9.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

3.10 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 7, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 7 of these rules to an applicant for an original certificate of registration, which has been denied by the SFM.

3.11 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.

3.12 Type.

Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

3.13 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within 30 days of such change.

3.14 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

3.15 Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

3.16 Restrictive Use.

3.16.1 A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

3.16.2 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

3.17 Right to Contest.

3.17.1 Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

3.17.2 Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

3.17.3 The decision as to the action to be taken on the submitted contention shall be made by the SFM, and such decision shall be final.

3.17.4 The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

3.18 Non-Transferable.

Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

3.19 Certificate of Registration Identification.

Every certificate shall be identified by a number. The certificate of registration shall be worn in a visible manner when inspecting and testing fire alarm systems.

3.20 New Employees

New or existing employees desiring to attain a certificate of registration may perform the various acts required while under the constant direct supervision of a person holding a valid certificate of registration for a period not to exceed 90 days from the initial date of employment or beginning service in the field.

R710-11-4. Service Tags.

4.1 Size and Color.

4.1.1 Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width.

4.1.2 Tags may be produced in any color except red or a variation of red.

4.1.3 A red tag shall be used to indicate the system fails to ensure a reasonable degree of protection for life and property from fire through inspecting and testing of fire alarm systems as required in NFPA, Standard 72, and the requirements of these rules. After placing the red tag on the system, the certified person shall notify the AHJ and provide the AHJ with a written copy of the noted deficiencies.

4.1.4 If the AHJ reviews the noted deficiencies on the attached red tag and finds the deficiencies are not consistent with the requirements in NFPA, Standard 72, the red tag shall be removed by the certified person that attached the red tag.

4.2 Placement of Tag.

The service tag shall be attached at the fire alarm control panel for each system inspected or at other locations as needed to show compliance. The service tag shall be attached to the control panel in such a position as to be conveniently inspected by the AHJ.

4.3 Tag Information.

4.3.1 Service tags shall bear the following information:

4.3.1.1 Provisions of Section 4.7.

4.3.1.2 Approved Seal of Registration of the SFM.

4.3.1.3 Certificate of registration number of individual who performed or supervised the service or services performed.

4.3.1.4 Signature of individual whose certificate of registration number appears on the tag.

4.3.1.5 Concern's name.

4.3.1.6 Concern's address.

4.3.1.7 Type of service performed.

4.3.1.8 Type of system serviced.

4.3.1.9 Date service is performed.

4.3.2 The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

4.4 Legibility.

4.4.1 The certificate of registration number required in Section 4.3.1.3, and the signature required in Section 4.3.1.4, shall be printed or written distinctly.

4.4.2 All information pertaining to date and type of service shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

4.5 Format.

ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

4.6 New Tag.

A new service tag shall be attached to a system each time a service is performed.

4.7 Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL".

4.8 Removal.

4.8.1 No person or persons shall remove a service tag except when further service is performed.

4.8.2 No person shall deface, modify, or alter any service tag that is required to be attached to the system.

4.8.3 A red tag can only be removed by written authority from the AHJ. Verbal authority to initially remove the tag is allowed as long as it is followed by written authority.

4.9 Tag Dates.

Service tags may be printed for any number of years not to exceed eight years.

R710-11-5. Seal of Registration.

5.1 Description.

The official seal of registration of the SFM shall consist of the following:

5.1.1 The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

5.1.1.1 The top portion of the outer ring shall have the wording "Utah State".

5.1.1.2 The bottom portion of the outer ring shall have the wording "Fire Marshal".

5.1.2 Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the certification number assigned to the person.

5.2 Use of Seal.

No person shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

5.3 Permissive Use.

Certificate holders or concerns shall use the Seal of Registration on every service tag.

5.4 Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the certificate of registration.

5.5 Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-11-6. Amendments and Additions.

6.1 Service.

At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

6.2 Frequency.

Fire alarm systems shall be inspected annually by a person holding the appropriate certificate of registration as required in Section 3.1 of these rules.

6.3 New Systems.

Newly installed fire alarm systems are exempt from the annual testing requirement required in Section 6.2 of these rules, for one year from the approval date of the initial installation acceptance testing.

6.4 Retroactive Installation of Automatic Fire Alarm Systems.

IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.5, 907.3.1.6, 907.3.1.7, and 907.3.1.8 are deleted.

6.5 National Fire Protection Association

6.5.1 NFPA 72, Chapter 2, Section 2.2 is amended to add the following NFPA standard: NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2007 edition.

6.5.2 NFPA 72, Chapter 4, Section 4.3.2.2(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.5.3 NFPA 72, Chapter 4, Section 4.3.3(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.5.4 NFPA 72, Chapter 4, Section 4.4.3.7.2 is amended to add the following sentence: When approved by the AHJ, the audible notification appliances may be deactivated during the investigation mode to prevent unauthorized reentry into the building.

6.5.5 NFPA 72, Chapter 4, Section 4.4.5 is deleted and rewritten as follows: Automatic smoke detection shall be provided at the location of each fire alarm control unit(s), notification appliance circuit power extenders, and supervising station transmitting equipment to provide notification of fire at the location.

6.5.5.1 NFPA 72, Chapter 4, Section 4.4.5, Exception No. 1: When ambient conditions prohibit installation of automatic smoke detection, automatic heat detection shall be permitted.

6.5.6 NFPA 72, Chapter 4, Section 4.5.2.1, RECORD OF COMPLETION, or equivalent form approved by the SFM shall be used as the accepted forms for testing and inspecting fire alarm systems.

6.5.7 NFPA 72, Chapter 6, Section 6.8.5.9 is amended to add the following section: 6.8.5.9.3 Automatic fire pumps shall be supervised in accordance with NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, and the AHJ.

6.5.8 NFPA 72, Chapter 7, Section 7.4.1.2 is amended as follows: On line three delete "110dBA" and replace it with "120dBA".

6.5.9 NFPA 72, Chapter 8, Section 8.3.4.7 is amended as follows: On line two, after the word "notified" insert the words "without delay".

6.5.10 NFPA 72, Chapter 10, Section 10.2.2.5.1 is deleted and rewritten as follows: Service personnel shall be qualified and experienced in the inspection, testing and maintenance of fire alarm systems. Qualified personnel shall meet the certification requirements stated in Utah Administrative Code, R710-11-3, Fire Alarm System Inspecting and Testing.

R710-11-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 The issuance, renewal, or continued validity of a certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant or the person has committed any of the following violations:

7.2.1 The applicant or person is not the real person of interest.

7.2.2 The applicant or person provides material misrepresentation or false statements on the application.

7.2.3 The applicant or person refuses to allow inspection by the SFM, or his duly authorized deputies.

7.2.4 The applicant or person for a certificate of registration does not have the proper equipment to conduct the operations for which application is made.

7.2.5 The applicant or person for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination or manipulative skills pursuant to Section 3.3 of these rules.

7.2.6 The applicant or person refuses to take the examination required by Section 3.3 of these rules.

7.2.7 The applicant or person fails to pay the certification of registration, examination or other required fees as required in Section 8 of these rules.

7.2.8 The applicant or person has been convicted of violating one or more federal, state or local laws.

7.2.9 The applicant or person has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

7.2.10 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a certificate of registration.

7.2.11 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire alarm system equipment.

7.3 A person whose certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

7.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a certificate of registration.

7.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the certification process or shall direct that the revocation be continued.

7.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.

R710-11-8. Fees.

8.1 Fee Schedule.

8.1.1 Certificates of Registration (new and renewals):

8.1.1.1 Certificate of registration - $40.00

8.1.1.2 Duplicate - $30.00

8.1.2 Examinations:

8.1.2.1 Initial examination - $30.00

8.1.2.2 Re-examination - $30.00

8.1.2.3 Three-year examination - $30.00

8.2 Payment of Fees.

The required fee shall accompany the application for certificate of registration. Certificate of registration fees will be refunded if the application is denied.

8.3 Late Renewal Fees.

8.3.1 Any certificate of registration not renewed on or before the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

8.3.2 When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time.

KEY: fire alarm systems
May 8, 2007 **53-7-204**

R746. Public Service Commission, Administration.
R746-420. Requests for Approval of a Solicitation Process.
R746-420-1. General Provisions.

(1) A Soliciting Utility filing for approval of a proposed Solicitation and Solicitation Process in accordance with the Energy Resource Procurement Act (Act) shall file a request for approval of the proposed Solicitation and Solicitation Process (Application) which shall include testimony and exhibits which provide:

(a) A description of the Solicitation Process the Soliciting Utility proposes to use;

(b) A copy of the complete proposed Solicitation with appendices, attachments and draft pro forma contracts if applicable;

(c) Information to demonstrate that the filing complies with the requirements of the Act and Commission rules;

(d) Descriptions of the criteria and the methodology, including any weighting and ranking factors, to be used to evaluate bids;

(e) Information directing parties to all questions and answers regarding the Solicitation and Solicitation Process posted on an appropriate website;

(f) Information on how participants in the pre-issuance Bidders' conference should submit advance written questions to the Soliciting Utility that are to be addressed at the pre-issuance Bidder's conference;

(g) A list of potentially interested parties to whom the Soliciting Utility has sent or will send notices of the filing of the request for approval of the proposed solicitation with the Commission; and

(h) Other information as the Commission may require.

(2) At the time of filing, or earlier if practicable, the Soliciting Utility shall provide to the Independent Evaluator, data, information and models necessary for the Independent Evaluator to analyze and verify the models.

(3) Pre Bid-Issuance Procedures. Prior to applying for approval of a proposed Solicitation:

(a) The Soliciting Utility shall give advance notice to the Commission as soon as practicable that it intends to conduct a Solicitation Process but not later than 60 days prior to the filing of the draft Solicitation and Solicitation Process to enable the Commission to promptly hire an Independent Evaluator;

(b) The Soliciting Utility shall hold a pre-issuance Bidders' conference in Utah, with both in-person and conference call participation at least 15 days prior to the time the Solicitation is filed for approval. Interested persons may attend this conference. The Soliciting Utility shall ensure that all questions and answers, made at the pre-issuance Bidder's conference, are provided or recorded in writing to the extent practicable;

(c) At the pre-issuance Bidder's conference, the Soliciting Utility should describe to the attendees in attendance the process, timeline for Commission review of the draft Solicitation and opportunities for providing input, including sending comments and/or questions to the Independent Evaluator; and

(d) No later than the date of filing of the proposed Solicitation, the Soliciting Utility shall issue a notice to potential bidders regarding the timeline for providing comments and other input regarding the draft Solicitation.

(4) Process for Approval of a Solicitation.

(a) Comments on the Soliciting Utility's Application shall be filed with the Commission within 45 days after the filing of the Application. The Independent Evaluator shall provide comments within 55 days after the filing of the Application. The Soliciting Utility shall file reply comments within 65 days after the filing of the Application.

(b) An Approved Solicitation and related documents shall be posted on an appropriate website as determined by the Commission order approving the Solicitation. Notice of the website posting of a Solicitation shall be sent to the potential bidders identified by the Soliciting Utility and as otherwise directed by the Commission.

(c) All material modifications to the terms and schedule of the Approved Solicitation must be approved by the Commission.

R746-420-2. Requests for Waiver of a Solicitation Process.

(1) A Soliciting Utility filing for waiver of the requirements of Section 54-17-201(2) shall file a request for waiver which shall include testimony and exhibits which provide:

(a) An explanation of and the factual basis for the emergency, opportunity or other factors that support the requested waiver;

(b) If the requested waiver is based upon an emergency, evidence establishing the nature and cause of the emergency and an explanation of why the proposed waiver is in the public interest;

(c) If the requested waiver is based upon a time-limited commercial or technical opportunity, evidence establishing the nature of the opportunity and an explanation of why the proposed waiver is in the public interest;

(d) If the requested waiver is based upon other factors, evidence establishing the nature of those factors and an explanation of why the proposed waiver is in the public interest;

(e) Evidence explaining and demonstrating when the Soliciting Utility first became aware of the claimed emergency, opportunity or other factors and how and when it pursued or responded to the same; and

(f) Evidence showing that a waiver of the Solicitation Process is in the public interest.

(2) A Commission order granting a requested waiver of a Solicitation Process shall not constitute and does not determine approval or disapproval of a significant energy resource decision including cost recovery. The Soliciting Utility retains the obligation to file for approval of a significant energy resource decision under Section 54-17-302.

(3) Pursuant to Section 54-17-201(3)(c)(ii), the Commission may condition the granting of a waiver on such conditions as the Commission may determine to be just, reasonable and in the public interest. If the Commission determines that insufficient ratepayer protections exist to warrant advance approval under Section 54-17-302, it may deny or condition approval pursuant to Section 54-17-302(6) in such manner as necessary to protect the public interest.

R746-420-3. Solicitation Process.

(1) General Requirements of a Solicitation Process.

(a) All aspects of a Solicitation and Solicitation Process must be fair, reasonable and in the public interest.

(b) A proposed Solicitation and Solicitation Process must be reasonably designed to:

(i) Comply with all applicable requirements of the Act and Commission rules;

(ii) Be in the public interest taking into consideration:

(A) whether they are reasonably designed to lead to the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of the Soliciting Utility located in this state;

(B) long-term and short-term impacts;

(C) risk;

(D) reliability;

(E) financial impacts on the Soliciting Utility; and

(F) other factors determined by the Commission to be relevant;

(iii) Be sufficiently flexible to permit the evaluation and selection of those resources or combination of resources determined by the Commission to be in the public interest;

(iv) Be designed to solicit a robust set of bids to the extent practicable; and

(v) Be commenced sufficiently in advance of the time of the projected resource need to permit and facilitate compliance with the Act and the Commission rules and a reasonable evaluation of resource options that can be available to fill the projected need and that will satisfy the criteria contained within Section 54-17-302(3)(c). The utility may request an expedited review of the proposed Solicitation and Solicitation Process if changed circumstances or new information require a different acquisition timeline. The Soliciting Utility must demonstrate to the Commission that the timing of the Solicitation Process will nevertheless satisfy the criteria established in the Act and in Commission rules.

(2) Screening Criteria - Screening in A Solicitation Process.

(a) In preparing a Solicitation and in evaluating bids, the Soliciting Utility shall develop and utilize, in consultation with the Independent Evaluator (if then under contract) and the Division of Public Utilities, screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the Solicitation Process is fair, reasonable and in the public interest.

