

**R23. Administrative Services, Facilities Construction and Management.**

**R23-2. Procurement of Architect-Engineer Services.**

**R23-2-1. Purpose and Authority.**

(1) In accordance with Subsection 63G-6-208(2), this rule establishes procedures for the procurement of architect-engineer services by the Division.

(2) The statutory provisions governing the procurement of architect-engineer services by the Division are contained in Title 63G, Chapter 6 and Title 63A, Chapter 5.

**R23-2-2. Definitions.**

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63G-6-103.

(2) The following additional terms are defined for this rule.

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

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

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

(d) "Public Notice" means the notice that is publicized pursuant to this rule to notify architects or engineers of Solicitations.

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

(f) "Solicitations" means all documents, whether attached or incorporated by reference, used for soliciting information from architects or engineers seeking to provide architect-engineer services to the Division.

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

(h) "Using Agency" means any state agency or any political subdivision of the state which utilizes the services procured under this rule.

**R23-2-3. Register of Architectural or Engineering Firms.**

(1) Architects or engineers interested in being considered for architect-engineer services procured by the Division under Section R23-2-19 may submit an annual statement of qualifications and performance data.

(2) The Division shall maintain a file of information submitted under Subsection (1).

(3) Except for services procured under Sections R23-2-17 and R23-2-19, an updated or project specific statement of qualifications shall generally be required in order to be considered in procurements of services for a specific project as provided in the solicitation.

**R23-2-4. Public Notice of Solicitations.**

The Division shall publicize its needs for architect-engineer services in the manner provided in Subsection R23-1-5(2). The public notice shall include:

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

(2) directions for obtaining the solicitation;

(3) a brief description of the project; and

(4) notice of any mandatory pre-submittal meetings.

**R23-2-5. Submittal Preparation Time.**

Submittal 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 submittals by the Division. In each case, the submittal preparation time shall be set to provide architects or engineers a reasonable time to prepare their submittals. The time between the first publication of the public notice and the earlier of the first required submittal of information or any mandatory 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.

**R23-2-6. Form of Submittal.**

The solicitation may provide for or limit the form of submittals, including any forms for that purpose.

**R23-2-7. Addenda to Solicitations.**

Addenda to the solicitation 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 until the selection of an architect or engineer is completed.

**R23-2-8. Modification or Withdrawal of Submittals.**

(1) Submittals may be modified prior to the due dates established in the solicitation.

(2) Architects or engineers may withdraw from consideration until a contract is executed.

**R23-2-9. Late Proposals and Late Modifications.**

Except for modifications allowed pursuant to negotiation, any proposal or modification received at the location designated for receipt of submittals after the due dates established in the Solicitation shall be deemed to be late and shall not be considered unless no other submittals are received.

**R23-2-10. Receipt and Registration of Submittals.**

After the date established for the first submittal of information, a register of submitting architects or engineers shall be prepared and open to public inspection. Prior to award, submittals and modifications shall be shown only to procurement officials and other persons involved with the review and selection process, who shall adhere to the requirements of GRAMA and this rule.

**R23-2-11. Disclosure of Submittals, Performance Evaluations, and References.**

(1) Except as provided in this rule, submittals shall be open to public inspection after notice of the selection results.

(2) The classification of records as protected and the treatment of such records shall be as provided in Section R23-1-35.

(3) 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 Subsection 63G-2-305(6) and shall be disclosed only to those persons involved with the performance evaluation, the architect or engineer that the information addresses and persons involved with the review and selection of submittals. 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 architect or engineer 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.

**R23-2-12. Selection Committee.**

(1) The Board delegates to the director the authority to appoint a selection committee, which may include representatives of the Board, the Division, the using agency, and architects or engineers and the general public.

(2) Each member of the selection committee shall certify

as to his lack of conflicts of interest.

**R23-2-13. Evaluation and Ranking.**

(1) The selection committee shall evaluate the relative competence and qualifications of architects or engineers who submit the required information.

(2) The evaluation shall be based on evaluation factors set forth in the solicitation and may include:

- (a) past performance and references;
- (b) qualifications and experience of the firm and key individuals;
- (c) plans for managing and avoiding project risks;
- (d) interviews; and
- (e) other factors that indicate the relevant competence and qualifications of the architect or engineer and the architect or engineer's ability to satisfactorily provide the desired services.

(3) The evaluation may be conducted in two phases with the first phase identifying no less than the top three ranked firms to be evaluated further in the second phase unless less than three firms are competing for the contract.

(4) Numerical rating systems may be used but are not required.

(5) The evaluation committee shall rank at least the top three firms.

**R23-2-14. Publicizing Selections.**

(1) Notice. After the selection of the successful firm, notice of the selection shall be available in the principal office of the Division in Salt Lake City, Utah and may be available on the Internet.

(2) Information Disclosed. The following shall be disclosed with the notice of selection:

- (a) the ranking of the firms;
- (b) the names of the selection committee members;
- (c) 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
- (d) the written justification statement supporting the selection.

(3) 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:

- (a) the names of individual selection committee scorers in relation to their individual scores or rankings; and
- (b) non-public financial statements.

**R23-2-15. Negotiation and Appointment.**

The Director shall conduct negotiations as provided for in Section 63-56-704 until an agreement is reached.

**R23-2-16. Role of the Board.**

(1) The Board has the responsibility to establish and monitor the selection process. It must verify the acceptability of the procedure and make changes in procedure as determined necessary by the Board.

(2) At each regular meeting of the Board, the Division shall submit a list of all architect-engineer services contracts entered into since its previous report and the method of selection used. This shall be for the information of the Board.

**R23-2-17. Performance Evaluation.**

(1) The Division shall evaluate the performance of the architectural or engineering firm and shall provide an opportunity for the using agency to comment on the Division's evaluation.

(2) This evaluation shall become a part of the record of

that architectural or engineering firm within the Division. The architectural or engineering firm shall be provided a copy of its evaluation at the end of the project and may enter its response in the file.

(3) Confidentiality of the evaluation information shall be addressed as provided in Subsection R23-2-11(3).

**R23-2-18. Emergency Conditions.**

The Director, in consultation with the chairman of the Board, shall determine if emergency conditions exist and document his decision in writing. The Director may use any reasonable method of awarding contracts for architect-engineer services in emergency conditions.

**R23-2-19. Direct Awards.**

(1) The Director may award a contract to an architectural or engineering firm without following the procedures of this rule if:

- (a) The contract is for a project which is integrally related to, or an extension of, a project which was previously awarded to the architectural or engineering firm;
- (b) The architectural or engineering firm performed satisfactorily on the related project; and
- (c) The Director determines that the direct award is in the best interests of the State.

(2) The Director shall place written documentation of the reasons for the direct award in the project file and shall report the action to the Board at its next meeting.

**R23-2-20. Small Purchases.**

(1) If the Director determines that architect-engineer services can be procured for less than \$100,000, or if the estimated construction cost of the project is less than \$1,500,000, the procedures contained in Subsection (2) may be used.

(2) The Director shall select a qualified firm and attempt to negotiate a contract for the required services at a fair and reasonable price. The qualified firm may be, but is not required to be, selected from the register of architectural or engineering firms provided for in Section R23-2-3. If, after negotiations on price, the parties cannot agree upon a price that, in the Director's judgment, is fair and reasonable, negotiations shall be terminated with that firm and negotiations begun with another qualified firm. This process shall continue until a contract is negotiated at a fair and reasonable price.