(b) Reasonable initial screening criteria may include, but are not necessarily limited to, reasonable and nondiscriminatory evaluation of and initial rankings based upon the following factors:

(i) Cost to utility ratepayers;

(ii) Timing of deliveries;

(iii) Point of delivery;

(iv) Dispatchability/flexibility;

(v) Credit requirements;

(vi) Level of change to pro forma contracts included in an approved Solicitation Process;

(vii) Transmission, Interconnection and Integration costs and benefits;

(viii) Commission-approved consideration of impacts of direct or inferred debt;

(ix) Feasibility, including project timing and the process for obtaining necessary rights and permits;

(x) Adequacy and flexibility of fuel supplies;

(xi) Choice of cooling technology and adequacy of water resources;

(xii) Systemwide benefits of transmission infrastructure investments associated with a project;

(xiii) Allocation of project development risks, including capital cost overruns, fuel price risk and environmental regulatory risk among project developer, utility and ratepayers; and

(xiv) Environmental impacts.

(c) In developing the initial screening and evaluation criteria, the Soliciting Utility, in consultation with the Independent Evaluator (if then under contract) and the Division of Public Utilities, shall consider the assumptions included in the Soliciting Utility's most recent Integrated Resource Plan (IRP), any recently filed IRP Update, any Commission order on the IRP or IRP Update and in its Benchmark Option.

(d) The Soliciting Utility may but is not required to consider non-conforming bids to the Request For Qualifications (RFQ) or Request For Proposals (RFP). The Soliciting Utility will provide advance notice to the Independent Evaluator of its decision consider a non-conforming bid.

(3) Screening Criteria - Request for Qualifications and Request of Proposals.

(a) Prior to the deadline for responding to the RFP, the Soliciting Utility may utilize a RFQ.

(b) The Independent Evaluator will provide each of the bidders with a Bid number once the Soliciting Utility, in consultation with the Independent Evaluator, has determined that the bidder has met the criteria under the RFQ.

(c) Reasonable RFQ screening criteria may include, but are not necessarily limited to, reasonable and nondiscriminatory evaluation of the following factors:

(i) Credit requirements and risk;

(ii) Non-performance risk;

(iii) Technical experience;

(iv) Technical and financial feasibility; and

(v) Other reasonable screening criteria that are applied in a fair, reasonable and nondiscriminatory manner.

(d) The RFQ should instruct each potential bidder to state in its RFQ response whether it is an affiliate of the Soliciting Utility or will contract with an affiliate of the Soliciting Utility.

(4) Disclosures. If a Solicitation includes a Benchmark Option, the Solicitation shall include at least the following information and disclosures:

(a) Whether the Benchmark Option will or may consist of a Soliciting Utility self-build or owned option (Owned Benchmark Resource) or if it is a purchase option (Market Benchmark Resource);

(b) If an Owned Benchmark Option is used, a description of the facility, fuel type, technology, efficiency, location, projected life, transmission requirements and operating and dispatch characteristics of the Owned Benchmark Option. If a Market Benchmark Option is used, the Soliciting Utility must disclose that a market option will be utilized and any inputs that will be utilized in the evaluation;

(c) A description and examples of the manner in which resources of differing characteristics or lengths will be evaluated;

(d) That bids will receive Bid numbers from the Independent Evaluator. The blinded personnel will not have access to any information concerning the relationship between the Bid numbers and the Blinded bids until after selection of the final short list;

(e) Assurances that resource evaluations will be conducted in a fair and non-preferential manner in comparison to the Benchmark Option;

(f) Assurances that the Benchmark Option will be validated by the Independent Evaluator and that no changes to any aspect of the Benchmark Option will be permitted after the validation of the Benchmark Option by the Independent Evaluator and prior to the receipt of bids under the RFP and that the Benchmark Option will not be subject to change unless updates to other bids are permitted; and

(g) Assurances that the non-blinded personnel will not share any non-blinded information about the bidders with employees or agents of a Soliciting Utility or its affiliates who are or may be involved in the development of a Solicitation, the evaluation of bids, or the selections of resources (Evaluation Team) until after selection of the final shortlist.

(5) Disclosures Regarding Evaluation Methodology. A Solicitation shall include a clear and complete description and explanation of the methodologies to be used in the evaluation and ranking of bids, including a complete description of:

(a) All evaluation procedures, factors and weights to be considered in the RFQ, initial screening and final evaluation of bids;

(b) Credit and security requirements;

(c) Pro forma power purchase and other agreements; and

(d) The Solicitation schedule.

(6) Disclosures Regarding Independent Evaluator. The Solicitation shall describe the Independent Evaluator's role in a manner consistent with Section 54-17-203, including:

(a) An explanation of the role of the Independent Evaluator;

(b) Contact information for the Independent Evaluator; and

(c) Directions and encouragement for potential bidders to

contact the Independent Evaluator with any questions, comments, information or suggestions.

(7) General Requirements. The Solicitation Process must:

(a) Satisfy all applicable requirements of the Act and Commission rules and be fair, reasonable and in the public interest;

(b) Clearly describe the nature and all relevant attributes of the requested resources;

(c) Include clear descriptions of the amounts and types of resources requested, the required timing of deliveries, acceptable places of delivery, pricing options, transmission constraints, requirements and costs that are known at the time, scheduling requirements, qualification requirements, bid and selection formats and procedures, price and non-price factors and weights, credit and security requirements and all other information reasonably necessary to facilitate a Solicitation Process in compliance with the Act and Commission rules;

(d) Utilize an evaluation methodology for resources of different types and lengths which is fair, reasonable and in the public interest and which is validated by the Independent Evaluator;

(e) Ensure that bidders will timely receive the data and information determined by the Soliciting Utility, in consultation with the Independent Evaluator or as directed by the Commission, to be necessary to facilitate a fair and reasonable competitive bidding process and all information reasonably requested by bidders;

(f) Impose credit requirements and other participation and bidding requirements that are non-discriminatory, fair, reasonable, and in the public interest;

(g) Permit a range of commercially reasonable alternatives to satisfy credit and security requirements;

(h) Permit and encourage negotiation with final short-list bidders for the benefit of ratepayers taking into account increased value but also not unreasonably increasing risks to ratepayers;

(i) Provide reasonable protections for confidential information of bidders; subject to disclosure pursuant to appropriate protective order to the Independent Evaluator and otherwise as required by the Commission;

(j) Provide reasonable protections for confidential information of the Soliciting Utility, subject to disclosure pursuant to appropriate protective order to the Independent Evaluator and otherwise as required by the Commission;

(k) Ensure that if any information that may affect the Solicitation Process is to be shared by the Soliciting Utility with any bidder or with the employees or agents of a Soliciting Utility or its affiliates who may be involved in the development or submission of a Benchmark Option used in a Solicitation (Bid Team), excluding confidential, proprietary or competitively sensitive Benchmark- or bid-specific information or negotiations, that the same information is shared with all bidders in the same manner and at the same time.

(8) Process Requirements for Benchmark Option. In a Solicitation Process involving the possibility of a Benchmark Option:

(a) The Evaluation Team, including non-blinded personnel, may not be members of the Bid Team, nor communicate with members of the Bid Team during the Solicitation Process about any aspect of the Solicitation Process, except as authorized herein.

(b) The names and titles of each member of the Bid Team, the non-blinded personnel and Evaluation Team shall be provided in writing to the Independent Evaluator.

(c) The Evaluation Team may solicit written comments on matters of technical expertise from the members of the Bid Team. All such communications to or from the Bid Team must be in writing. The Independent Evaluator must participate in all such communications between members of the Bid Team and Evaluation Team and must retain a copy of all such correspondence to be made available in future Commission proceedings. The Independent Evaluator must also make available to the bidder about whose bid the Bid Team's technical expertise was sought a written copy of the correspondence between the Evaluation and Bid Teams. Any response to such correspondence from the bidder must be in writing to the Independent Evaluator and must be conveyed to the Evaluation Team. The Independent Evaluator must provide its own or third party verification of the reasonableness of any technical information solicited from the Bid Team or bidder before it may be used in any evaluation.

(d) There shall be no communications regarding blinded bid information, either directly or indirectly, between the non-blinded personnel and other Evaluation Team members until the final shortlist is determined except as authorized herein, which communications shall be done in the presence of the Independent Evaluator. The non-blinded personnel must not reveal to other Evaluation Team members, either directly or indirectly in any form, any blinded information regarding the identity of any of the bidders.

(e) The Evaluation Team shall have no direct or indirect contact or communication with any bidder other than through the Independent Evaluator until such time as a final shortlist is selected by the Soliciting Utility.

(f) Each member of the Bid Team and Evaluation Team, including non-blinded personnel, shall promptly execute a commitment and acknowledgment that he or she agrees to abide by all of the restrictions and conditions contained in these Commission rules. These acknowledgments shall be filed with the Commission within 10 days of their execution.

(g) Should any bidder or a member of the Bid Team attempt to contact a member of the Evaluation Team, such bidder or member of the Bid Team shall be directed to the Independent Evaluator for all information and such communication shall be reported to the Independent Evaluator by the Evaluation Team within seven business days.

(h) All relevant costs and characteristics of the Benchmark Option must be audited and validated by the Independent Evaluator prior to receiving any of the bids and are not subject to change during the Solicitation except as provided herein.

(i) All bids must be considered and evaluated against the Benchmark Option on a fair and comparable basis.

(j) Environmental risks and weight factors must be applied consistently and comparably to all bid responses and the Benchmark Option.

(k) The Solicitation must allow power purchase contract terms equivalent to the projected facility life of the Benchmark Option. The Commission may waive this requirement during review of the draft Solicitation and Solicitation Process for good cause shown.

(l) If the Soliciting Utility is subject to regulation in more than one state concerning the acquisition, construction, or cost recovery of a significant energy resource, the Soliciting Utility shall explain the degree to which it has taken into account the likelihood of resource approval and cost recovery in other jurisdictions in exercising its judgment in selecting the Benchmark Option.

(9) Issuance of A Solicitation.

(a) The Soliciting Utility shall issue the approved Solicitation promptly after Commission approval of the Solicitation and Solicitation Process.

(b) Bidders shall be directed to submit bids directly to the Independent Evaluator in accordance with the schedule contained in the Solicitation.

(c) The Soliciting Utility shall hold a pre-Bid conference in Utah, with both in-person and conference call participation available, at least 30 days before the deadline for submitting responsive bids.

(10) Evaluation of Bids.

(a) The Independent Evaluator shall "blind" all bids and supply blinded bids to the Soliciting Utility and make blinded bids available to the Division of Public Utilities subject to the provisions of an appropriate Commission-issued protective order.

(b) The Independent Evaluator shall supply such information regarding bidders and bids to non-blinded personnel as is necessary to enable such personnel to complete required credit and legal evaluations.

(c) The Soliciting Utility must cooperate fully with the Independent Evaluator.

(d) Subject to an appropriate confidentiality agreement approved by the Commission, the Soliciting Utility shall timely provide to the Independent Evaluator and the Division of Public Utilities full access to all relevant personnel of the Soliciting Utility, together with all data, materials, models and other information, including confidential information and forward pricing curves, used or to be used in developing the proposed Solicitation, preparing the Benchmark Option, or screening, evaluating or selecting bids.

(e) The Soliciting Utility, monitored by the Independent Evaluator, shall conduct a thorough evaluation of all bids in a manner consistent with the Act, Commission Rules and the Solicitation.

(f) The Independent Evaluator shall pursue a reasonable combination of auditing the Soliciting Utility's evaluation and conducting its own independent evaluation, in consultation with the Division of Public Utilities, such that the Independent Evaluator can fulfill its duties and obligations as set forth in the Act and in Commission Rules.

(g) The Soliciting Utility, the Division of Public Utilities and the Independent Evaluator may request further information from any bidder. Any communications with bidders in this regard shall be conducted only through the Independent Evaluator. The Soliciting Utility shall be informed in a timely manner of the content of any communications between the Independent Evaluator and a bidder, but communications shall be conducted on a confidential or blinded basis.

(h) In order to facilitate both an independent evaluation function and an auditing function, the Independent Evaluator shall have access to all information and resources utilized by the Soliciting Utility in conducting its analyses. The Soliciting Utility shall provide the Independent Evaluator with complete and open access to all documents, information, data and models utilized by the Soliciting Utility in its analyses. The Independent Evaluator shall be allowed to actively and contemporaneously monitor all aspects of the Soliciting Utility's evaluation process in the manner it deems appropriate so that the Soliciting Utility's evaluation process is transparent to the Independent Evaluator. The Soliciting Utility shall have an affirmative responsibility to respond promptly and fully to any request for reasonable access or information made by the Division of Public Utilities or the Independent Evaluator. To the extent the Independent Evaluator determines through its audit or independent evaluation that its evaluation and the Soliciting Utility's yield different results, the Independent Evaluator shall notify the Soliciting Utility and the Division of Public Utilities and attempt to identify reasons for the differences as early as practicable. Where practicable, the Soliciting Utility, the Division of Public Utilities and the Independent Evaluator shall attempt to reconcile such differences. If the differences cannot be reconciled to the Independent Evaluator's satisfaction, the Independent Evaluator will promptly notify the Commission.

(i) The Independent Evaluator shall be responsible for unblinding all bids included on the final short-list and providing relevant contact information to the Soliciting Utility for final negotiations with these short-listed bidders. The Independent Evaluator shall monitor any negotiations with short-listed bidders.

(j) The Division of Public Utilities and the Independent Evaluator may, through the Independent Evaluator, ask the PacifiCorp Transmission group to conduct reasonable and necessary transmission analyses concerning bids received. Any such analyses shall be provided to the Division of Public Utilities, the Independent Evaluator and the Soliciting Utility. The Soliciting Utility may, in a general rate case or other appropriate Commission proceeding, include and the Commission will allow, recovery in the Soliciting Utility's retail rates of any reasonable amounts paid by the Soliciting Utility for those analyses.

R746-420-4. Qualifications of Independent Evaluator.

(1) An Independent Evaluator must:

(a) Demonstrate qualifications, expertise and experience to perform all of the functions of the Independent Evaluator as contemplated by the Act and Commission rules;

(b) Demonstrate independence from the Soliciting Utility and potential bidders identified by the utility or determined by the Commission;

(c) Be experienced and competent to facilitate necessary communications, including operation and control of a website for all purposes contemplated by Commission rules;

(d) Provide statements of interest to the Commission which disclose:

(i) any contracts or other economic arrangements of any kind between the Soliciting Utility or likely bidders and the Independent Evaluator or any affiliates that currently exist, that have existed within the past ten years, or that have been promised or are expected in the future; and

(ii) memberships in trade organizations; and

(e) File with the Commission a full copy of any agreement of any type between the Independent Evaluator and the Soliciting Utility or any likely bidder or any affiliates.

(2) While performing services related to the Solicitation, the Independent Evaluator shall not accept employment from nor communicate with bidders and the Soliciting Utility regarding future employment or contract opportunities.

R746-420-5. Payments to Independent Evaluator.

(1) Payments to the Independent Evaluator selected by the Commission shall be paid by the Soliciting Utility in accordance with terms and conditions specified by the Commission.

(a) The Commission and the Independent Evaluator shall execute a contract approved by the Commission with such terms and conditions as the Commission may approve.

(b) Invoices for the Independent Evaluator's services shall be sent as directed by contract.

(c) After an invoice is reviewed and approved, it will be forwarded to the Soliciting Utility for payment to the Independent Evaluator.

(d) Unless the Commission directs otherwise in connection with a Solicitation, the expenses of the Independent Evaluator shall be reimbursed as follows:

(i) The Soliciting Utility is authorized to collect bid fees that are reasonable under the circumstances of up to $10,000 per bid to defray costs of the Independent Evaluator; and

(ii) The Soliciting Utility may, in a general rate case or other appropriate Commission proceeding, include and the Commission will allow, recovery in the Soliciting Utility's retail rates of any additional amounts paid by the Soliciting Utility for the Independent Evaluator.

R746-420-6. Functions of Independent Evaluator.

(1) The Independent Evaluator shall perform all functions contemplated by the Act or Commission rules, in coordination with and under the contract with the Commission.

(2) The functions of the Independent Evaluator shall include the following:

(a) Facilitate and monitor communications between the Soliciting Utility and bidders;

(b) Review and validate the assumptions and calculations of any Benchmark Option;

(c) Analyze the Benchmark Option for reasonableness and consistency with the Solicitation Process;

(d) Analyze, operate and validate all important models, modeling techniques, assumptions and inputs utilized by the Soliciting Utility in the Solicitation Process, including the evaluation of bids;

(e) Receive and "blind" bid responses;

(f) Provide input to the Soliciting Utility on:

(i) the development of screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the Solicitation Process is fair, reasonable and in the public interest in preparing a Solicitation and in evaluating bids;

(ii) the development of initial screening and evaluation criteria that take into consideration the assumptions included in the Soliciting Utility's most recent IRP, any recently filed IRP Update, any Commission order on the IRP or IRP Update and in its Benchmark Option;

(iii) whether a bidder has met the criteria specified in any RFQ and whether to reject or accept non-conforming RFQ responses;

(iv) whether and when data and information should be distributed to bidders because it is necessary to facilitate a fair and reasonable competitive bidding process or has been reasonably requested by bidders;

(v) negotiation of proposed contracts with successful bidders; and

(vi) other matters as appropriate in performing the duties of the Independent Evaluator under the Act and Commission rules, or as directed by the Commission;

(g) Ensure that all bids are treated in a fair and non-discriminatory manner;

(h) Monitor, observe, validate and offer feedback to the Soliciting Utility, the Commission, and the Division of Public Utilties on all aspects of the Solicitation and Solicitation Process, including:

(i) content of the Solicitation;

(ii) evaluation and ranking of bid responses;

(iii) creation of a short list(s) of bidders for more detailed analysis and negotiation;

(iv) post-Bid discussions and negotiations with, and evaluations of, short list bidders; and

(v) negotiation of proposed contracts with successful bidders;

(i) Offer feedback to the Soliciting Utility on possible adjustments to the scope or nature of the Solicitation or requested resources in light of bid responses;

(j) Solicit additional information on bids necessary for screening and evaluation purposes;

(k) Advise the Commission at all stages of the process of any unresolved disputes or other issues or concerns that could affect the integrity or outcome of the Solicitation Process;

(l) Analyze and attempt to mediate disputes that arise in the Solicitation Process with the Soliciting Utility and/or bidders, and present recommendations for resolution of unresolved disputes to the Commission;

(m) Participate in and testify at Commission hearings on approval of the Solicitation and Solicitation Process and/or approval of a Significant Energy Resource Decision;

(n) Coordinate as appropriate and as directed by the Commission with staff or evaluators designated by regulatory authorities from other states served by the Soliciting Utility;

(o) Perform such other evaluations and tasks as the Commission may direct;

(p) At the request of the Commission and subject to the existence or negotiation of appropriate contractual arrangements, participate in the evaluation of a request for an Order to Proceed under Section 54-17-304 and testify at any Commission hearings regarding the same; and

(q) No part or provision of this rule shall prevent or preclude the Commission from removing or dispensing with any function, responsibility, service or task of the Independent Evaluator in a particular case or proceeding as the Commission may determine is appropriate in the circumstances of such case or proceeding.

(3) Communications

(a) Communications between a Soliciting Utility and potential or actual bidders shall be conducted only through or in the presence of the Independent Evaluator. Bidder questions and Soliciting Utility or Independent Evaluator responses shall be posted on an appropriate website. The Independent Evaluator shall protect or redact competitively sensitive information from such questions or responses to the extent necessary.

(b) The Soliciting Utility may not communicate with any bidder regarding the Solicitation Process, the content of the Solicitation or Solicitation documents, or the substance of any potential response by a bidder to the Solicitation, except through or in the presence of the Independent Evaluator.

(c) The Soliciting Utility shall provide timely and accurate responses to any request from the Independent Evaluator, including requests from bidders submitted by the Independent Evaluator, for information regarding any aspect of the Solicitation or the Solicitation Process.

(4) Reports

(a) The Independent Evaluator shall prepare at least the following confidential reports and provide them to the Commission, the Division of Public Utilities and the Soliciting Utility:

(i) Monthly progress reports on all aspects of the Solicitation Process as it progresses;

(ii) Final Reports as soon as possible following the completion of the Solicitation Process. Final reports shall include analyses of the Solicitation, the Solicitation Process, the Soliciting Utility's evaluation and selection of bids and resources, the final results and whether the selected resources are in the public interest;

(iii) Other reports the Independent Evaluator deems appropriate; and

(iv) Other reports as the Commission may direct.

(b) The Independent Evaluator shall prepare at least the following public reports and provide them to the Commission and all Interested Parties:

(i) Final report, without confidential information, analyzing the Solicitation, the Solicitation Process, the Soliciting Utility's evaluation and selection of bids and resources, the final results and whether the selected resources are in the public interest;

(ii) Comments and recommendations with respect to changes or improvements for a future Solicitation Process; and

(iii) Other reports as the Commission may direct.

(c) Upon advance notice to the Soliciting Utility, the Independent Evaluator may conduct meetings with intervenors during the Solicitation Process to the extent determined by the Independent Evaluator or as directed by the Commission.

(d) If at any time the Independent Evaluator becomes aware of any violation of any requirements of the Solicitation Process or Commission rules, the Independent Evaluator shall immediately notify the Soliciting Utility and the Commission. The Independent Evaluator shall report any actions taken by the Soliciting Utility and any other recommended remedies to the Commission.

(e) The Independent Evaluator shall document all substantive correspondence and communications with the Soliciting Utility and bidders, shall make such documentation available to parties in any relevant proceedings upon proper request and subject to the terms of a protective order if the request contains or pertains to confidential information. Within six months after the end of the Solicitation Process, the Independent Evaluator shall provide a copy of this documentation to the Soliciting Utility. The Soliciting Utility shall maintain a complete record of its analyses and evaluations, including spreadsheets and models materially relied upon by the utility, all materials submitted to the Commission and all materials submitted in response to discovery requests. The Soliciting Utility shall retain such documentation for a period of at least 10 years. A party to a proceeding may petition the Commission to require specified additional materials to be maintained for a specified period.

KEY: significant energy resource, solicitation process, order to proceed, filing requirements
May 17, 2007 **54-17-100 et seq.**

R746. Public Service Commission, Administration.
R746-430. Procedural and Informational Requirements for Action Plans and Significant Energy Resource Review and Approval.
R746-430-1. Definition and Filing of Action Plan.

Definition: "Action Plan" means a plan, prepared or updated in anticipation of the acquisition of the Affected Utility's significant energy resource(s) under the Energy Resource Procurement Act, Utah Code Title 54 Chapter 17, outlining actions and specific resource decisions intended to implement an Affected Utility's Integrated Resource Plan consistent with the utility's strategic business plan.

(1) Filing of an Action Plan- As soon as practicable after development of its Integrated Resource Plan or as part of the development of an Integrated Resource Plan, each Affected Utility shall file with the Commission an Action Plan. The Affected Utility shall include with the Action Plan the following:

(a) Information showing the Affected Utility's analysis and conclusions by which it identified and selected the actions and significant energy resources which will be pursued through the Action Plan consistent with the Energy Resource Procurement Act, Utah Code Title 54, Chapter 17;

(b) Identification of the Integrated Resource Plan used in the development of the Action Plan, including information showing how the Action Plan is consistent with the Integrated Resource Plan or why deviations have been made;

(c) Identification of all data, models and information used to develop the Action Plan, including, but not limited to, the Affected Utility's costs, risk and scenario analysis, methodologies and assumptions used to develop the Action Plan; and

(d) Identification of the means, whether included or not included in the Action Plan, by which the Affected Utility may enable changes to the actions and significant energy resource(s) pursued through the Action Plan, which changes may be warranted as the Affected Utility prepares and pursues future Integrated Resource Plans or may revise actions and significant energy resources in future Action Plans.

(2) Procedure on an Action Plan- Upon the filing of an Action Plan:

(a) The Commission shall set and give notice of a scheduling conference to set a schedule which will identify the time period during which interested parties may obtain information to prepare comments on the Action Plan, set the date upon which comments shall be provided to the Commission and other interested parties, and set a date upon which reply comments may be made to the comments previously filed.

(b) The Commission may, but is not required to, hold hearings in connection with the Action Plan for the purpose of the Commission's review and guidance.

(3) Affect of Review or Guidance - Nothing in these rules requires any acknowledgment, acceptance or order pertaining to the Action Plan submitted. Any review or guidance provided by the Commission shall not be binding on the Affected Utility and shall not be construed as approval of any action or resource identified in the Action Plan. The Affected Utility's response to any Commission review or guidance may be considered by the Commission in connection with any other request or filing made by the Affected Utility under the Energy Resource Procurement Act, Utah Code Title 54, Chapter 17.

R746-430-2. Approval of a Significant Energy Resource.

(1) Filing Requirements- When an Affected Utility files a request to approve a Significant Energy Resource pursuant to Section 54-17-302, the utility shall include with its request the following:

(a) Information to demonstrate the utility has complied with the requirements of the Energy Resource Procurement Act and Commission rules;

(b) Information to demonstrate whether approval of the selected Significant Energy Resource is in the public interest;

(c) Information regarding the solicitation process, if the Significant Energy Resource was solicited through a solicitation process, including, but not limited to:

(i) Summaries of all bids received;

(ii) Summaries of the Affected Utility's rankings and evaluations of bids;

(iii) Copies of all reports relating to the solicitation process made by an independent evaluator who may have been involved with the solicitation process;

(iv) A copy of the complete Commission approved Solicitation with appendices, attachments and drafts, if applicable; and

(v) A signed acknowledgment from a utility officer involved in the solicitation that to the best of his or her knowledge, the utility fully observed and complied with the requirements of the Commission's rules or statutes applicable to the solicitation process;

(d) Identification of all information, data, models and analyses used by the Affected Utility to evaluate the acquisition of the Significant Energy Resource if the acquisition is pursuant to Section 54-17-201(3), or to evaluate and rank bids and the selected resource, if the acquisition is by a solicitation process pursuant to Section 54-17-201(2);

(e) Contracts proposed for execution or use in connection with the acquisition of the Significant Energy Resource and identification of matters for which contracts are being negotiated or remain to be negotiated;

(f) Information on the estimated costs for the Significant Energy Resource, including but not limited to engineering studies, data, and models used in the analysis, and any other costs which the utility considers recoverable pursuant to Section 54-17-303;

(g) An analysis of the estimated effects the Significant Energy Resource will have on the Affected Utility's revenue requirement;

(h) Financial information demonstrating adequate financial capability to obtain the Significant Energy Resource pursuant to the proposed acquisition;

(i) Identification of all other relevant information in support of the requested approval; and

(j) If the Commission has not previously issued a Protective Order in the approval request proceeding, a Proposed Protective Order, using the Commission's standard Protective Order, which may be used to facilitate access to information which may be claimed as confidential or protected.

(2) Procedure to Approve a Significant Energy Resource and Its Acquisition.

(a) If the Affected Utility is contemplating acquiring a Significant Energy Resource through a solicitation process, after it has completed its evaluation of bids but prior to filing a request to approve a Significant Energy Resource, the utility shall provide a written notification to the Commission of the Significant Energy Resources it has selected from the bids and the reasoning for the utility's selection of those resources.

(b) The Affected Utility may negotiate a proposed final agreement for the acquisition of the proposed Significant Energy Resource at any time, however, any such agreement shall be expressly conditional on the final decision of the Commission in the approval proceeding.

(c) The Affected Utility shall file a request for approval of a Significant Energy Resource as soon as practicable after completion of the utility's decision to select the resource.

(i) Prior to filing the request for approval of a Significant Energy Resource, the Affected Utility shall provide public notice of its intent to file the request and seek approval of the Significant Energy Resource from the Commission.

(ii) After the filing of the request, the Commission will schedule and provide notice of a Scheduling Conference to set a schedule for the proceedings, including a public hearing, through which it will consider the requested approval of the Significant Energy Resource.

(d) Any agreement for the acquisition of a Significant Energy Resource shall be submitted to the Commission for approval. The Commission will set a schedule to accept comments and reply comments from interested persons and the Affected Utility concerning whether the agreement complies with any Commission orders or Commission conditions relating to the Significant Energy Resource which will be acquired through the agreement.

(e) The Affected Utility shall maintain a complete record of analyses and evaluations, including spreadsheets and models materially relied upon by the utility, all materials submitted to the Commission and the Independent Evaluator and all materials submitted in response to discovery requests during any proceedings to approve a Significant Energy Resource and its acquisition for at least ten years after the date of a Commission order approving an agreement to acquire the Significant Energy Resource. A party to a proceeding may petition the Commission to require specified additional material to be maintained for a specified time.

R746-430-3. Requests for a Determination of Whether to Proceed with an Approved Significant Energy Resource In the Event of Change in Circumstances or Costs.