**R23-2-21. Alternative Procedures.**

(1) The Division may enhance the process whenever the Director determines that it would be in the best interest of the state. This may include the use of a design competition.

(2) Any exceptions to this rule must be justified to and approved by the Board.

(3) Regardless of the process used, the using agency shall be involved jointly with the Division in the selection process.

**KEY: procurement, architects, engineers**

**July 14, 2008**

**Notice of Continuation December 23, 2004**

**63A-5-103 et seq.**

**63G-2-101 et seq.**

**63G-6-208(2)**

**R23. Administrative Services, Facilities Construction and Management.****R23-4. Suspension/Debarment.****R23-4-1. Purpose and Authority.**

(1) This rule sets forth the the basis and guidelines for suspension or debarment from consideration for award of contracts by the division.

(2) This rule is authorized under Subsection 63A-5-103(1), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management, and Subsection 63G-6-208(2), which authorizes the Building Board to make rules regarding the procurement of construction, architect-engineering services, and leases.

**R23-4-2. Definitions.**

(1) "Director" means the director of the division, including, unless otherwise stated, his duly authorized designee.

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

(3) "Person" shall have the meaning provided in Section 63G-6-103.

**R23-4-3. Suspended and Debarred Persons Not Eligible for Consideration of Award.**

No person who has been suspended or debarred by the division, will be allowed to bid or otherwise solicit work on division contracts until they have successfully completed the suspension or debarment period.

**R23-4-4. Causes for Suspension/Debarment and Procedure.**

(1)(a) The causes for debarment and procedures for suspension/debarment are found in Sections 63G-6-804 through 63G-6-806, as well as Section 63A-5-208(8).

(b) Pursuant to subsection 63G-6-804(2)(e), a pattern and practice by a state contractor to not properly pay its subcontractors may be determined by the Director to be so serious and compelling as to affect responsibility as a state contractor and therefore may be a cause for debarment.

(c) A pattern and practice by a subcontractor to not honor its bids or proposals may be a cause for debarment.

(2) The procedures for suspension/debarment are as follows:

(a) The director, after consultation with the using agency and the Attorney General, may suspend a person from consideration for award of contracts for a period not to exceed three months if there is probable cause to believe that the person has engaged in any activity which may lead to debarment. If an indictment has been issued for an offense which would be a cause for debarment, the suspension, at the request of the Attorney General, shall remain in effect until after the trial of the suspended person.

(b) The person involved in the suspension and possible debarment shall be given written notice of the division's intention to initiate a debarment proceeding. The using agency and the Attorney General will be consulted by the director and may attend any hearing.

(c) The person involved in the suspension and debarment will be provided the opportunity for a hearing where he may present relevant evidence and testimony. The director may establish a reasonable time limit for the hearing.

(d) The director, following the hearing on suspension and debarment shall promptly issue a written decision, if it is not settled by written agreement.

(e) The written decision shall state the specific reasons for the action taken, inform the person of his right to judicial or administrative review, and shall be mailed or delivered to the suspended or debarred person.

(f) The debarment shall be for a period as set by the Director, but shall not exceed three years.

(g) Notwithstanding any part of this rule, the Director may appoint a person or person(s) to review the issues regarding the suspension or debarment as a recommending authority to the Director.

**KEY: contracts, construction, construction disputes**

**March 15, 2005**

**63A-5-103 et seq.**

**Notice of Continuation December 31, 2007**

**63G-6-103**

**63G-6-804**

**R23. Administrative Services, Facilities Construction and Management.****R23-21. Division of Facilities Construction and Management Lease Procedures.****R23-21-1. Purpose and Authority.**

(1) As provided in Subsection 63G-6-208(2), this rule establishes procedures for the procurement of leasing of real property.

(2) The Building Board's authority to adopt rules for the activities of the Division is set forth in Subsection 63A-5-103(1)(e).

(3) The statutory provisions governing the procurement of leasing of real property by the Division are contained in Title 63G, Chapter 6; Title 63A, Chapter 5; and Title 4, Chapter 1.

**R23-21-2. New Leases.****A. Agency Request and Justification**

An agency requesting leased space must submit a request and justification statement to the Division of Facilities Construction and Management (DFCM) preferably at least six months before the required date of occupancy. A space utilization program should be prepared by the agency. Assistance is available, if needed, from the staff of the DFCM. The staff of DFCM, along with the agency, will review the program and criteria for the space requested.

The justification statement should include the following:

- Planned agency use
- Present agency location
- Proposed area or location of new lease
- Any options that should be considered
- Lease term
- Present lease rate and what services are included
- Present square footage
- Requested square footage

**B. Securing Space**

If a new lease is required, an advertisement will be prepared by DFCM and competitive proposals will be solicited to comply with the State Procurement Code. Proposals will be reviewed jointly by the DFCM staff and the agency.

The review will include compliance to codes that are required by state and federal laws.

**C. Negotiations**

DFCM will negotiate, or may allow the agency to participate in the negotiations, so that space can be leased in the best interest of the agency and the state.

**D. Lease Agreements**

A standard lease agreement has been prepared for use by DFCM. An approved alternate may be used. The lessor, agency, and staff of DFCM should be involved in the preparation of the final written lease agreement.

**E. Lease Approval and Processing**

The lease will be distributed for approval signatures of the Lessor, the Agency Budget Officer, the Agency Director, the Attorney General, and DFCM.

The lease will be recorded by DFCM on a computerized lease file for updating, renewal and control.

Approval of the Division of Finance is required to establish a payment schedule and issue a contract number.

**R23-21-3. Renewal of Leases and Options.**

DFCM will notify each agency at least six months in advance as to the expiration date of the lease. DFCM will consult with the agency on whether to renew an existing lease or seek new space. This will be based on space requirements and needs of the agency.

If the agency decides to renew a lease, they must submit a request to the Division of Facilities Construction and Management at least 120 days prior to the expiration date. If the leased space is conducive to the agency needs, then long-term

leasing should be considered. Previously outlined procedures shall be followed for lease renewals and options that agencies may wish to exercise.

**R23-21-4. Lease Advertisement Procedures and Specifications.**

The Procurement Code requires that any agency wanting to lease new space must advertise for competitive proposals. Listed below, and in the following attachments, are the advertisement requirements of the Division of Facilities Construction and Management (DFCM).

A. Parties interested in submitting a proposal must complete a Schedule A, which is an Offeror/Lessor Proposal Sheet, and submit to DFCM before the advertised deadline.

B. The agency must submit to DFCM a Schedule B, which contains the Specifications for Advertisement of Space which DFCM will send to interested parties upon request. The advertisement will run for a period of three consecutive weekends. Materials required for advertisement must be received by DFCM no later than noon on Monday in order for the advertisement to be in the paper the following weekend.

**R23-21-5. Non-State Tenants Utilizing State-Owned Space.****A. Request and Justification**

A non-state or private company requesting to lease space in a state-owned facility must submit a request and justification statement to the Division of Facilities Construction and Management (DFCM) with reasonable notice prior to required date of occupancy. The criteria to evaluate the request of the non-state or private company shall include the following:

- Planned use of the space
- Proposed area or location of the lease
- Any options that should be considered
- Lease term
- Lease rate and what services are included
- Requested square footage
- Projected use by a state agency of the space requested

**B. Securing Space**

Proposals will be reviewed jointly by the DFCM staff and the Agency.