(1) Filing of a Request- When an Affected Utility seeks a Commission review and determination, pursuant to Section 54-17-304, of whether it should proceed with an approved Significant Energy Resource decision, the utility shall file with its request the following:

(a) Information concerning the nature and cause of the change of circumstances or projected costs, including, but not limited to, when and how the Affected Utility became aware of the change of circumstances or projected costs and any actions it has taken;

(b) Information concerning all costs incurred by the utility or to be incurred by the utility if the Commission determines that the utility should not proceed with the approved Significant Energy Resource, including those for which the utility anticipates it will seek future recovery pursuant to Section 54-17-304(4);

(c) Information concerning the utility's expectations concerning costs, timing and other aspects of an Approved Energy Resource if the utility were to proceed with its acquisition with the changed circumstances or projected costs. This information shall also include proposed contracts or contract amendments, if any, to be used in the event the utility were to proceed with the Significant Energy Resource;

(d) The utility's conclusions and recommendations on whether it would or would not be in the public interest to proceed with the Approved Energy Resource, and identification of all information, data, models and analyses used in arriving at the utility's conclusions and recommendations;

(e) Information concerning any alternatives which the utility considered to meet the needs or purposes for which the Approved Energy Resource is intended in the utility's own analysis of whether or not to proceed with the Approved Energy Resource, including, but not limited to, identification of all data, models, and analyses used by the utility; and

(f) If the Commission has not previously issued a Protective Order in the approval request proceeding, a Proposed Protective Order, using the Commission's standard Protective Order, which may be used to facilitate access to information which may be claimed as confidential or protected.

(2) Procedure on a Request for a Commission Review and Determination on Whether to Proceed.

(a) The Affected Utility shall give notice of the filing of its request to all parties who participated in the Commission proceedings by which the Significant Energy Resource was approved, individuals who have requested notification of such requests, and, additionally, as directed by the Commission.

(b) The Commission shall set and give notice of a scheduling conference by which it will set a schedule which will identify the time period, if any, during which interested persons may obtain information to prepare comments on the request, set the date upon which comments shall be provided to the Commission and other interested persons, and set a date upon which reply comments may be made to the comments previously filed. The Commission may, but is not required to, set a date for a public hearing on the request.

(c) The Affected Utility shall maintain a complete record of its analyses and evaluations, including spreadsheets and models materially relied upon by the utility, all materials submitted to the Commission and all material submitted in response to discovery for a period of ten years from the date the Commission issues an order on its request. A party to a proceeding may petition the Commission to require specified additional information to be maintained for a specified time.

KEY: action plan, significant energy resource, order to proceed, utilities
May 17, 2007 54-17-100 et seq.

R865. Tax Commission, Auditing.
R865-20T. Tobacco Tax.
R865-20T-1. Assessment of Cigarette and Tobacco Products Tax Pursuant to Utah Code Ann. Sections 59-14-204 and 59-14-302.

A. The cigarette tax is a tax on the first purchase, use, storage, or consumption of cigarettes by a manufacturer, jobber, wholesaler, distributor, retailer, user, or consumer within the state.

B. If cigarettes are purchased outside the state for use, storage, or consumption within the state, the tax must be paid by the user, storer, or consumer.

C. The tobacco products tax is a tax on the first purchase, use, storage, or consumption of tobacco products by a manufacturer, wholesaler, jobber, distributor, retailer, user, storer, or consumer within the state.

D. No tax is due from nonresidents or tourists who import cigarettes or tobacco products for their own use while in the state.

R865-20T-2. Methods of Paying Taxes on Cigarettes and Tobacco Products Pursuant to Utah Code Ann. Sections 59-14-205 and 59-14-303.

A. If the tax is due as a result of use, storage, or consumption of imported cigarettes, the tax may be paid by affixing stamps or by filing a return prescribed by the Tax Commission.

1. This return must be filed and the tax must be paid within 15 days from the date of use, storage, or consumption unless application is made to the Tax Commission for permission to file returns and pay the tax on a monthly basis.

2. Monthly returns are due, together with the payment of the tax, on or before the 15th day of the month following the calendar month during which the cigarettes were imported.

3. Monthly returns must be filed even though no tax is due.

B. Quarterly returns required under Section 59-14-303 shall include all purchases of tobacco products during the preceding quarter, with no adjustment for inventories on hand at the end of the quarter.

R865-20T-3. Licensing of Cigarette and Tobacco-Products Dealers Pursuant to Utah Code Ann. Sections 59-14-202 and 59-14-301.

A. Each cigarette vending machine shall be licensed as a separate place of business, provided that only one machine needs to be licensed at any place of business where the licensee has more than one machine in operation.

1. The license shall be posted in a conspicuous place on the vending machine.

2. If a licensee operates more than one place of business, the application shall contain the required information about each place of business.

3. The application must be accompanied by the required fee for each place of business.

B. If a licensee's place of business changes, the licensee shall forward the license to the Tax Commission with a request for notation of the change in location.

C. A license under which business has been transacted has no redeemable value when the licensee ceases to transact business.

R865-20T-5. Bonding Requirements For Tobacco-Products Dealers Pursuant to Utah Code Ann. Section 59-14-301.

A. Dealers selling tobacco products upon which the taxes imposed by this act have been paid by a previous seller are not required to post a bond.

R865-20T-6. Purchase of Cigarette Stamps Pursuant to Utah Code Ann. Section 59-14-206.

(1) Cigarette revenue stamps are sold only to licensed and bonded dealers, except in cases where confiscated merchandise is sold to a person who does not intend to resell the merchandise but purchases it for consumption or use.

(2) Stamps may be delivered to a licensee on credit, provided that the following two conditions are met:

(a) A written request is made naming the person to whom the stamps are to be delivered, and identifying that person by means of signature, and including the address to which the stamps should be delivered.

(b) Only a responsible person of mature age is designated as the agent to whom the stamps are delivered.

(3) In addition to satisfying the conditions of Subsection (2), the licensee shall also comply with Subsection (3)(a), (3)(b), or (3)(c), whichever is appropriate.

(a) In the case of individual ownership, the request for stamps shall be signed by the licensee in the same manner that the signature appears on the licensee's bond.

(b) In the case of a partnership, the request shall be signed by a partner whose signature appears on the bond.

(c) In the case of a corporation, the request shall be signed by a duly authorized officer of the corporation.

R865-20T-7. Export Sales of Cigarette and Tobacco Products Pursuant to Utah Code Ann. Sections 59-14-205 and 59-14-401.

A. Sales of cigarettes and tobacco products to jobbers dealers outside the state are not subject to the taxes imposed by this act provided that physical delivery of the goods is made outside the state.

B. All export sales for which an exemption or refund is claimed must be supported by invoices and delivery tickets or bills of lading showing all of the following:

1. date of sale;
2. name and address of customer;
3. address to which delivered;
4. quantity and type of product sold.

R865-20T-8. Records Pertaining To Cigarette and Tobacco-Product Sales Pursuant to Utah Code Ann. Section 59-14-404.

A. It is the duty of manufacturers, jobbers, distributors, wholesalers, retailers, users, or consumers of cigarettes or tobacco products to keep records necessary to determine the amount of tax due on the sale, purchase, or consumption of those products.

B. All pertinent records must be preserved for a period of three years.

C. The records shall be available for inspection by the Tax Commission or its authorized agents at all times during normal business hours or at other times determined by mutual agreement.

R865-20T-9. Cigarette-Manufacturer Inventory Requirements Pursuant to Utah Code Ann. Section 59-14-205.

A. Inventories of cigarettes held by manufacturers in warehouses located in Utah may be delivered to wholesalers or jobbers without being stamped. A record of those deliveries must be kept by the manufacturer at its place of business in this state or at the warehouse. The record shall contain all of the following:

1. date of delivery;
2. the person to whom the cigarettes were delivered;
3. place of delivery;
4. quantity delivered.

B. The record must be available for inspection by the Tax Commission or its agents at any reasonable time.

C. If the merchandise is sold to retailers, consumers or persons other than wholesalers or jobbers, the manufacturer must qualify as a licensed dealer.

R865-20T-10. Procedures for the Revocation, Renewal, and Reinstatement of Licenses Issued Pursuant to Utah Code Ann. Sections 59-14-202, 59-14-203.5, and 59-14-301.5.

A. In order to renew a license issued under Sections 59-14-202 and 59-14-301, a licensee shall file form TC-38B, Cigarette and Tobacco Products License Renewal Application, with the Tax Commission on or before the last day of the month prior to the month in which the license expires.

1. The form shall be accompanied by the statutory renewal fee.

B. A license revoked pursuant to Section 26-42-103 shall be revoked for a period of one year commencing on the date the commission receives notification to revoke by the enforcing agency.

C. In order to reinstate a license revoked or suspended, or allowed to expire, a licensee shall file form TC-69, Utah State Business and Tax Registration, with the Tax Commission.

1. The form shall be accompanied by the statutory reinstatement fee.

D. A revoked or suspended license may not be reinstated prior to the expiration of the revocation or suspension period.

R865-20T-11. Reporting of Imported Cigarettes Pursuant to Utah Code Ann. Section 59-14-212.

A. A manufacturer, distributor, wholesaler, or retail dealer required by Section 59-14-212 to provide the Tax Commission, on a quarterly basis, a copy of the importer's federal import permit and the customs form showing the tax information required by federal law:

1. is not required to enclose that information with the quarterly report;

2. shall retain that information in its records; and

3. at the request of the Tax Commission, provide copies of that information to the Tax Commission.

R865-20T-12. Definition of Counterfeit Tax Stamp Pursuant to Utah Code Ann. Section 59-14-102.

"Counterfeit tax stamp," for purposes of the definition of a counterfeit cigarette in Section 59-14-102, includes a cigarette stamp that has previously been affixed to another pack of cigarettes.

KEY: taxation, tobacco products
February 12, 2007
Notice of Continuation March 19, 2007

59-14-102
59-14-202
59-14-203.5
59-14-204
through
59-14-206
59-14-212
59-14-301
through
59-14-303
59-14-401
59-14-404

R895. Technology Services, Administration.
R895-3. Computer Software Licensing, Copyright, Control, Retention, and Transfer.
R895-3-1. Purpose.

The purpose of this rule is to establish the State of Utah's position and its intent to:

(1) comply with computer software licensing agreements and applicable federal laws, including copyright and patent laws;

(2) define the methods by which the State of Utah (State) will control and protect computer software; and

(3) establish the State's right, title and interest in state-developed computer software, including the sale and transfer of such software under certain conditions.

R895-3-2. Application.

All state agencies of the executive branch of the State government shall comply with this rule, which applies to the use, acquisition and transfer of all computer software, regardless of the operating environment or source of the software.

R895-3-3. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Technology Governance Act, and in accordance with Section 63-46a-3 of the Utah Rulemaking Act, Utah Code Annotated.

R895-3-4. Definitions.

As used in this rule:

(1) "Audit" means to review compliance with laws, rules and policies that apply to computer software and related documentation; and to report findings and conclusions.

(2) "Commercial computer software" means computer software that is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

(3) "Computer program" means a set of statements or instructions used in an information processing system to provide storage, retrieval, and manipulation of data from the computer system and any associated documentation and source material that explain how to operate the program.

(4) "Computer software" means sets of instructions or programs structured in a manner designed to cause a computer to carry out a desired result.

(5) "Spot Audit" means a periodic audit described in (1) and conducted by a person or persons performing the State Software Controller function.

(6) "State agency" means any agency or administrative sub-unit of the executive branch of the State government except:

(a) the State Board of Education; and

(b) the Board of Regents and institutions of higher education.

(7) "State-developed computer software" means computer software and related documentation developed under contract with the State or by State employees under the conditions set forth in the Employment Inventions Act, Section 34-39-1 et seq., Utah Code Annotated.

R895-3-5. Compliance and Responsibilities: Software Licensing.

(1) Each state agency and its employees shall comply with computer software licensing agreements, state laws, federal contracts, federal funding agreements, and federal laws, including copyright and patent laws.

(2) All management personnel will discourage software piracy and take appropriate personnel action up to and including dismissal, against any employee who has been found to be in violation of software license agreements. Personnel action shall be in full accordance with the Department of Human Resource Management Rule R477-11-1 et seq., Utah Administrative Code.

(3) Each state agency shall:

(a) establish a software controller function that has the responsibility and authority to manage software licenses, software licensing agreements, software inventory, and the oversight of and reporting on spot audits;

(b) coordinate training to employees who are assigned to, as part of their job responsibilities, the software controller function;

(c) provide training to other employees appropriate to their responsibilities including those who install, transfer and dispose of software;

(d) provide to employees notices of the state agency's software use policy at appropriate locations. Appropriate locations may include computing facilities, offices, lunchrooms or websites.

(e) keep and maintain an inventory of all state-owned computer software and software licensing agreements by:.

(i) establishing accurate software inventories and maintaining them;

(ii) establishing a baseline inventory of software already purchased;

(iii) maintaining this inventory through annual inventory reviews that reconcile purchases against inventory;

(iv) acquiring and using auditing tools to assist in establishing the inventory baseline and performing the ongoing reconciliation;

(f) dispose of software in accordance with the software license agreement.

(g) remove from the storage media before disposing of a computer, all private, protected or controlled data as defined by the Government Records Access and Management Act, UCA 63-2-101 et seq.

(h) Understand the conditions of computer software licensing agreements before purchasing computer software, and inform State employees, whose responsibility it is to monitor the State's compliance with computer software licensing agreements, of these conditions.

(i) Inform employees that are engaged in developing or controlling the distribution of software for the State, that any state-developed software is an asset owned by the State and controlled according to the terms of this rule.

(4) A state software controller function is established within the Department of Technology Services with the following responsibilities:

(a) coordinate all centralized software purchases;

(b) manage software licenses, software licensing agreements and software inventory for centralized software purchases;

(c) coordinate and provide information to employees who are responsible for the software controller function within each state agency;

(d) coordinate statewide audits or spot audits as needed. In determining when to conduct a spot audit personnel performing this function will take into consideration factors including but not limited to:

(i) an unusual organizational activity such as high employee turnover;

(ii) large development projects or recent large scale changes in computer software.

R895-3-6. Compliance and Responsibilities: Retention and Transfer of State-Developed Computer Software.

(1) Unless otherwise prohibited by federal law, regulation, contract or funding agreement, a state agency may retain the right, title and interest in any state-developed computer software. To do so, the agency shall:

(a) clearly define in all contracts that it controls the ownership rights for computer software development and related

documentation; and

(b) mark all computer software and related documentation developed by employees of the State with the copyright symbol and year, and label "Utah State Government" on all media on which the computer software or documentation is stored and at the beginning of the computer software execution.

(2) A state agency may sell or otherwise transfer the right, title and interest in any state-developed computer software. In order to carry this out, the agency must do the following:

(a) Submit a request to and obtain approval from the Chief Information Officer prior to the sale or transfer of state-developed computer software. The agency's request shall include a copy of the transfer agreement and any other contractual information. A summary report of these requests will be provided to the Information Technology Policy and Strategy Committee. An example of a model transfer or sale of state-developed software agreement may be obtained from the Chief Information Officer.

(b) Clearly specify within the transfer documents whether the costs of development will be recovered from the receiver.

(c) Clearly specify within the transfer documents whether the costs associated with copying and sending the state-developed computer software will be recovered from the receiver.

(d) Clearly specify within the transfer documents that the receiver is responsible for acquiring any commercial computer software upon which the state-developed computer software may be dependent.

(e) Clearly specify within the transfer documents that no additional services, such as installation, training, or maintenance, will be provided unless the parties have agreed otherwise.

(f) Clearly specify within the transfer documents that the state-developed computer software is being transferred in "as is" condition, and that the State will not be held liable for any incidental or consequential damages under any circumstances.

(g) Retain a record of the transfer, and process it in accordance with the Government Records Access and Management Act, Section 63-2-101 et seq., Utah Code Annotated.

(3) In accordance with the requirements of (2), a state agency may initiate an agreement to transfer state-developed computer software when reasons exist to share such software with another state or entity.

(4) The Chief Information Officer may measure compliance of a state agency and its employees with this rule by conducting periodic audits in accordance with Section 63F-1-206, Utah Code Annotated. In performing audits, the Chief Information Officer may utilize external auditors and an agency's internal auditor(s) when such resources are available and the use of such resources is appropriate.

KEY: computer software, licensing, copyright, transfer
December 17, 2002 **63F-1-206**
Notice of Continuation May 29, 2007 **63-46a-3**
34-39-1 et seq.
63-2-101 et seq.

R994. Workforce Services, Unemployment Insurance.
R994-102. Employment Security Act, Public Policy and Authority.
R994-102-101. Authority and Statement of the Rules.

(1) One of the purposes of the Employment Security Act, Utah Code Section 35A-4-101 et seq., the Act, is to lighten the burdens of persons unemployed through no fault of their own by maintaining their purchasing power in the economy. The legislature, in establishing this program, recognized the substantial social ills associated with unemployment and sought to ameliorate these problems with a program to pay workers for a limited time while they seek other employment.

(2) The Department of Workforce Services (Department) is responsible for protecting the investment of employers who contributed to the unemployment insurance fund, the interests of the unemployed workers who may be eligible for the dollars provided by the fund, and the community which benefits from a stable workforce through the maintenance of purchasing power.

(3) The legal authority for these rules and for the Department to carry out its responsibilities is found in Utah Code Sections 34A-1-104 and 35A-4-101 et seq.

(4) These rules are to be liberally construed and administered and doubts should be resolved in favor of finding coverage of the employee and assisting those who are attached to the work force.

KEY: unemployment compensation
April 4, 2004 35A-4-102
Notice of Continuation May 16, 2007

R994. Workforce Services, Unemployment Insurance.
R994-106. Combined Wage Claims.
R994-106-101. General Definition.

(1) An unemployed individual who has covered employment and wages in more than one state has the right to combine such wages and employment in the base period of one state if the combination will provide benefits for which he could not otherwise qualify or will increase the benefits for which he qualifies in a single state. He must file a combined wage claim if he is eligible to do so rather than claim extended benefits. If he wishes, he has the right to reject a combined-wage claim and file against a state in which he is separately eligible or to cancel the combined wage claim and file no claim.

(2) Section 35A-4-106 provides for the wages earned in other states to be used to qualify for unemployment insurance benefits. Many of the restrictions and guidelines contained in this Rule are required by federal regulations which govern the establishment and payment of unemployment benefits when a claimant uses wages earned outside the state or his residence at the time the claim is filed. If there is a conflict between this Rule and federal regulations, the federal regulations will be followed.

R994-106-102. Definition of Terms.

(1) Agent State.

Agent state means any state in which an individual files a claim for benefits from another state or states.

(2) Combined-Wage Claim.

A combined-wage claim is a claim using wage credits from more than one state.

(3) Combined-Wage Claimant.

A claimant who uses wages from more than one state to establish monetary entitlement to benefits.

(4) Commuter.

Commuter applies to each individual who, immediately before becoming unemployed, customarily commuted from his residence in the agent state to his work in the liable state.

(5) Employment and Wages.

"Employment" refers to all services which are covered under the unemployment compensation law of a state, whether expressed in terms of weeks of work or otherwise. "Wages" refers to all remuneration for such employment.

(6) Interstate Benefit Payment Plan.

This is the plan approved by the Interstate Conference of Employment Security Agencies under which benefits are payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(7) Liable State.

The liable state is the same as the paying state.

(8) Paying State.

The paying state is the state against which the claimant is filing that actually issues the benefit checks.

(9) State.

State includes the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

(10) State Agency.

The agency which administers the unemployment compensation law of a state.

(11) Transferring State.

A transferring state is one in which the claimant had covered employment and wages within the base period of the paying state that can be transferred to establish a claim. Wages from more than one transferring state can be used to establish a combined wage claim.

R994-106-103. Restrictions on Combined Wage Claims.

(1) Any unemployed individual who has had covered employment in two or more states may file a combined wage claim unless:

(a) he has established a claim under any other state;

(b) the benefit year has not ended;

(c) and there are still unused benefit rights.

(2) Unused Benefit Rights.

A claimant will not be considered to have unused benefit rights on a prior claim if:

(a) all benefits have been exhausted, or

(b) benefits have been denied by a seasonal restriction, or

(c) benefits have been postponed for an indefinite period or for the remainder of the benefit year. A disqualification imposed because a claimant is not able to work or available for work is not considered a denial of a claimant's benefit rights.

(3) Use of Wages in Paying State.

If an individual files a combined wage claim, all wages and employment in all states during the base period of the paying state must be included. He may not select a paying state but must accept that state which is determined under Subsection 35A-4-106(1)(b) and R994-106-103.

(4) Base Period for a Combined Wage Claim.

The base period for a combined wage claim means the "base period" as established in the paying state.

(5) Benefit Year for a Combined Wage Claim.

The benefit year for a combined wage claim is the "benefit year" of the paying state.

R994-106-104. Determining the Paying State.

(1) The paying state is determined in order of the following priorities:

(a) the state in which the combined wage claim is filed if the claimant qualifies for unemployment benefits in that state on the basis of combined employment and wages; then

(b) if the claimant is not monetarily eligible for benefits in the state of filing, a combined wage claim must be considered against the state of last employment. If the claimant is not eligible under the law of this state, the state of next-to-last employment must be considered and so on through the order in which the work was performed; or

(c) if the combined wage claim is filed in Canada, the paying state will be that state where the combined wage claimant was last employed in covered employment among the states with wages used in determining the claim.

(2) The claimant has the right to claim against another state or states if he receives an ineligible monetary determination. If such request is made in accordance with instructions from the local office or within the appeal period of the monetary determination, a claim may be taken against another state(s) with the effective date of the original claim.

R994-106-105. Responsibilities of Utah when Transferring Wages.

(1) Transfer of Employment and Wages.

Wages earned in Utah in covered employment during the base period of the combined wage claim filed by a claimant will be promptly transferred to the paying state. Such wages will be transferred without restriction as to their use for determination and benefit payments under the provisions of the Paying state's law.

(2) Employment and Wages Not Transferrable.

Wages earned in Utah will not be transferred if the employment and wages have been:

(a) transferred to any other paying state and have not been returned unused, or which have been previously used as the basis of a monetary determination which establishes a benefit year; or

(b) canceled or are otherwise unavailable to the claimant as a result of a monetary determination made prior to its receipt of the request for transfer, if such determination has become final or is subject to a pending appeal. If the appeal is finally

decided in favor of the combined wage claimant, any employment and wages determined eligible for use as wages in establishing monetary eligibility will be transferred to the paying state and any necessary redetermination will be made by the paying state.

R994-106-106. Non-Monetary Eligibility Determination.

When a combined wage claim is filed, the law and eligibility requirements of the paying state apply even if an issue has been previously adjudicated by a transferring state.

R994-106-107. Conditions for Withdrawing a Combined Wage Claim.

(1) Because of the complexities of combining wages, disadvantages to the claimant may not be apparent until after the monetary determination has been received. Therefore, the claimant has the right to withdraw from a combined wage claim anytime before the monetary determination of the paying state becomes final. The claimant's right to withdraw is inherent and need not be supported by reasons, provided that he either:

(a) repays in full any benefits paid to him, or

(b) authorizes the state against which he will claim benefits to withhold and forward to the former paying state a full repayment of benefits.

R994-106-108. Notification and Appeals.

(1) Notification.

A combined wage claimant will receive a monetary determination notice from the paying state once the wage information from all states is received. If a transferring state refuses to transfer wages because the wage credits were canceled under a disqualification or because the work was not covered, the claimant will be sent an appealable determination by the transferring state.

(2) Protests and Appeals.

A protest of a monetary determination from a transferring state or from a paying state other than Utah may be made. If the paying state or any transferring state makes any decision, monetary or nonmonetary, adverse to a combined-wage claimant's interest, the claimant is entitled to a written determination and the right to request reconsideration or an appeal in accordance with the law of the state making the determination.

KEY: unemployment compensation, interstate compacts
1987 35A-4-106(1)
Notice of Continuation May 17, 2007

R994. Workforce Services, Unemployment Insurance.
R994-303. Contribution Rates and Relief of Charges.
R994-303-101. General Definition.

(1) This rule explains some terms used in relation to employer contribution rates and how rates may be affected by delinquent contributions, delinquent reports and acquiring a business of another employer, as these terms are used in Sections 35A-4-301, 35A-4-303, 35A-4-306, and 35A-4-307. It explains when an employer is notified of his contribution rate, his appeal rights if he wants to protest that rate, what a qualified employer is and the conditions under which a qualified employer will receive a rate less than the maximum rate. This rule also defines successor and explains succession and some terms used in relation to successorship such as acquiring a business and assets. The successor's responsibility for the predecessor's liability is discussed in Subsection 35A-4-305(6) of the Act.

(2) The objective of the benefit ratio method of taxation is to employ an experience rating system that:

(a) provides for equitable allocation of costs;

(b) increases incentives for employer participation;

(c) makes building and maintaining a solvent reserve fund the responsibility of those employers who use the system.

R994-303-102. Computation Date.

"Computation date" means July 1st of any year. The computation date is not the date contribution rates are computed but merely serves as a reference point to identify the period of time used to compute rates.

R994-303-103. Notification of Contribution Rate and Appeal Rights.

The Department will notify the employer of his contribution rate prior to the beginning of the calendar year to which the rate applies. If the employer protests this rate, the protest must be filed within 30 days after the date the "Contribution Rate Notice" is issued by filing a written appeal stating the grounds upon which the appeal is based. This right to appeal the contribution rate does not, however, give new rights of appeal to protest the benefit costs used in computing the rate. The appeal rights for protesting the payment of benefits to former employees, charges to the employer, or the correctness of benefit charges are established in Section 35A-4-306 of the Act.

R994-303-104. Qualified Employer.

A "qualified employer" is an employer that paid wages during all four quarters of the fiscal year immediately preceding the computation date. Generally "employer" means any employing unit that paid wages during a calendar quarter. An employer becomes subject to the Act on the first day of the quarter in which the employer paid wages. Coverage will be terminated if there is no payroll in each of the four calendar quarters of a calendar year.

R994-303-105. Rates Assigned to Qualified Employers.

(1) On or after January 1, 1988, a qualified employer who fails to pay all contributions due for the "applicable fiscal year" which is the four consecutive calendar quarters in the fiscal year immediately preceding the computation date, will be assigned a contribution rate equal to the overall contribution rate or the assigned contribution rate, plus an additional one percent surcharge. Unpaid contributions for fiscal years prior to the applicable fiscal year have no effect on the employer's rate, as provided in Section 35A-4-303(10).

(2) Contributions assessed for the applicable fiscal year after the rates are computed will not cause the one percent surcharge to be added to the rate for the following year.

(3) A qualified employer who has been assigned the 1 percent surcharge in addition to his overall contribution rate because of delinquent contributions for the applicable fiscal year shall be reassigned a rate based upon his own experience, as provided under the experience rating provisions of the Act, effective the first day of the quarter in which full payment of contributions due is made. Example: If the employer in the example given in the paragraph above paid the contributions due for the second quarter of 1988 during June 1989, he would be reassigned a rate, effective April 1, 1989, based on his own experience. His experience would include taxable wages reported on the late second quarter report. The Department will reassign a rate effective January 1st of the year if the Department determines that the party liable for the delinquent contributions was not properly notified of the liability.

(4) Delinquent Reports - Effect on Rate.

A delinquent report is one that is not properly filed when due. The Department will notify the employer that the failure to file the delinquent report by the time the contribution rates are computed may be treated as if a report had been filed showing no payroll for that quarter. This will usually result in a higher contribution rate. A delinquent report that still has not been filed by the end of the calendar year will not result in adding the one percent surcharge to an employer's overall contribution rate as a penalty. Other penalties and interest assessed due to delinquent reports are discussed in Section 35A-4-305 of the Act.

R994-303-106. Successorship and Its Effect on Contribution Rates.

(1) Definitions.

(a) "Successor" is the employing unit which acquires the business or acquires substantially all of the assets of a business.

(b) "Predecessor" is the employing unit which last operated the business.

(c) "Acquired" means to come in possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated, is NOT considered an acquisition, if the court places restrictions on transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(d) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Therefore, acquiring use of assets is defined to mean that the successor obtains the physical assets, for example; cash, inventories, equipment, or buildings. Use of assets may also include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, an agreement by the predecessor not to compete.

(e) "Business" is an employing unit which pursues an activity or enterprise for gain, benefit, advantage or livelihood.

(f) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(g) "Discontinued operations" means that immediately at the point of acquisition, the preceding employer has no continuing business activity, for example, no concurrently operating business at another location. Liquidation of accounts receivable or "wind-down payroll" is not considered to be a continued business activity. In determining whether an employer is a successor, the phrases "substantially all" and "discontinued operations" are applied conjunctively. If less than 90 percent of all the assets are acquired, then there is no successorship and the "discontinued operations" test need not be applied.

(h) "Like part or character" will be defined by using all

four digits from the most current Standard Industrial Code (SIC) Manual, published by the Executive Office of the President, Office of Management and Budget. There is no succession unless it is determined that a like part or character of the business acquired is retained. For example: A new owner acquires a business or substantially all of its assets. The business formerly operated as an automotive service station and the predecessor employer has ceased to operate. If the new owner opens as an automotive repair shop and not a service station, there is no successorship.

(2) If the acquired business was closed for 30 or more consecutive calendar days during its normal operating period immediately prior to the acquisition, there is no successorship.

(3) Succession.

In the case of succession, effective on the first day of the year following the year in which the business is acquired, a successor will pay a contribution rate newly computed on the basis of the combined experience of the predecessor and the successor unless the date of acquisition is January 1, in which case the new rate takes effect immediately. The successor's rate during the year of acquisition will be as follows:

(a) Successor Was a Qualified Employer.