Available space should be included in the master plan of all state agencies that is presented to the Utah State Building Board.

**C. Negotiations**

DFCM will negotiate, or may allow the agency(ies) to participate in the negotiations, so that state-owned space can be leased in the best interest of the state and at such rates that are consistent with similar private facilities taking into consideration such things as location, etc.

**D. Lease Agreements**

Using a standard lease agreement as prepared for use by DFCM, the non-state tenant, state agency using proposed facility, and staff of DFCM shall be involved in the preparation of the final written lease agreement.

**E. Lease Approval and Processing**

The lease will be distributed by DFCM for approval signatures and processing.

**KEY: leases, leasing services****March 3, 1995****63A-5-103 et seq.****Notice of Continuation December 31, 2007**

**R23. Administrative Services, Facilities Construction and Management.****R23-25. Administrative Rules Adjudicative Proceedings.****R23-25-1. Purpose and Authority.**

(1) Under the authority of Section 63A-5-103(1)(e), this rule establishes procedures for adjudicative proceedings in accordance with the Utah Administrative Procedures Act, Section 63G-4-101 et seq., except as provided in Subsections (2) through (4).

(2) This rule does not apply to an Agency action that is not governed by the Administrative Procedures Act and the laws of the State of Utah, including:

- (a) Subsection 63G-4-102, Administrative Procedures Act;
- (b) Title 63G, Chapter 6, Utah Procurement Code;
- (c) Title 63A, Chapter 5, Part 1, State Building Board; and
- (d) Title 63A, Chapter 5, Part 2, Division of Facilities Construction and Management.

(3)(a) The provisions of this rule do not govern actions or proceedings that a federal statute or regulation requires be conducted solely in accordance with federal procedures.

(b) If a federal statute or regulation requires a modification to these procedures, the federal procedures prevail.

(4) To the extent that this rule conflicts with a similar rule governing the agency, the conflicting provisions of the other rule shall govern.

**R23-25-2. Designation of Proceedings.**

The Agency designates all agency action subject to the scope and applicability of the Utah Administrative Procedures Act, Section 63G-4-101 et seq. as informal proceedings.

**R23-25-3. Definitions.**

(1) The terms used in this rule are defined in Section 63G-4-103.

(2) In addition:

(a) "Agency" means the Utah State Building Board or the Division of Facilities Construction and Management.

(b) "Presiding officer" means the director of the Division of Facilities Construction and Management, or the director's designee.

**R23-25-4. Procedure.**

Pursuant to Section 63G-4-203, the procedure for informal adjudicative proceedings is as follows:

(1)(a) The respondent to a notice of agency action or request for agency action shall file and serve a written response, signed by the respondent or the respondent's representative, within 30 days of mailing of the notice of agency action, or within 30 days of notice of the Agency setting the matter for an informal adjudicative proceeding.

(b) The response shall be filed with the Agency and one copy shall be sent by mail to each party.

(c) Failure to file a responsive pleading may result in a default pursuant to Section 63G-4-209.

(2)(a) A hearing shall be provided to any party to the proceeding requesting a hearing.

(b) The Agency shall hold a hearing if required by statute or rule.

(c) A request for a hearing shall be in writing and filed at the same time the respondent submits a written response as provided in Subsection (1)(a).

(3) In the hearing, the parties named in the notice of agency action or in the request for agency action may be represented by counsel and shall be permitted to testify, present evidence and comment on the issues.

(4) Hearings will be held only after timely notice to all parties.

(5)(a) Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary

evidence.

(b) Each party to the proceeding is responsible for ensuring the appearance and associated costs of witnesses.

(6) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(7) Intervention is prohibited, except that intervention is allowed where a Federal statute or rule requires that the state allow intervention.

(8) All hearings are open to all parties, except the presiding officer may take appropriate measures to preserve the integrity of the hearing, including the exclusion of a witness if requested by a party, and the protection of confidentiality of records or other information protected by law.

(9) Within a reasonable time after the close of the hearing, or after the party's failure to request a hearing, the presiding officer shall issue a signed order in accordance with Subsections 63G-4-203 (1) (i), (j), and (k).

(10) All hearings shall be recorded at the agency's expense.

(11) Nothing in this section restricts or precludes any investigative right or power given to the agency by statute.

**R23-25-5. Agency Review or Reconsideration.**

(1)(a) If the agency director is the presiding officer, and not a designee, there is no agency review permitted pursuant to Section 63G-4-301.

(b) If the agency director designates another person as the presiding officer, then a party may seek review of the presiding officer's order by filing a written request with the agency director.

(c) The requirements provided in Section 63G-4-301 shall apply to any agency review.

(2)(a) Nothing contained in this Rule prohibits a party from filing a petition for reconsideration pursuant to Utah Administrative Procedures Act, Section 63G-4-302.

(b) The requirements provided in Section 63G-4-302 shall apply to any agency reconsideration.

**R23-25-6. Public Petition for Declaratory Orders.**

Petitions for declaratory orders shall be made and processed in accordance with the Department of Administrative Services Rule R13-1.

**R23-25-7. Emergency Orders.**

Emergency orders may be issued by the agency in accordance with Section 63G-4-502.

**R23-25-8. Exhaustion of Administrative Remedies.**

(1) A person must exhaust their administrative remedies in accordance with Section 63G-4-401 prior to seeking judicial review.

(2) In any adjudicative proceeding before the agency there shall be an opportunity for an affected party to respond and participate.

(3) Only an aggrieved party that has exhausted the available and adequate remedies before the presiding officer, including any agency review or reconsideration by the agency director, may seek judicial review of the final decision of the agency director.

**R23-25-9. Civil Enforcement.**

In addition to any other remedy provided by law or any other rule applicable to the agency, civil enforcement may be pursued as provided under Section 63G-4-501.

**R23-25-10. Waivers.**

(1) In addition to any other waiver allowed by law or this rule, any procedural matter, including any right to notice or

hearing, may be waived by the affected person by signing a written waiver in a form approved by the agency.

(2) The waiver provision of this rule may not be construed to prohibit a finding of default as provided in Subsection R23-25-4(1)(c) or Section 63G-4-209.

**R23-25-11. Agency Rights and Remedies.**

Agency reserves all rights, remedies and available procedures under the Utah Administrative Procedures Act, Section 63G-4-101, et seq., unless the reservation is in conflict with the provisions of this Rule.

**KEY: administrative law, adjudicative proceedings**

April 11, 2007

63G-4-102

Notice of Continuation September 6, 2006

**R23. Administrative Services, Facilities Construction and Management.****R23-26. Dispute Resolution.****R23-26-1. Purpose and Scope.**

(1) The purpose of this rule is to establish a process for resolving disputes involved with contracts under the Division's procurement authority. The objectives of the procedure are to:

- (a) encourage the payment of the appropriate and fair amount on a timely basis for work or services performed;
- (b) encourage the resolution of issues on an informal basis in order to minimize Disputes and Claims;
- (c) encourage fair and timely settlement of Claims;
- (d) provide a process that is as simple as possible and minimizes the costs to all parties in achieving a resolution;
- (e) maintain effective contractual relationships and responsibilities;
- (f) when possible, resolve related issues and responsibilities as a package;
- (g) discourage bad faith, frivolous or excessive Claims;
- (h) avoid having Claims interfere with the progress of the work;
- (i) assure that the presentation of good faith and non-frivolous issues and Claims do not negatively affect selection processes for future work, while bad faith and frivolous issues, as well as the failure of a Contractor or Subcontractor to facilitate resolution of issues, may be considered in the evaluation of the Contractor or Subcontractor; and
- (j) provide a process where Subcontractors at any tier, which have a Claim that involves a good faith issue related to the responsibility of the Division or anyone for whom the Division is liable, has the ability to present the matter for resolution in a fair and timely manner to those of any higher tier and ultimately to the Division without creating any contractual relationship between the Division and the Subcontractor at any tier.

(2) This rule does not apply to any protest under Section 63G-6-801.

(3) A Claim under this rule that does not include a monetary claim against the Division or its agents is not limited to the dispute resolution process provided for in this rule.

(4) Persons pursuing Claims under the process required by this rule:

- (a) are bound by the decision reached under the process unless the decision is properly appealed; and
  - (b) may not pursue a Claim under the dispute resolution process established in Sections 63G-6-805 through 63G-6-814.
- (5) This rule does not apply to tort or other claims subject to the provisions of the Utah Governmental Immunity Act.

(6) This rule shall not limit the right of the Division to have any of its issues, disputes or claims considered in accordance with the applicable contract or law.

**R23-26-2. Authority.**

(1) The rule is authorized pursuant to Subsection 63A-5-208(6) and under the authority of the Utah State Building Board, Section 63A-5-101 and the Department of Administrative Services, Division of Facilities Construction and Management, Section 63A-5-201 et seq.

**R23-26-3. Definitions.**

For purposes of this rule:

(1) "Claim" means a dispute, demand, assertion or other matter submitted by a Contractor that has a contract under the procurement authority of the Division, including Subcontractors as provided for in this rule. The claimant may seek, as a matter of right, modification, adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the contract. A request for Preliminary Resolution Effort (PRE) shall not be considered a "Claim." A

requested amendment, requested change order, or a Construction Change Directive (CCD) is not a PRE or Claim unless agreement cannot be reached and the procedures of this rule are followed.

(2) "Contractor" means a person or entity under direct contract with the Division and under the Division's procurement authority.

(3) "DFCM representative" means the Division person directly assigned to work with the Contractor on a regular basis.

(4) "Director" means the director of the Division, including unless otherwise stated, his/her duly authorized designee.

(5) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201 et seq. It may also be referred in this rule as "DFCM."

(6) "Executive Director" means the Executive Director of the Department of Administrative Services, including unless otherwise stated, his/her duly authorized designee.

(7) "Preliminary Resolution Effort" or "PRE" means the processing of a request for preliminary resolution or any similar notice about a problem that could potentially lead to a Claim and is prior to reaching the status of a Claim.

(8) "Resolution of the claim" means the final resolution of the claim by the Director, but does not include any administrative appeal, judicial review or judicial appeal thereafter.

(9) "Subcontractor" means any subcontractor or subconsultant at any tier under the Contractor, including any trade contractor, specialty contractor or consultant but does not include suppliers who provide only materials, equipment or supplies to a contractor, subcontractor or subconsultant. "Subcontractor" does not include any person or entity, at any tier, under contract with a Lessor.

**R23-26-4. Procedure for Preliminary Resolution Efforts.**

(1) Request for Preliminary Resolution Effort (PRE). A Contractor raising an issue related to a breach of contract or an issue concerning time or money shall file a PRE as a prerequisite for any consideration of the issue by the Division.

(2) Time for Filing. The PRE must be filed in writing with the DFCM representative within twenty-one (21) days after the Contractor knew or should have known of an event for initiating a PRE, as defined in the applicable contract. If the Division's contract does not define the event, the event shall be defined as the time at which the issue cannot be resolved through the normal business practices associated with the contract. The labeling of the notice shall not preclude the consideration of the issue by the Division. A shorter notice provision may be designated in the contract where damages can be mitigated such as delays or concealed or unknown conditions, the discovery of hazardous materials, emergency conditions, or historical or archeological discoveries.

(3) Content Requirement. The PRE shall be required to include in writing to the extent information is reasonably available at the time of such filing:

- (a) a description of the issue;
- (b) the potential impact on cost and time or other breach of contract; and
- (c) an indication of the relief sought.

(4) Supplementation. Additional detail of the content requirement above shall be provided later if the detail is not yet available at the initial filing as follows:

(a) While the issue is continuing or the impact is being determined, the Contractor shall provide a written updated status report every 30 days or as otherwise reasonably requested by the DFCM Representative; and

(b) After the scope of work or other factors addressing the issue are completed, the complete information, including any

impacts on time, cost or other relief requested, must be provided to the DFCM Representative within twenty-one (21) days of such completion.

(5) Subcontractors.

(a) Under no circumstances shall any provision of this rule be intended or construed to create any contractual relationship between the Division and any Subcontractor.

(b) The Contractor must include the provisions of this subsection (5) in its contract with the first tier Subcontractor, and each Subcontractor must do likewise. At the Contractor's discretion, the Contractor may allow a Subcontractor at the 2nd tier and beyond to submit the PRE directly with the Contractor.

(c) In order for a Subcontractor at any tier to be involved with the preliminary resolution process of the Division, the following conditions and process shall apply:

(i) The Subcontractor must have attempted to resolve the issue with the Contractor including the submission of a PRE with the Contractor;

(ii) The Subcontractor must file a copy of the PRE with the DFCM Representative;

(iii) The PRE to the Contractor must meet the time, content and supplementation requirements of Section R23-26-4. The triggering event for a Subcontractor to file a PRE shall be the time at which the issue cannot be resolved through the normal business practices associated with the contract, excluding arbitration and litigation;

(iv) The PRE submitted to the Contractor shall only be eligible for consideration in the Division's PRE process to the extent the issue is reasonably related to the performance of the Division or an entity for which the Division is liable;

(v) The Contractor shall resolve the PRE to the satisfaction of the Subcontractor within sixty (60) days of its submittal to the Contractor or such other time period as subsequently agreed to by the Subcontractor in writing. If the Contractor fails to resolve the PRE with the Subcontractor within such required time period, the Subcontractor may submit in writing the PRE with the Contractor and the Division. In order to be eligible for Division consideration of the PRE, the Subcontractor must submit the PRE within twenty-one (21) days of the expiration of the time period for the Contractor/Subcontractor PRE process. The Division shall consider the PRE as being submitted by the Contractor on behalf of the Subcontractor.

(vi) Upon such PRE being submitted, the Contractor shall cooperate with the DFCM Representative in reviewing the issue.

(vii) The Division shall not be obligated to consider any submission which is not in accordance with this rule.

(viii) The Subcontractor may accompany the Contractor in participating with the Division regarding the PRE raised by the Subcontractor. The Division is not precluded from meeting with the Contractor separately and it shall be the responsibility of the Contractor to keep the Subcontractor informed of any such meetings.

(ix) Notwithstanding any provision of this rule, a Subcontractor shall be entitled to pursue a payment bond claim.

(6) PRE Resolution Procedure. The DFCM Representative may request additional information and may meet with the parties involved with the issue.

(7) Contractor Required to Continue Performance. Pending the final resolution of the issue, unless otherwise agreed upon in writing by the DFCM Representative, the Contractor shall proceed diligently with performance of the contract and the Division shall continue to make payments in accordance with the contract.