If the successor was a "qualified employer" immediately prior to the time of the acquisition, it shall continue to pay the rate assigned prior to the acquisition.

(b) Successor Was Not a Qualified Employer.

If the successor was an employer but not a "qualified employer" immediately prior to the time of the acquisition and acquires one or more businesses simultaneously, it shall pay a rate newly computed based on the combined experience of the predecessor(s) and the successor. This rate shall be effective on the first day of the next calendar quarter. The successor pays its previously assigned rate for the balance of the quarter in which the acquisition occurs unless the acquisition occurs on the first day of that quarter, in which case the newly computed rate takes effect on that day.

(c) Successor Was Not an Employer.

If the successor was not an employer immediately prior to the time of the acquisition it shall pay the predecessor's rate for the current calendar year. If the successor simultaneously acquires two or more businesses it shall pay a rate newly computed based on the combined experience of the predecessors. This newly computed rate shall be effective on the day of acquisition.

(4) Effect of Contributions Owed by the Predecessor on the Successor's Rate.

A successor will be assigned a 1 percent surcharge in addition to his overall contribution rate if there are unpaid contributions owed by the predecessor in the prior fiscal year. The one percent surcharge applies in the years that the successor's rate is affected by the predecessor's payroll and benefit costs.

(5) Successorship Determination and Burden of Proof.

The Department will determine whether the predecessor's payroll and benefit costs will be transferred to the successor. Either the predecessor or successor may appeal the determination within 10 days of the date the determination is issued. Once the determination has been made, the burden of proof is on the predecessor or the successor to show that the determination was made in error.

R994-303-107. Fiscal Year.

Fiscal year shall be defined as in Section 35A-4-301(6), to mean the year beginning with the 1st day of July of one year and ending the 30th day of June of the next year.

R994-303-108. Benefit Costs.

(1) Net benefit costs are defined as those benefits actually paid during the fiscal year without regard to the week ending date for which the payment is made. The benefit is considered paid on the date the unemployment check is written regardless of when the check is received or cashed by the claimant. Net benefit costs do not include those benefits established as an overpayment during the same fiscal year in which the benefits were paid. Benefit costs from a prior fiscal year subsequently established as an overpayment will be deducted from cumulative benefit costs beginning with the fiscal year in which the overpayment is established, but will not be deducted from benefit costs attributable to prior fiscal years except in cases where failure to make the deduction would result in a gross inequity and provided the employer has made a written request within 30 days of when he knew or should have known of the establishment of the overpayment. Once the fiscal year ends, any benefit costs from a prior fiscal year which are subsequently identified as an overpayment will be deducted from the cumulative benefit costs beginning with the year in which the overpayment is established and subsequent years.

(2) If the benefit costs used to compute the basic tax rate are less than zero, they will be treated as if they were zero. In this case, the minimum overall tax rate an employer can be assigned will be the social tax rate.

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R994. Workforce Services, Unemployment Insurance.
R994-401. Payment of Benefits.
R994-401-101. Payment of Benefits.

Eligibility is established and benefits are paid on a weekly basis. The week starts on Sunday and ends on Saturday. Benefits do not become due until the end of the week for which benefits are claimed.

R994-401-201. Weekly Benefit Amount (WBA), Maximum Benefit Amount (MBA), and Monetary Determination.

(1) The formulas for determining the WBA and the MBA are found in Section 35A-4-401.

(2) The wages used to determine the WBA and the MBA are limited to wages reported to the Department by base period employers and verifiable wages paid by additional base period employers reported by the claimant in the initial claim. If an employer does not report wages and the claimant can verify wages from that employer, those wages may be included.

(3) The Department will send the claimant a "Notice of Monetary Determination." The notice will inform the claimant of the WBA, MBA, and the wages used to determine the claimant's monetary eligibility. The notice will also inform the claimant of his or her right to appeal the monetary determination. The claimant must notify the Department of any errors in the monetary determination. The time limit for notifying the Department of any errors or for appealing a monetary determination is the same as filing an appeal from an initial Department determination and is governed by rules R994-508-102 through R994-508-104.

(4) The monetary determination is based on the wages actually paid during the base period regardless of when the work was performed.

(5) To be monetarily eligible, a claimant must have earned base period wages of 1 and 1/2 times the high quarter wages and also meet a minimum dollar amount as established by the monetary base period wage requirement as defined in Section 35A-4-201.

(6) If a claimant is not monetarily eligible under the 1 and 1/2 times requirement in paragraph (5) of this section, but meets the monetary base period wage requirement, the claimant can still be eligible under this section if the claimant had earnings of at least five percent of the "monetary base period requirement for insured work," as defined in Subsection 35A-4-201(17), in each of at least 20 weeks during the base period. The earnings must be for work performed during each of the 20 weeks, all of which must fall within the base period, regardless of when the claimant received payment for the work. The requirement that the claimant show work and earnings in 20 weeks is only met if the claimant was paid wages as defined by the definition of "wages paid" in R994-401-202.

(7) The dollar amount for each of the 20 weeks required to establish eligibility will be determined by the monetary base period requirement for insured work in effect for the calendar year in which the initial claim is filed even if some or all of the 20 weeks are in a different calendar year.

(8) If the claimant is determined monetarily ineligible under the 1 and 1/2 times standard, it is the claimant's responsibility to show 20 weeks of covered employment which meet the minimum dollar amount. Acceptable proof of covered employment includes:

(a) appropriately dated check stubs issued by the employer;

(b) a written statement from the employer showing dates of employment and the amount of earnings for each week;

(c) time cards;

(d) canceled payroll checks; or

(e) personal or business records kept in the normal course of employment that would substantiate work and earnings.

(9) An employer's potential liability is based on its proportion of the claimant's base period wages. Employers will be informed of the wages used in determining a claimant's monetary entitlement, the employer's potential liability for benefits costs, and the right to and time limitation for requesting relief of charges or a correction to wages. A contributory employer is given a notice of all benefit costs each quarter and has the opportunity to report any errors or omissions to the Department at that time as well. The quarterly notices give the employer 30 days to advise the Department of any corrections, as provided in Subsection 35A-4-306(3).

(10) A party failing to file a timely appeal or protest may lose its right to have the monetary determination corrected. An untimely appeal or protest may be considered if the party had good cause, as defined in R994-508-104.

(11) The Department may revise the monetary determination after the expiration of the appeal time if there has been a mistake as to the facts or the revision would be substantial and required by fairness for a party who did not have access to the information and therefore could not have reasonably filed a timely appeal. The decision to revise a monetary determination after the appeal time has expired is discretionary with the Department.

R994-401-202. Wages Used to Determine Monetary Eligibility.

(1) "Wages paid" include those wages actually received by the worker and wages constructively paid, provided the employer's liability for payment has become unconditionally established. Wages are considered constructively paid, for the purposes of this section, on the earliest of: the next regular pay day in accordance with the employer's customary payment practices, the day required by contractual agreement, or as required by state law.

(2) Quarterly wages are all wages paid or constructively paid during a quarter regardless of when those wages are earned. Bonus or lump sum payments which do not meet the definition of vacation and severance pay in R994-405-701 et seq, made within the quarter which were not due on any specific day shall be treated as wages paid during the quarter in which the payment is made unless a request is made by the claimant for apportionment to the calendar quarters in which the remuneration was earned. Any such request must be received by the Department within ten days of the issuance of the monetary determination as provided by Subsection 35A-4-401(7).

R994-401-203. Retirement or Disability Retirement Income.

(1) A claimant's WBA is reduced by 100% of any retirement benefits, social security, pension, or disability retirement pay (referred to collectively in this section as "retirement benefits" or "retirement pay") received by the claimant. Except, for claims with an effective date on or after July 4, 2004, and on or before June 27, 2010 the reduction for social security retirement benefits will only be 50%. The payments must be:

(a) from a plan contributed to by a base-period employer. Payments made by the employer for whom the claimant did not work during the benefit year are not counted. Social security payments are counted if a base period employer contributed to social security even if the social security payment is not based on employment during the base period;

(b) based on prior employment and the claimant qualifies because of age, length of service, disability, or any combination of these criteria. Disability payments must be based, at least in part, by length of service. Savings plans such as a 401(k) or IRA should not be used to reduce the WBA Payments from workers' compensation for temporary disability, black lung disability income, and benefits from the Department of Veterans Affairs are not counted because the amount of the payment is

based on disability and not on length of service. Payments received as a spouse or beneficiary are not counted. That portion of retirement benefits payable to a claimant's former spouse is not counted if the paying entity pays the former spouse directly and it is pursuant to court order or a signed, stipulated agreement in accordance with the law;

(c) periodic and not made in a lump sum. Lump sum payments, even if drawn from the employer's contributions to a fund established for the purpose of retirement, are not treated as severance pay under Subsection 35A-4-405(7); and

(d) payable during the benefit year. A claimant's WBA is not reduced if the claimant is eligible for, but not receiving, retirement income. However, if the claimant subsequently receives a retroactive payment of retirement benefits which, if received during the time unemployment insurance claims were filed, would have resulted in a reduced payment, an overpayment will be established. The period of time the payment represents, not the time of the receipt, is the determining factor. An assumption that a claimant is entitled to receive a pension, even if correct, is not sufficient basis to recompute the WBA. However, if a claimant has applied for a pension and expects to be determined eligible for a specific amount attributable to weeks when Unemployment Insurance benefits are payable, and the claimant is only awaiting receipt of those payments, a reduction of the claimant's WBA will be made.

(2) A claimant who could be eligible for a retirement income, but does not apply until after the Unemployment Insurance benefits have been paid, will be at fault for any overpayment resulting from a retroactive payment of retirement benefits.

(3) The formula for recomputation of the MBA in the event a claimant begins receiving retirement income after the beginning of the benefit year is found in Subsection 35A-4-401(2)(d). The recomputation is effective with the first full calendar week in which the claimant is eligible to receive applicable retirement benefits or adjustments to those benefits.

R994-401-301. Partial Payments - General Definition.

(1) A claimant's earnings that are equal to or less than 30 percent of the WBA will not result in a reduction of the WBA. The claimant's gross weekly earnings over 30 percent of the WBA will be deducted dollar for dollar from the WBA in the week in which it was earned. A claimant who earns less than the WBA and files a claim may be credited with a waiting week, or paid a partial payment. A claimant who earns equal to or more than the WBA will not be credited with a waiting week nor be eligible for any partial payment for that week.

(2) All work and earnings must be reported on a weekly basis. For example, when an otherwise eligible claimant is required to report income from a farm, and is paid one day of holiday pay and then accepts a one-day temporary job, the work and earnings from all three sources must be reported.

(3) Earnings are reportable in the week the work is performed which may be different from the week payment is received. If a claimant receives payment for commission sales, or other periodic earnings, the income must be attributed to, and reported in, the week when the work was performed.

(4) Reportable earnings which a claimant must report on the weekly claim include any and all wages, remuneration, or compensation for services even if the employer is not required to pay contributions on these wages.

R994-401-302. Liability of Part-time Concurrent Reimbursable Employers When There is No Job Separation from the Part-Time Reimbursable Employer.

(1) If the claimant worked for two or more employers during the base period and is separated from one or more of these employers, but continues in the regular part-time work with a reimbursable employer, the nonseparating part-time employer will not be liable for benefit costs provided;

(a) the claimant earned wages from a nonseparating employer within seven days prior to the date when the claim was filed,

(b) the claimant is not working on an "on call" basis,

(c) the number of hours of work have not been reduced, and

(d) the nonseparating employer makes a request that it not be held liable for benefit costs within ten days of the first notification of the employer's potential liability.

(2) The claimant's WBA will be determined on the basis of the total base period employment and earnings, however, earnings from the part-time reimbursable employer will be excluded from the calculation of the MBA.

(3) If the claimant is later separated from this employer within the benefit year or the claimant's hours of work are reduced below the customary number of hours worked during the base period, the reimbursable employer will be liable to pay the proportionate amount of benefit payments paid thereafter. A new monetary determination can also be made at the request of the claimant and would include all base period wages. The effective date of the revised monetary determination will be the first day of the week in which the request is made. See R994-307-101 for contributory employers.

R994-401-303. Income The Claimant must Report While Receiving Unemployment Benefits.

(1) All payments whether an hourly wage, salary, or commission paid for the performance of any service shall be reportable unless specifically identified as an exception in R994-401-304 or R994-401-305.

(2) Gratuities or tips paid directly to an employee by a customer or the employer for a service provided are reportable.

R994-401-304. Income Which May Be Reportable Under Certain Circumstances.

(1) A bonus paid as a direct result of past performance of service for a specific period prior to the separation is not reportable with respect to any week after the separation. A bonus is a payment given to an employee in addition to usual wages. If the payment is made contingent upon termination it will be considered a severance payment. Payments given at the time of separation that are based on years of service will also be considered severance payments. Severance payments are reportable in accordance with Subsection 35A-4-405(7).

(2) If a claimant is hired to start working on a certain day and the work is not available as of that date but the employer puts the claimant on the payroll as of that date, the claimant is considered employed and those wages are reportable.

(3) Any payment made in consideration of training that is required by the employer is considered to be reportable income unless shown to be:

(a) expenses necessary for school, for example, tuition, fees, and books;

(b) travel expenses;

(c) actual costs for room and board where costs are created as a necessary expense for the schooling; and

(d) the payments are exempt from income tax liability.

(4) If a claimant is being paid under a contract for the express purpose of being available to an employer, and there are limits placed upon the individual either as to how much earnings, if any, may be earned while receiving these payments, or on the time the individual must hold himself or herself available to the employer, the payment is considered reportable income.

(5) Any payments in kind are reportable, including the cash value for meals, lodging, or other payment unless the meals and lodging are excluded from the definition of wages by the

Internal Revenue Service as under the following conditions:

(a) Meals that are furnished:

(i) on the business premises of the employer;

(ii) for the convenience of the employer;

(iii) without charge for substantial non-compensatory business reasons, not for the purpose of additional compensation. Substantial noncompensatory business reasons will be limited to meals which are provided:

(A) to have employees available for emergency call;

(B) to have employees with restricted lunch periods;

(C) because adequate eating facilities are not otherwise available.

(b) Lodging that is furnished:

(i) on the business premises of the employer;

(ii) as a condition of employment;

(iii) for the convenience of the employer, for example, to have an employee available for call at any time.

(6) Pensions that do not meet the criteria in R994-401-203 are not reportable income.

R994-401-305. Income a Claimant is not Required to Report While Receiving Unemployment Benefits.

Payments which are received for reasons other than the performance of a service are not reportable income. Some examples are:

(1) Payments from corporate stocks and bonds;

(2) Public service in lieu of payment of fines;

(3) Fees paid for jury duty or as witness fees will be considered reimbursement for expenses;

(4) Amounts paid specifically, either as an advance or reimbursement, for bona fide, ordinary, and necessary expenses incurred or reasonably expected to be incurred in the business of the employer. If an accounting by the employee is not required by the employer for actual expenses, the Department shall not require itemization;

(5) Payments specifically identifiable as not being provided for the rendering of service will not be considered wages including grants, public or private assistance or other support payments;

(6) Money or other considerations which are normally provided as a matter of course to immediate family members;

(7) Income from investments;

(8) Disability or permanent impairment awards under the Workers' Compensation Act; and,

(9) Payment attributable to the value of any equipment owned by the claimant and necessary for the performance of the job. If there is no contract of hire or the contract does not delineate what portion is payable for the equipment, the Department will determine the claimant's wages based on the prevailing wage for similar work under comparable conditions.

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	35A-4-401(3)
	35A-4-401(6)

R994. Workforce Services, Unemployment Insurance.
R994-402. Extended Benefits.
R994-402-201. General Definition.

Extended benefits (EB) are paid during certain periods of high unemployment within a state. The maximum benefit amount for a claimant is one-half of the amount of his original regular claim up to a maximum of 13 times the weekly benefit amount. All extended benefits stop when the unemployment rate drops below a certain level. When the claimant has been unable to find work for an extended period of time and has exhausted all rights to regular benefits, extended benefits may be paid providing the state is in an extended benefit period as defined by Subsection 35A-4-402(7). A claimant does not have to have additional wage credits to qualify for extended benefits as the original claim is extended with the same weekly benefit amount. If the claimant does have sufficient additional wage credits and can qualify for a new regular claim, extended benefits are not allowed. There is no waiting week on an extended benefit claim. Availability requirements for extended benefits are different from those for regular claimants. The EB claimant must have no occupational restrictions, must reduce wage expectations and increase his work search efforts beyond those expected of regular benefit claimants. The only exception to this requirement is for claimants who have Department approval while attending school.

R994-402-202. Federal Requirements for Extended Benefits.

(1) Notwithstanding the provisions of the Utah Employment Security Act concerning regular benefits, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the Department finds that during such period:

(a) he failed to accept any offer of suitable work or failed to apply for any suitable work to which he was referred by the Department; or

(b) he failed to actively engage in seeking work as prescribed under Sections R994-405-305 and R994-403-118.

(2) Any individual who has been found ineligible for extended benefits by reason of the provisions in Subsection R994-402-202(1) shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than 6 times the extended weekly benefit amount.

(3) For the purpose of extended benefits, the term "suitable work" means with respect to any individual, any work which is within such individual's capabilities, provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:

(a) the individual's extended weekly benefit amount, plus

(b) the amount, if any, of supplemental unemployment benefits payable to such individual for such week; and further,

(c) pays wages not less than the higher of:

(i) the minimum wage provided by Title 29 U.S. Code Section 216(b) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(ii) the applicable state or local minimum wage;

(4) Notwithstanding R994-402-202(3), no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described in that subsection if:

(a) the position was not offered to such individual in writing and was not listed with the Department of Workforce Services;

(b) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of R994-402-202(3);

(c) the individual furnishes satisfactory evidence to the Department that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) without regard to the definition specified by R994-402-202(3).

(5) No work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code and set forth herein under Subsection 35A-4-405(3).

(6) For the purpose of Subsection R994-402-202(1)(b), an individual shall be treated as actively engaged in seeking work during any week if:

(a) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

(b) the individual furnishes tangible evidence that he has engaged in such effort during such week.

(7) The Department of Workforce Services shall refer any claimant entitled to extended benefits to any suitable work which meets the criteria prescribed in R994-402-203(3).

(8) An individual who has been denied benefits under the provisions of Section 35A-4-405(2)(b) shall not be eligible to receive extended benefits until after the end of the 52 week denial period and is then otherwise eligible for extended benefits and has subsequent to the date of such disqualification performed services in bona fide covered employment and earned wages for such services equal to at least six times the individual's weekly benefit amount.

(9)(a) Except as provided in subparagraph (9)(b) of this rule, payment of extended compensation shall not be made to any individual if he is filing against Utah from any other state under the interstate benefit payment plan, and an extended benefit period is not in effect that week in that state.

(b) Subparagraph (9)(a) of this rule shall not apply to the first two weeks for which extended compensation is payable to the individual.

R994-402-203. Elements to Qualify for Extended Benefits.

To be eligible for extended benefits the claimant must:

(1) exhaust regular benefits as defined by Subsection 35A-4-402(7)(h) or his benefit year must have ended after the beginning of the EB period;

(2) be ineligible for a regular claim in Utah or any other state or under any federal unemployment program;

(3) file for extended benefits in accordance with instructions;

(4) meet federal requirements for availability and work search; and

(5) accept suitable work which is offered in writing.

R994-402-204. Suitable Work.

(1) Suitable work for EB claimants includes work:

(a) in any occupation within the claimant's capabilities unless he can show that his prospects for obtaining work in his regular occupation are good, as defined in Subsection R994-402-202(3)(d)(iii); and

(b) paying at least the federal or state minimum wage provided the gross average pay exceeds the claimant's weekly benefit amount plus any supplemental unemployment benefit.

(2) Suitable work for EB claimants does not include work:

(a) available as the result of a strike or labor dispute;

(b) having wages, hours or other conditions of the work which are substantially less favorable to the claimant than those prevailing for similar work in the locality (for example, a skilled

claimant, such as a carpenter, may be required to take a job paying the minimum wage in another occupation, but he does not have to take a carpenter job paying minimum wage if that wage is substantially less than the prevailing wage for carpenter work in his locality);

(c) which requires the claimant as a condition of being employed to join a union or to resign from or refrain from joining any bona fide labor organization;

(d) requiring modifications of other conditions of work which would not be considered suitable for a regular claimant, such as unsafe working conditions, work requiring a move or travel beyond normal commuting distance, etc.; except with regard to the type of occupation and the wages, standards for determining the suitability of work are the same for EB claimants as for regular claimants.

R994-402-205. Good Prospects.

When a claimant has a definite assurance of full-time employment in his customary occupation to begin within four weeks he is considered to have good prospects. He must continue to seek work, but it is not necessary to seek or accept employment consistent with the definition of suitable work for EB claimants. He may restrict his availability to occupations and conditions of employment as permitted for regular claimants.

R994-402-206. Position Offered in Writing.

A position is considered "offered in writing" if it is listed with the Department and the claimant is referred or offered a referral by the Department even if the claimant is given the referral orally. If an employer makes a verbal offer of work and the job is not listed with the Department, the provisions of Section 35A-4-405(3) may apply.

R994-402-207. Systematic and Sustained Work Search.

(1) A systematic and sustained work search means that the claimant must register for work with the Department and contact at least 5 employers including 3 in-person contacts each week, unless advised otherwise by an authorized Department representative. The claimant should have a realistic plan for finding employment. All of the employer contacts cannot be made on the same day except in circumstances where a work search on several days of the week is impractical. Work search contacts must be with employers not previously contacted. A claimant may not argue that in-person employer contacts are limited because of traditional methods of seeking work in a particular occupation or because of a limited number of employers in an occupation because the claimant may not limit himself to any particular occupation.

(2) There is no good cause for failure to make a systematic and sustained work search after the claimant has received instructions with regard to the required work search. If the claimant is ill or otherwise unable to seek work, but files a claim for benefits after being instructed with regard to work search requirements, benefits must be denied under Section 35A-4-402 and not under Section 35A-4-403(1)(c) unless the claimant was on jury duty. Benefits may be allowed if the claimant failed to make the required work search because he was on jury duty and benefits would have been allowed under similar circumstances to a claimant for regular benefits. If the claimant made the required work search but was unable to work for more than 24 consecutive hours during normal working days, he may not be eligible in accordance with Sections R994-403-116 and R994-403-117.

(3) If the claimant has obtained part-time work, he is still required to make a work search on those days when he is not working. The number of contacts may be reduced if the amount of time working is substantial.

R994-402-208. Filing Requirements.

Extended benefit claimants must report information as requested on special EB claim forms. If a claim form is submitted with information that clearly shows the claimant did not intend to receive benefits, but was merely providing information, benefits will be denied under Subsection 35A-4-403(1)(a) rather than under EB provisions which require an indefinite disqualification under the federal regulations.

R994-402-209. Burden of Proof.

The claimant has the responsibility to keep records of all employers contacted in search of work including the name and address of the employer, the date of the contact, the person contacted, the result of the contact, and the type of work sought, etc. Failure to keep such records or provide such information will result in a conclusion that a work search was not made unless other convincing evidence is provided.

R994-402-210. Period of Disqualification.

A claimant who fails to accept an offer of suitable work or fails to actively seek work must be denied benefits for the week in which such failure occurs and for the following weeks until he has had employment during at least four subsequent weeks and earned at least six times his weekly benefit amount. The earnings do not have to be in consecutive weeks, but must be bona fide employment. It is not necessary for the work to be in "covered" employment but it may not be self-employment.

R994-402-211. Requalification Requirement Following 5b2 Disqualification.

All disqualifications issued under the state provisions of the Employment Security Act continue to be in effect as provided by those laws on EB claims. In addition, a claimant who has been denied benefits under Subsection 35A-4-405(2)(b) is not eligible to receive extended benefits until he has returned to bona fide covered employment and earned at least six times his weekly benefit amount in employment subsequent to the disqualifying separation, even if the disqualification period has ended.

R994-402-212. Out of State Claimants.

Claimants filing EB claims against Utah who are living in states which are not in an EB period will be entitled to receive only two weeks of extended benefits. The amount of the payment, whether it is a full or partial payment, is immaterial. When a payment of any amount has been made for each of two weeks, whether or not consecutive, no further payments can be made.

R994-402-213. Overpayments.

Overpayments established on extended benefit payments are collectible in accordance with the provisions of Subsections 35A-4-406(4) and 35A-4-406(5).

R994-402-601. Notice.

Immediately after it has been determined that an extended benefit period will become effective or will end in the state, the Department of Workforce Services shall make public announcement and give personal notice calculated to reach the largest practicable number of interested persons within the state. Such notice at the beginning of an extended benefit period will state the first date on which potential claimants may file a claim for and become eligible for extended benefit payments, which group of claimants may qualify for extended benefits, what action must be taken to protect their benefit rights, and the date by which claimants must file to qualify at the beginning of the extended benefit period.

R994-402-602. Effective Date of EB Claim.

Claims for extended benefit payments will be filed on forms prescribed by the Department. The effective date of claims for extended benefits shall be the Sunday of the first week during which extended benefits are payable in accordance with Subsection 35A-4-402(7) provided the claimant has filed as instructed. The effective date of the EB claim will be backdated under Subsection 35A-4-403(1)(a) up to two weeks for claimants who were not given personal notice of the extended benefit period. The Department may further extend the time during which claims for extended benefits may be backdated upon a showing of good cause under Subsections 35A-4-403(1) and 35A-4-401(1)(b).

KEY: unemployment compensation, employee recruitment, extended benefits
1987 35A-4-402(2)
Notice of Continuation May 17, 2007 35A-4-402(6)(a)

R994. Workforce Services, Unemployment Insurance.
R994-404. Payments Following Workers' Compensation.
R994-404-101. Claimants Who Qualify for an Adjustment to the Base Period.

(1) A claimant who was off work due to a work related illness or injury may qualify for an adjusted base period if all of the following elements are satisfied:

(a) the claimant must have received temporary total disability (TTD) compensation for the illness or injury under the workers' compensation or occupational disease laws of this state or under federal law;

(b) the claimant must have received TTD for at least seven weeks during the normal base period. The weeks need not be consecutive;

(c) the initial claim for unemployment insurance benefits must have been filed no later than 90 calendar days after the claimant was released by his or her health care provider to return to full-time work. This does not include release to limited or light duty work. The effective date of the eligible claim must be within the 90 days regardless of the date on which the claimant contacts the Department to file a claim. For example, if the 90th day falls on Wednesday and the claimant files a claim on Thursday, the effective date of the claim would be Sunday of that calendar week and would fall within the 90 day time limitation;

(d) the initial claim for unemployment insurance benefits must have been filed within 36 months of the week the covered injury or illness occurred.

(2) Wages previously used to establish a benefit year cannot be re-used.

R994-404-102. Good Cause for Late Filing.

(1) Good cause for not filing within the 90 day period can be established if:

(a) the claimant contested the release to work date by filing for a hearing with the appropriate administrative agency and there was no substantial delay between the date of the decision of the agency and the filing of the claim;

(b) the delay in filing was due to circumstances beyond the claimant's control;

(c) the claimant delayed filing due to circumstances which were compelling and reasonable; or

(d) the claimant returned to work immediately after receiving a release from his health care provider and there was no substantial delay between the time the employment ended and the filing of the claim.

(2) A lack of knowledge about the wage freeze provisions due to the claimant's failure to inquire or the employer's failure to provide information does not establish good cause for failure to file within the 90 day period.

R994-404-103. The Effective Date of the Claim.

The effective date of the claim for benefits shall be the Sunday of the week in which the claimant makes application for benefits. Although the Act provides for the use of an alternate benefit year, it does not extend coverage to the weeks that were not filed timely in accordance with provisions of Subsection 35A-4-403(1)(a).

R994-404-104. Adjustment of the Base Period.

The claimant can file a claim using wages paid during the first four of the last five completed calendar quarters immediately preceding the week the claim was filed (normal base period) or the first four of the last five completed calendar quarters prior to the date the claimant left work due to the illness or injury.

KEY: unemployment compensation, workers' compensation
September 29, 2005 35A-4-404

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R994. Workforce Services, Unemployment Insurance.
R994-406. Fraud, Fault and Nonfault Overpayments.
R994-406-101. Claimant Responsible for Providing Complete, Correct Information.

(1) The claimant is responsible for providing all of the information requested in written documents as well as any verbal request from a Department representative. The claimant is also responsible for following all Department instructions.

(2) The claimant can not shift responsibility for providing correct information to another person such as a spouse, parent, or friend. The claimant is responsible for all information required on his or her claim.

R994-406-201. Nonfault Overpayments.

(1) If the claimant followed all instructions and provided complete and correct information as required in R994-406-101(1) and then received benefits to which he or she was not entitled due to an error made by the Department or an employer, the claimant is not at fault in the creation of the overpayment.

(2) The claimant is not liable to repay overpayments created through no fault of the claimant except that the sum will be deducted from any future benefits.

R994-406-202. Method of Repayment of Nonfault Overpayments.