(8) Decision. The Division shall issue to the Contractor, and any other party brought into the process by the DFCM Representative as being liable to the Division, a written decision providing the basis for the decision on the issues presented by all of the parties within thirty (30) days of receipt of all the information required under Subsection R23-26-4 (5)(b) above.

(9) Decision Final Unless Claim Submitted. The decision by the Division shall be final, and not subject to any further administrative or judicial review (not including judicial enforcement) unless a Claim is submitted in accordance with this rule.

(10) Extension Requires Mutual Agreement. Any time period specified in this rule may be extended by mutual agreement of the Contractor and the Division.

(11) If Decision Not Issued. If the decision is not issued within the thirty (30) day period, including any agreed to extensions, the issue may be pursued as a Claim.

(12) Payment for Performance. Except as provided in this rule, any final decision where the Division is to pay additional monies to the Contractor, shall not be delayed by any PRE, Claim or appeal by another party. Payment to the Contractor of any final decision shall be made by the Division in accordance with the contract for the completed work. Notwithstanding any other provision of this rule, payment to the Contractor shall be subject to any set-off, claims or counterclaims of the Division. Payment to the Contractor for a Subcontractor issue submitted by the Contractor shall be paid by the Contractor to the Subcontractor in accordance with the contract between the Contractor and the Subcontractor. Any payment or performance determined owing by the Contractor to the Division shall be made in accordance with the contract.

**R23-26-5. Resolution of Claim.**

(1) Claim. If the decision on the PRE is not issued within the required timeframe or if the Contractor is not satisfied with the decision, the Contractor or other party brought into the process by the Division, may submit a Claim in accordance with this rule as a prerequisite for any further consideration by the Division or the right to any judicial review of the issue giving rise to the claim.

(2) Subcontractors. In order for a Subcontractor to have its issue considered in the Claim process by the Division, the Subcontractor that had its issue considered under Section 23-26-4(6) may submit the issue as a Claim by filing it with the Contractor and the Division within the same timeframe and with the same content requirements as required of a Claim submitted by the Contractor under this rule. The Division shall consider the Claim as being submitted by the Contractor on behalf of the Subcontractor. Under no circumstances shall any provision of this rule be intended or construed so as to create any contractual relationship between the Division and any Subcontractor.

(a) Upon such Claim being submitted, the Contractor shall fully cooperate with the Director, the person(s) evaluating the claim and any subsequent reviewing authority.

(b) The Director shall not be obligated to consider any submission which is not in accordance with this rule.

(c) The Subcontractor may accompany the Contractor in participating with the Director, the person(s) evaluating the Claim and any subsequent reviewing authority regarding the Claim. The Director, the person(s) evaluating the Claim and any subsequent reviewing authority is not precluded from meeting with the Contractor separately, and it shall be the responsibility of the Contractor to keep the Subcontractor informed of any such meetings and matters discussed.

(d) Notwithstanding any provision of this rule, a Subcontractor shall be entitled to pursue a payment bond claim.

(3) Time for Filing. The Claim must be filed in writing promptly with the Director, but in no case more than twenty-one(21) days after the decision is issued on the PRE under Subsection 23-26-4(8) above or no more than twenty-one (21) days after the decision is not issued under Subsection 23-26-4(11) above, whichever is later.

(4) Content Requirement. The written Claim shall include:

(a) a description of the issues in dispute;



(b) the basis for the Claim, including documentation and analysis required by the contract and applicable law and rules that allow for the proper determination of the Claim;

(c) a detailed cost estimate for any amount sought, including copies of any related invoices; and

(d) a specific identification of the relief sought.

(5) Extension of Time to Submit Documentation. The time period for submitting documentation and any analysis to support a Claim may be extended by the Director upon written request of the claimant showing just cause for such extension, which request must be included in the initial Claim submittal.

(6) Contractor Required to Continue Performance. Pending the final determination of the Claim, including any judicial review or appeal process, and unless otherwise agreed upon in writing by the Director, the Contractor shall proceed diligently with performance of the Contract and the Division shall continue to make payments in accordance with the contract.

(7) Agreement of Claimant on Method and Person(s) Evaluating the Claim. The Director shall first attempt to reach agreement with the claimant on the method and person(s) to evaluate the Claim. If such agreement cannot be made within fourteen (14) days of filing of the Claim, the Director shall select the method and person(s), considering the purpose of this rule as stated in Section R23-26-1. Unless agreed to by the Director and the claimant, any selected person shall not have a conflict of interest or appearance of impropriety. Any party and the person(s) evaluating the Claim has a duty to promptly raise any circumstances regarding a conflict of interest or appearance of impropriety. If such a reasonable objection is raised, and unless otherwise agreed to by the Director and the claimant, the Director shall take appropriate action to eliminate the conflict of interest or appearance of impropriety. The dispute resolution methods and person(s) may include any of the following:

(a) A single expert and/or hearing officer qualified in the field that is the subject of the Claim;

(b) An expert panel, consisting of members that are qualified in a field that is the subject of the Claim;

(c) An arbitration process which may be binding if agreed to by the parties to the Claim;

(d) A mediator; or

(e) Any other method that best accomplishes the purpose of Section R23-26-1.

(8) Evaluation Process.

(a) No Formal Rules of Evidence. There shall be no formal rules of evidence but the person(s) evaluating the Claim shall consider the relevancy, weight and credibility of the evidence.

(b) Questions. Parties and the person(s) evaluating the Claim have the right to ask questions of each other.

(c) Investigation and Documents. The person(s) evaluating the Claim has the right to investigate and request documents, consider any claims or counterclaims of the Division, may set deadlines for producing documents, and may meet with the parties involved with the Claim together or separately as needed. Copies of submitted documents shall be provided to all parties.

(d) Failure to Cooperate. The failure of a party to cooperate with the investigation or provide requested documentation may be a consideration by the person(s) evaluating the Claim in reaching the findings in its report.

(e) Record of the Proceeding. The person(s) evaluating the Claim shall determine the extent to which formal minutes, transcripts, and/or recordings shall be made of the meetings and/or hearings and shall make copies available to all parties.

(f) Certification. The person(s) evaluating the Claim may require the certification of documents provided.

(9) Timeframe for Person(s) Evaluation the Claim and Director's Determination. The Claim shall be resolved no later

than sixty (60) days after the proper filing of the Claim, which includes any extension of time approved under Section R23-26-5(5). The person(s) evaluating the Claim may extend the time period for resolution of the Claim by not to exceed sixty (60) additional days for good cause. The time period may also be extended if the claimant agrees. The person(s) evaluating the Claim shall issue to the parties a schedule providing the timeframe for the issuance of the following:

(a) a Preliminary Resolution Report including the preliminary findings regarding the Claim;

(b) the receipt of written comments concerning the preliminary report. A copy of such comments must be delivered to the other parties to the Claim within the same timeframe;

(c) a reply to written comments, which must also be delivered to the other parties to the Claim within the same timeframe; and

(d) a final report and recommendation which must be delivered to the Director and the other parties no later than seven (7) days prior to the expiration of the required timeframe for resolution of the Claim.

(10) Director's Final Resolution. The Director shall consider the final recommendation and report and issue the final resolution of the Claim, with any modifications, prior to the expiration of the required timeframe for resolution of the Claim.