Even though the claimant is without fault in the creation of the overpayment, 50% of the claimant's weekly benefit amount will be deducted from any future benefits payable to him or her until the overpayment is repaid. No billings will be made and no collection procedures will be initiated.

R994-406-203. Waiver of Recovery of Nonfault Overpayments.

(1) The Department may waive recovery of a nonfault overpayment if the claimant:

(a) requests a waiver within 10 days of notification of the opportunity to request a waiver, within 10 days of the first offset of benefits following a reopening, or upon a showing of a significant change in the claimant's financial circumstances. Good cause will be considered if the claimant can show the failure to request a waiver within these time limitations was due to circumstances which were beyond the claimant's control or were compelling and reasonable; and

(b) can show that recovery of the 50% offset as provided in R994-406-202 would render the claimant unable to pay for the basic needs of survival for his or her immediate family, dependents and other household members.

(i) The claimant must provide verification of financial resources and the social security numbers of family members, dependents and household members.

(ii) Before granting the waiver, the Department must consider all potential financial resources of the claimant, the claimant's family, dependents and other household members.

(iii) "Unable to pay for the basic needs of survival" means "economically disadvantaged" and is defined as 70% of the Lower Living Standard Income Level (LLSIL). Therefore, if the claimant's total family resources in relation to family size are not in excess of 70% of the LLSIL, the waiver will be granted provided the economic circumstances are not expected to change within the next 90 days. Individual expenses will not be considered. Available financial resources, current income, and anticipated income will be included and averaged for the three months.

(2) Any nonfault overpayment outstanding at the time the request is granted is forgiven and the claimant has no further repayment obligation.

(3) A waiver cannot be granted retroactively for any payments made against an overpayment or any of the overpayment which has already been offset except if the offset was made pending a decision on a timely waiver request which is ultimately granted.

R994-406-301. Claimant Fault.

(1) Elements of Fault.

Fault is established if all three of the following elements are present, or as provided in subsection (3) and (4) of this section. If one or more elements cannot be established, the overpayment does not fall under the provisions of Subsection 35A-4-405(5).

(a) Materiality.

Benefits were paid to which the claimant was not entitled.

(b) Control.

Benefits were paid based on incorrect information or an absence of information which the claimant reasonably could have provided.

(c) Knowledge.

The claimant had sufficient notice that the information might be reportable.

(2) Claimant Responsibility.

The claimant is responsible for providing all of the information requested by the Department regarding his or her Unemployment Insurance claim. If the claimant has any questions about his or her eligibility for unemployment benefits, or the Department's instructions, the claimant must ask the Department for clarification before certifying to eligibility. If the claimant fails to obtain clarification, he or she will be at fault in any resulting overpayment.

(3) Receipt of Settlement or Back-Pay.

(a) A claimant is "at fault" for the resulting overpayment if he or she fails to advise the Department that grievance procedures are being pursued which may result in payment of wages for weeks during which he or she claims benefits.

(b) If the claimant advises the Department prior to receiving a settlement that he or she has filed a grievance with the employer and makes an assignment directing the employer to pay to the Department that portion of the settlement equivalent to the amount of unemployment compensation received, the claimant will not be "at fault" if an overpayment is created due to payment of wages attributable to weeks for which the claimant received benefits. If the grievance is resolved in favor of the claimant and the employer was properly notified of the wage assignment, the employer is liable to immediately reimburse the Department upon settlement of the grievance. If reimbursement is not made to the Department consistent with the provisions of the assignment, collection procedures will be initiated against the employer.

(c) If the claimant refuses to make an assignment of the wages claimed in a grievance proceeding, benefits will be withheld on the basis that the claimant is not unemployed because of anticipated receipt of wages. In this case, the claimant should file weekly claims and if back wages are not received when the grievance is resolved, benefits will be paid for weeks properly claimed provided the claimant is otherwise eligible.

(4) Receipt of Retirement Income.

Notwithstanding any other provision of this section, a claimant who could be eligible for retirement income but does not apply until after unemployment benefits have been paid, is "at fault" for any overpayment resulting from a retroactive payment of retirement benefits. See R994-401-203(1)(d) and (2)

R994-406-302. Repayment and Collection of Fault Overpayments.

(1) When the claimant has been determined to be "at fault" in the creation of an overpayment, the overpayment must be repaid. If the claimant is otherwise eligible and files for additional benefits during the same or any subsequent benefit

year, 100% of the benefit payment to which the claimant is entitled will be used to reduce the overpayment.

(2) Discretion for Repayment.

(a) Full restitution is required for all fault overpayments. However, legal collection proceedings may be held in abeyance at the Department's discretion and the overpayment will be deducted from future benefits payable during the current or subsequent benefit years. Discretion will only be exercised if the Department or the employer share fault in the creation of the overpayment but it is determined the claimant was more at fault under the provisions of rule R994-403-119e.

(3) Collection Procedures.

(a) The Department will send an initial overpayment notice on all outstanding fault or fraud overpayments. If, after 15 days, the claimant does not either make payment in full or enter into an installment payment agreement as provided in subsection (4) below the account is considered delinquent and the claimant is notified that a warrant will be filed unless a payment is received or an installment agreement entered into within 15 days. However, there may be other circumstances under which a warrant may be filed on any outstanding overpayment. A warrant attaches a lien to any personal or real property and establishes a judgment that is collectible under Utah Rules of Civil Procedure.

(b) All outstanding overpayments on which a lien has been filed are reported to the State Division of Finance for collection whereby any refunds due to the claimant from State income tax or any such rebates, refunds, or other amounts owed by the state and subject to legal attachment may be applied against the overpayment.

(c) No warrant will be issued on fault overpayments provided the claimant entered into an installment agreement within 30 days of the issuance of the initial overpayment notice and all payments are made in a timely manner in accordance with the installment agreement.

(4) Installment Payments.

(a) If repayment in full has not been made within 30 days of the initial overpayment notice or the claimant has not voluntarily entered into an installment agreement, the Department will allow the claimant to pay in installments by notifying the claimant in writing of the minimum installment payment which the claimant is required to make. If the claimant is unable to make the minimum installment payments, the claimant may request a review within ten days of the date written notice is mailed.

(b) Whether voluntarily or involuntary, installment payments will be established as follows:

If the entire overpayment is:

(i) $3,000 or less, the monthly installment payment is equal to 50% of claimant's weekly benefit entitlement

(ii) $3,001 to 5,000, the monthly installment payment is equal to 100% of claimant's weekly benefit entitlement

(iii) $5,001 to 10,000 the monthly installment payment is equal to 125% of claimant's weekly benefit entitlement

(iv) $10,001 or more the monthly installment payment is equal to 150% of claimant's weekly benefit entitlement

(c) Installment agreements will not be approved in amounts less than those established above except in cases where the claimant meets the requirements of economically disadvantaged as defined in R994-406-204(1)(b)(iii). On a periodic basis the Department may send notice to the claimant requesting verification of his or her disadvantaged status. If the claimant fails to provide the verification as requested, or no longer qualifies for a lesser installment payment, the Department will send the claimant a new monthly payment amount. The new installment payment amount may be in accordance with the percentages in subparagraph (b) or a lesser amount depending on the information received from the claimant.

(d) Minimum monthly installment agreement payments must be received by the Department by the last day of each month. Payments not made timely are considered delinquent.

(5) Offsetting overpayments with subsequent eligible weeks.

If an overpayment is set up under Section R994-406-201 or R994-406-301 for weeks paid on a claim, the claimant may repay the overpayment by filing for open weeks in the same benefit year after the claim has been exhausted, provided the claimant is otherwise eligible. 100% of the compensation amount for each eligible week claimed will be credited to the established overpayment(s) up to the total amount of the outstanding overpayment balance owed to the Department.

R994-406-401. Claimant Fraud.

(1) All three elements of fraud must be proved to establish an intentional misrepresentation sufficient to constitute fraud. See section 35A-4-405(5). The three elements are:

(a) Materiality.

(i) Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining;

(A) any benefit payment to which the claimant is not entitled, or

(B) waiting week credit which results in a benefit payment to which the claimant is not entitled.

(ii) A benefit payment received by fraud may include an amount as small as one dollar over the amount a claimant was entitled to receive.

(b) Knowledge.

A claimant must have known or should have known the information submitted to the Department was incorrect or that he or she failed to provide information required by the Department. The claimant does NOT have to know that the information will result in a denial of benefits or a reduction of the benefit amount. Knowledge can also be established when a claimant recklessly makes representations knowing he or she has insufficient information upon which to base such representations. A claimant has an obligation to read material provided by the Department and to ask a Department representative if he or she has a question about what information to report.

(c) Willfulness.

Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions. If a claimant delegates the responsibility to personally provide information or allows access to his or her Personal Identification Number (PIN) so that someone else may file a claim, the claimant is responsible for the information provided or omitted by the other person, even if the claimant had no advance knowledge that the information provided was false or important information was omitted. The claimant is responsible for securing the debit card issued by the Department (EPPICard or card). Securing the card means that the card and the PIN are never kept together, the card is kept in a secure location, and the PIN is not known by anyone but the claimant. If a claimant loses his or her card, the claimant must report the loss of the card to the Department and change his or her PIN immediately even if the claimant is not currently filing weekly claims for benefits. If the claimant fails to report the loss of the card and change the PIN immediately, or fails to secure the card, the claimant will be liable for claims made and money removed from the card.

(2) The Department relies primarily on information provided by the claimant when paying unemployment insurance benefits. Fraud penalties do not apply if the overpayment was the result of an inadvertent error. Fraud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits.

(3) The absence of an admission or direct proof of intent

to defraud does not prevent a finding of fraud.

R994-406-402. Burden and Standard of Proof in Fraud Cases.

(1) The Department has the burden of proving each element of fraud.

(2) The elements of fraud must be established by clear and convincing evidence. There does not have to be an admission or direct proof of intent.

R994-406-403. Fraud Disqualification and Penalty.

(1) Penalty Cannot be Modified.

The Department has no authority to reduce or otherwise modify the period of disqualification or the monetary penalties imposed by statute. The Department cannot exercise repayment discretion for fraud overpayments and these amounts are subject to all collection procedures.

(2) Week of Fraud.

(a) A "week of fraud" shall include each week any benefits were received due to fraud. The only exception to this is if the fraud occurred during the waiting week causing the next eligible week to become the new waiting week. In that case, the new waiting week will not be considered as a week of fraud for disqualification purposes. However, because the new waiting week is a non-payable week, any benefits received during that week will be assessed as an overpayment and because the overpayment was as a result of fraud, a fraud penalty will also be assessed.

(b) If a claimant commits a fraudulent act during one week, and benefits are paid in later weeks which would not have been paid but for the original fraud, each week wherein benefits were paid is a week of fraud subject to an overpayment determination, a penalty and a disqualification period.

(c) If the only week of fraud was the waiting week and no benefit payments were made, there will be no disqualification period.

(3) Disqualification Period.

(a) The claimant is ineligible for benefits for a period of 13 weeks for the first week of fraud. For each additional week of fraud, the claimant will be ineligible for benefits for an additional six weeks. The total number of weeks of disqualification will not exceed 49 weeks for each fraud determination. The Department will issue a fraud determination on all weeks of fraud the Department knows about at the time of the determination.

(b) The disqualification period begins the Sunday following the date the Department fraud determination is made.

(4) Overpayment and Penalty.

(a) For any fraud decision where the initial fraud determination was issued on or before June 30, 2004, the claimant shall repay to the division an overpayment which is equal to the amount of the benefits actually received. In addition, a claimant shall be required to repay, as a civil penalty, the amount of benefits received as a direct result of fraud. "Benefits actually received" means the benefits paid or constructively paid by the Department. Constructively paid refers to benefits used to reduce or off-set an overpayment, deducted at the request of the claimant to pay income taxes, or used as a payment to the Office of Recovery Services for child support obligations or other payments as required by law. For example: The claimant has a weekly benefit amount of $100 and reports no earnings during a week when he or she actually had $50 in reportable earnings. Because a claimant may earn up to 30% of his or her weekly benefit amount with no deduction, the claimant was entitled to receive $80 for that week and was thus overpaid the amount of $20. If the elements of fraud are established, the claimant is disqualified during that week of fraud and all benefits paid for that week are considered an overpayment. The claimant would also be liable to repay, as a civil penalty, the $20 received by direct reason of fraud. Therefore, in this example, the claimant would be liable for a total overpayment and penalty of $120, an amount that would have to be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period.

(b) For all fraud decisions where the initial department determination is issued on or after July 1, 2004, the claimant shall repay to the division the overpayment and, as a civil penalty, an amount equal to the overpayment. The overpayment in this subparagraph is the amount of benefits the claimant received by direct reason of fraud. In the example in subsection (3)(a) of this section, the overpayment would be $20 and the penalty would be $20 for a total due of $40. The overpayment and penalty would have to be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period.

(5) Additional Penalties. Criminal prosecution of fraud may be pursued as provided by Subsection 35A-4-104(1) in addition to the administrative penalties.

R994-406-404. Repayment and Collection of Fraud Overpayments and Penalties.

Fraud overpayments and penalties will be collected in accordance with rule R994-406-302 except that a warrant will always issue in fraud overpayments even if the claimant enters into an installment agreement and is current in the monthly payments. Fraud overpayments and penalties may also be collected by civil action or warrant as provided by Subsections 35A-4-305(3) and 35A-4-305(5), respectively. The Department may use unemployment insurance benefits payable for weeks prior to the penalty period to reduce overpayments and penalties.

R994-406-405. Future Eligibility in Fraud Cases.

A claimant is ineligible for unemployment benefits or waiting week credit after a disqualification for fraud until any overpayment and penalty established in conjunction with the disqualification has been satisfied in full. Wage credits earned by the claimant cannot be used to pay benefits or transferred to another state until the overpayment and penalty are satisfied. An outstanding overpayment or penalty may NOT be satisfied by deductions from benefit payments for weeks claimed after the disqualification period ends, as a claimant is precluded from receiving any future benefits or waiting week credit as long as there is an outstanding fraud overpayment. However, a claimant may be permitted to file a new claim to preserve a particular benefit year. An overpayment is considered satisfied as of the beginning of the week during which payment is received by the Department. Benefits will be allowed as of the effective date of the new claim if a claimant repays the overpayment and penalty within seven days of the date the notice of the outstanding overpayment and penalty is mailed.

R994-406-406. Agency Error in Determining Disqualification Periods.

If the division has sufficient evidence to assess a disqualification prior to paying benefits, but fails to take action, a fraud disqualification will not be assessed even if the claimant provided false or information or deliberate omissions. The resulting overpayment will be assessed under the provisions of Subsections 35A-4-406(4)(b) or 35A-4-406(5)(a).

KEY: overpayments, unemployment compensation

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