#### **R23-26-6. Administrative Appeal to the Executive Director of the Department of Administrative Services.**

(1) Administrative Appeal. The Contractor may file a written administrative appeal of the final resolution of the person(s) evaluating the Claim with the Executive Director of the Department of Administrative Services. The administrative appeal is the prerequisite for any further consideration by the State of Utah, or to judicial review of the issue giving rise to the Claim. It shall be considered that the Contractor, or another party brought into the process by the Division, has not exhausted its administrative remedies if such an administrative appeal is not undertaken.

(2) Time for Filing. The administrative appeal must be filed in writing promptly with the Executive Director and delivered to the other parties to the Claim, but in no case more than fourteen (14) days after the Contractor's receipt of the Director's final resolution of the Claim.

(3) Content. The Administrative Appeal must state the basis for the appeal.

(4) Response. Within five (5) days of receipt of the Administrative Appeal, any party may deliver to Executive Director written comments concerning the appeal. A copy of such comments must be delivered to the other parties to the Claim within the same five (5) day time period.

(5) Reply to Written Comments. Within five (5) days of receipt of written comments, any party may deliver to the Executive Director a reply to the written comments concerning the appeal. A copy of such reply must be delivered to the other parties to the Claim within the same five (5) day time period.

(6) Executive Director's Decision. Within thirty (30) days of receipt of the Administrative Appeal, and after considering the appeal, the Director's final resolution, responses and replies, the Executive Director or his/her designee shall issue a final decision of the appeal in writing and shall state the basis of the decision. Failure of the Executive Director to issue a written decision within the thirty (30) day time period, shall entitle the appellant to seek judicial review of the Claim. The time period for the Executive Director's decision may be extended by agreement of the Executive Director and the Appellant.

#### **R23-26-7. Payment of Claim.**

(1) When a stand alone component of a Claim has received a final determination, and is no longer subject to review or appeal, that amount shall be paid in accordance with the

payment provisions of the contract or judicial order.

(2) When the entire Claim has received a final determination, and is no longer subject to review or appeal, the full amount shall be paid within fourteen (14) days of the date of the final determination unless the work or services has not been completed, in which case the amount shall be paid in accordance with the payment provisions of the contract to the point that the work or services is completed.

(3) The final determination date is the earlier of the date upon which the claimant accepted the settlement in writing with an executed customary release document and waived its rights of appeal, or the expiration of the appeal period.

(4) Any final determination where the Division is to pay additional monies to the Contractor shall not be delayed by any appeal or request for judicial review by another party brought into the process by the Division as being liable to the Division.

(5) Notwithstanding any other provision of this rule, payment of all or part of a Claim is subject to any set-off, claims or counterclaims of the Division.

(6) Payment to the Contractor for a Subcontractor issue (Claim) deemed filed by the Contractor, shall be paid by the Contractor to the Subcontractor in accordance with the contract between the Contractor and the Subcontractor.

(7) The execution of a customary release document related to any payment may be required as a condition of making the payment.

#### **R23-26-8. Judicial Review.**

(1) The Executive Director's decision on the appeal, or the failure to provide a decision within the required time period under Subsection R23-26-6(6), shall be deemed a final agency action subject to judicial review as provided in Sections 63G-4-401 and 63G-4-402, including, but not limited to requirements for exhaustion of administrative remedies, the requirements for a petition of judicial review, jurisdiction and trial de novo.

(2) The participation of a person in the claim evaluation process does not preclude the person from testifying in a judicial proceeding to the extent allowed by Utah law.

#### **R23-26-9. Allocation of Costs of Claim Resolution Process.**

(1) In order to file a Claim, a claimant must pay a \$1500 filing fee to the Division. When the Claim is a pass-through from a Subcontractor in accordance with Subsection R23-26-4(5), the payment of the fee shall be made by the Subcontractor.

(2) Unless otherwise agreed to by the parties to the Claim, the costs of resolving the Claim shall be allocated among the parties on the same proportionate basis as the determination of financial responsibility for the Claim.

(3) The costs of resolving the Claim that are subject to allocation include the claimant's filing fee, the costs of any person(s) evaluating the Claim, the costs of making any required record of the process, and any additional testing or inspection procured to investigate and/or evaluate the Claim.

(4) Each party is responsible for its own attorney fees.

#### **R23-26-10. Alternative Procedures.**

To the extent otherwise permitted by law, if all parties to a Claim agree in writing, a protocol for resolving a Claim may be used that differs from the process described in this rule.

#### **R23-26-11. Impact on Future Selections.**

(1) The presentation of a good faith and non-frivolous issue or Claim shall not be considered by the Division's selection process for a future award of contract; and

(2) The submission of a bad faith and frivolous issue or Claim or the failure by a Contractor to facilitate resolution of a Claim, may be considered in the Division's evaluation of performance.

#### **R23-26-12. Delegated Projects.**

Projects delegated by the Division shall provide for contract provisions which provide a similar dispute resolution process as provided for in this rule.

#### **R23-26-13. Report to Building Board.**

The Division may report on the status of claims to the Utah State Building Board.

**KEY: resolutions, settlements, disputes  
March 15, 2005**

**63A-5-208(6)  
63A-5-103(1)(e)  
63G-6-208(2)**

**R23. Administrative Services, Facilities Construction and Management.****R23-29. Across the Board Delegation.****R23-29-1. Purpose.**

This rule provides the procedures for delegation of construction projects to the University of Utah and Utah State University.

**R23-29-2. Authority.**

This rule is authorized under Subsection 63A-5-103, which directs the Building Board to make rules necessary for the discharge of its duties and the duties of the Division of Facilities Construction and Management.

**R23-29-3. Authority and Extent of Delegation.**

(1) As permitted by subsection 63A-5-206(3)(a)(ii)(B), authority is delegated to the University of Utah and Utah State University, "the Institutions," to exercise direct supervision over the design and construction of all alterations, repairs, and improvements to existing facilities on their respective campuses up to the dollar amounts stated below.

(2) As permitted by subsection 63A-5-206(5)(c), the Board expresses its intent to authorize the delegation of the design and construction of new facilities on a project-by-project basis up to the dollar amounts stated below. New facilities means the addition of new space costing more than \$100,000.

(3) This delegation is granted to Utah State University for projects having a total budget for design and construction of less than \$2,000,000.

(4)(a) This delegation is granted to the University of Utah for the design and construction of all alteration, repair and improvement projects unless the Utah State Building Board, after consultation with the University of Utah, determines that the project should be managed by DFCM.

(b) For projects having a total budget for design and construction greater than \$5,000,000, the University of Utah shall provide the following in writing to the Director of DFCM prior to initiating a project under this delegation:

(i) a notice of the University's desire to manage the project under this delegation authorization; and

(ii) a project management and staffing plan for the project.

(5) Projects may not be subdivided into multiple projects in order to arrive at projects which are small enough to meet the dollar limits for delegation.

(6) Substantial benefit and justification must be demonstrated before consideration will be given to any delegation requests from these institutions for projects larger than the above limits.

(7) When applicable, this delegation authority shall not take effect for a specific project until the following requirements are met:

(a) Legislative authorization for design and construction has been obtained for the construction of all new space costing more than \$100,000.

(b) The requirements of section R23-29-17 regarding the completion of a DFCM administered architectural program have been satisfied.

**R23-29-4. Fiduciary Control.**

The Institutions shall assume fiduciary control over project finances and shall assume all responsibility for project budgets and expenditures. The Institutions shall be responsible for ensuring compliance with all applicable laws, rules, and building codes.

**R23-29-5. Building Official.**

Each Institution is designated as the Building Official for projects delegated. Institutions shall comply with all requirements of the Uniform Building Standards Act, Chapter

58-56. If an Institution does not have the internal staff to comply with this requirement, it must contract for the appropriate service.

**R23-29-6. Procurement.**

Each Institution shall comply with the state Procurement Code, Chapter 63G-6-102, and its procurement rules. Any aspect of the Institution's rules for the procurement of architect/engineer services or construction which is less restrictive than the procurement rules adopted by the Building Board must be approved by the Board.

**R23-29-7. Contract Documents.**

The Institutions shall utilize substantially the same standard Contract Documents as used by DFCM. Any substantive differences must be approved by the Board.

**R23-29-8. Transfer of State Funds.**

(1) To the extent possible, all state funds appropriated to DFCM for projects delegated to the Institutions shall be transferred to the respective Institution immediately upon their receipt by DFCM.

(2) State funds provided from state issued bonds, or from other sources containing similar restrictions, shall be transferred to the Institutions on a reimbursement basis. Such reimbursements shall be made on a monthly basis upon receipt of a reimbursement request from the Institution detailing the expenditures made on each project.

(3) Upon completion of a project, any remaining statewide funds like roofing, paving) shall remain with the Institution to be used for a similar need on its campus. This activity shall be noted in the monthly report to the Building Board.

**R23-29-9. Contingencies.**

The Institutions shall be subject to the same laws and rules regarding contingency funds as is DFCM. The only difference is that contingency funds for delegated projects shall be segregated from the contingency funds held by DFCM for non-delegated projects.

**R23-29-10. Space Standards.**

The Institutions shall comply with the space standards as adopted by the Building Board. Any significant deviations from these standards shall be reported to the Board.

**R23-29-11. Design Criteria.**

The Institutions shall utilize the Design Criteria adopted by the Building Board. These may be supplemented by special requirements that are unique to each Institution. Any significant departures from the Board approved Design Criteria shall be reported to the Board.

**R23-29-12. Value Engineering.**

The Institutions shall comply with state law and Rule R23-6 regarding the value engineering and life cycle costing of facilities. DFCM may assist each Institution as requested in the performance of these reviews.

**R23-29-13. Record Drawings.**

At the completion of each delegated project, each Institution shall submit a copy of all record drawings to DFCM.

**R23-29-14. Statutory Requirements on DFCM Projects.**

(1) In addition to those noted elsewhere in this rule, the Institutions shall comply with the following statutory requirements which have been placed on DFCM projects.

(a) Subsection 63A-5-205(3) relating to the investment of contractor's retention.

(b) Subsection 63A-5-206(3)(c)(ii) relating to the

notification to local governments regarding certain types of projects.

(c) The Percent-for-Art program as provided in Sections 63A-5-206 and 63A-5-209, and Title 9, Chapter 6, Part 4.

(d) Subsection 63A-5-206(7) relating to the reporting of completed projects to the Office of the Legislative Fiscal Analyst.

(e) Section 63A-5-208 relating to the listing and changing of subcontractors and the disclosure of subcontractor bids.

(2) The Institutions and DFCM shall strive to avoid any confusion which could result from inconsistent procedures and requirements being used by each entity.

**R23-29-15. Reporting.**

(1) Each Institution shall report monthly to the Building Board on the status of its delegated projects.

(2) The following reports shall be presented in a similar format and content as that presented by DFCM on projects and funds it is administering.

- (a) Architect/Engineer Contracts Awarded
- (b) Construction Contracts Awarded
- (c) Contingency Funds
- (d) Statewide Funds
- (e) Status Report for Projects in Construction

(3) The above reports shall be submitted to DFCM at least ten calendar days prior to each Board meeting to be included in packet sent to the Building Board.

(4) A copy of the above reports shall be submitted to the Office of the Commissioner of Higher Education for distribution to the Board of Regents at the same time it is submitted to DFCM.

**R23-29-16. Capital Budget Requests.**

The Institutions shall continue to submit all capital budget requests to DFCM and the Building Board for review, prioritization, and recommendation to the Governor and the Legislature.

**R23-29-17. Programming.**

(1) For projects within the definition of "Capital Developments" as defined in subsection 63A-5-103(3)(a), which will be funded wholly or in part by state funds for either construction or operations and maintenance, a facility program shall be developed under the supervision of DFCM unless this requirement is waived by the Building Board.

(2) For projects which are within the delegation limits set forth in section R23-29-1 and which do not meet the requirements of subsection R23-29-17(1), the Institutions may determine the extent of programming or scope definition required and supervise the development of these documents. No DFCM review or approval will be required.

**R23-29-18. Sharing of Resources.**

DFCM and the Institutions shall strive to share personnel resources where resources exist at one entity and not at another. The Institutions and DFCM shall enter into a separate agreement to accomplish this sharing of resources.

**R23-29-19. Staffing Levels.**

(1) The Institutions have represented that they have adequate existing resources to assume the responsibilities given to them under this delegation.

(2) The Institutions shall not increase the staffing levels related to the administration of capital projects beyond the levels represented in seeking this delegation which was 32 full time staff at the University of Utah and 15 full time staff and 5 F.T.E. of student employees at Utah State University.

**R23-29-20. Review of Delegated Projects.**

Upon direction of the Building Board, DFCM staff may review the management of delegated projects and report its findings to the Board.

**R23-29-21. Authority to Modify Delegation.**

The Building Board may modify or repeal the authority delegated under this rule by amending or repealing this rule.

**KEY: buildings, delegation\***

**October 29, 1998**

**Notice of Continuation June 1, 2009**

**63A-5-206**

**R152. Commerce, Consumer Protection.****R152-11. Utah Consumer Sales Practices Act.****R152-11-1. Purposes, Rules of Construction.**

A. These substantive rules are adopted by the Director of the Division of Consumer Protection pursuant to Section 8 of Chapter 188 of the Laws of Utah, 1973 (Utah Consumer Sales Practices Act, Utah Code Annotated Section 13-11-1 et seq., as amended). Without limiting the scope of any section of the Utah Consumer Sales Practices Act or any other rule, these rules shall be liberally construed and applied to promote their purposes and policies. The purpose and policies of these rules are to:

(1) define with reasonable specificity acts and practices which violate Section 4 of the Utah Consumer Sales Practices Act.

(2) protect consumers from suppliers who engage in referral sellings, commit deceptive acts or practices, or commit unconscionable acts or practices.

(3) encourage the development of fair consumer sales practices.

(4) supplement and compliment any other rules promulgated by the State of Utah or any agency or subdivision thereof or any other governmental entity.

**B. Definitions.**

(1) "Advertisement" means any written, visual, or oral communication made to a consumer by means of newspaper, magazine, circular, billboard, direct mailing, sign, radio, television or otherwise, which identifies or represents the terms of any item of goods, service, franchise, distributorship or intangible which may be transferred in a consumer transaction.

(2) "Consumer Commodity" means any subject of a consumer transaction.

(3) "Fixture" or "Fixtures" means goods or products that are not readily removable from a permanent structure or land itself such as shingling, siding and or windows or other like improvements and which, when they thus become so related to particular real estate that an interest in them arises under real estate law.

(4) "Goods" mean all things which are movable at time of identification to the contract for sale other than the money in which the price is to be paid and things in action.

(5) "Service" means performance of labor or any act for the benefit of another.

(6) "Offer" means any attempt to effect, an offer to enter into a consumer transaction.

(7) "Product" means any goods, services, consumer commodity, or other property, both tangible and intangible (except securities and insurance) which is the subject or object of a consumer transaction.

(8) "Service" means performance of labor or any act for the benefit of another.

(9) All other terms used in these regulations shall carry the same meaning and definition as in the Utah Consumer Sales Practices Act unless otherwise specified, consistent with that Act.

**R152-11-2. Exclusions and Limitations in Advertisement.**

A. It is a deceptive act or practice for a supplier in connection with a consumer transaction, in the sale or offering for sale of a consumer commodity to make any offer in written or printed advertising or promotional literature without stating clearly and conspicuously in close proximity to the words stating the offer of any material exclusions, reservations, limitations, modifications, or conditions. The following are examples of the types of material exclusions, reservations, limitations, modifications, or conditions of offers which must be clearly stated:

(1) An advertisement for any consumer commodity not disclosing the amount of any additional charge for any of the

features displayed or listed in the advertisement would be deceptive.

(2) An advertisement for an article of clothing must state that there is an additional charge for sizes above or below a certain size if such is the case.

(3) An advertisement which offers floor covering with an additional charge for room sizes above or below a certain size must disclose the nature and amount of additional charge.

(4) An advertisement for a consumer commodity sold from more than one outlet under the direct control of the supplier causing the advertisement to be made must state:

(a) Which outlets within the area served by the publication in which the advertisement appears either have or do not have certain features mentioned in the advertisement;

(b) Which outlets within the area served by the publication in which the advertisement appears charge rates higher than the rate mentioned in advertisement. For example:

**TABLE**

"Rug Shampooer - \$15.00 a day at  
West 3rd Street South Office -  
all other locations are more."

(c) An advertisement for a consumer commodity sold from outlets not under the direct control of the supplier causing the advertisement to be made does not violate Section 2a(4)(a) or 2a(4)(b) of this rule if it states that the consumer commodity is available only at participating independent dealers.

(5) An advertisement for any consumer commodity requiring installation must reflect the exact price of the commodity and if the price includes installation or if installation is additional.

(6) If the advertised price is available only during certain hours of the day or certain days of the week that fact must be stated along with the hours and days the price is available.

(7) If the advertisement involves or pictures more than one consumer commodity (for example: a sofa, cocktail table and two commodes) and the advertised price applies only if the complete set is purchased, that fact must be stated.

(8) If there is a minimum amount (or maximum amount) that must be purchased for the advertised price to apply, that fact must be stated.

(9) If an advertisement specifies a price for a consumer commodity which includes a trade-in, that fact must be stated. For example: a 6 volt battery for \$50.00 plus your old battery.

(10) If there are "additional" items that must be purchased for the advertised price to apply that fact must be so stated.

(11) These examples are intended to be illustrative only and do not limit the scope of any section of the Utah Consumer Sales Practices Act or of this or any other rule or regulation.

B. Offers made orally, such as through radio or television advertising, must include a conspicuously clear and oral statement of any material exclusions, reservations, modifications, or conditions.

C. If an error is made in advertising, either by pricing, wording, picture, or description, it shall be the responsibility of the supplier to retract or correct the error. A retraction is necessary when it cannot be shown that the error was due to the fault of the advertising medium. If it can be documented that the responsibility rests with the advertising medium, a retraction by the supplier is not necessary but the supplier may post a correction in close proximity to the merchandise which was advertised incorrectly.

**R152-11-3. Bait Advertising/Unavailability of Goods.**

A. Definitions: For the purposes of this rule, the following definitions shall apply:

(1) "Raincheck" means a written document evidencing a consumer's entitlement to purchase advertised items at an

advertised price within the time limits set forth in paragraph d. of this rule.

(2) "Salesperson" means the supplier or his agent or employee who interacts personally or directly with a consumer in negotiating or effecting a consumer transaction.

B. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to offer to sell consumer commodities when the offer is not a bona fide effort to sell the advertised consumer commodities. An offer is not bona fide if:

(1) A supplier uses a statement or illustration in any advertisement which would create in the mind of a reasonable consumer a false impression of the grade, quality, quantity, make, value, model, year, size, color, usability, or origin of the consumer commodities offered or which otherwise misrepresents the consumer commodities in such a manner that, on subsequent disclosure or discovery of the true facts, the consumer is diverted from the advertised consumer commodities to other consumer commodities. An offer is not bona fide, even though the true facts are made known to the consumer before he views the advertised consumer commodities, if the first contact or interview is secured by deception.

(2) A supplier discourages the purchase of the advertised consumer commodities in order to sell other consumer commodities. This does not however, prohibit the good faith recommendation concerning a different consumer commodity as it relates to a consumer's particular or unique needs or problems concerning the consumer commodity. The following are examples of acts or practices which raise a presumption that an offer to sell consumer commodities is not bona fide:

(a) Refusal to show, demonstrate, or sell the consumer commodities advertised in accordance with the terms of the advertisement;

(b) Disparagement by the supplier either by acts or words of the advertised consumer commodities or of the guarantee, credit terms, availability of service, repairs, or parts, or any other respects of the consumer commodities;

(c) The failure of a supplier to have available at all outlets under its direct control, or listed in the advertisement, a sufficient quantity of the advertised consumer commodities at the advertised price to meet reasonably anticipated demands, unless the advertisement clearly and adequately disclosed that there is a limited quantity of advertised consumer commodities available and/or that the consumer commodities are available only at the designated outlets;

(d) The failure to give rainchecks to consumers where the advertisement does not disclose that there is a limited quantity or availability of consumer commodities. Suppliers who clearly and consistently post a raincheck policy for public review shall be exempt from this section;

(e) The showing or demonstrating of defective, unusable, or impractical consumer commodities when such defective, unusable, or impractical nature is not fairly and adequately disclosed in the advertisement;

(f) The use of a sales plan or method of compensation for salesperson designed to prevent or discourage them from selling the advertised consumer commodity. This does not, however, prohibit the usual and reasonable use of commissions as a means of compensation;

(g) The demonstration of an advertised consumer commodity in such a manner that makes the commodity appear inferior.

(3) A supplier, in the event of a sale to the consumer of the offered consumer commodities, attempts to persuade a consumer to repudiate the purchase of the offered commodities and purchase other consumer commodities in their stead, by any means, including but not limited to the following:

(a) Accepting a consideration for the offered consumer commodities and then switching the consumer to other commodities;

(b) Delivering offered consumer commodities which are unusable or impractical for the purposes represented or materially different from the offered consumer commodities. The purchase on the part of some consumers of the offered consumer commodities is not in itself prima facie evidence that the offer is bona fide.

(4) A supplier represents in any advertisement, which would create in the mind of the consumer, a false impression that the offer of goods has been occasioned by a financial or natural catastrophe when such is not true.

(5) A supplier misrepresents the former price, savings, quality or ownership of any goods sold.

#### **R152-11-4. Use of the Word "Free" etc.**

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to use the word "free" or other words of similar import or meaning, except when such representation is, in fact, the case and the cost of the "free" consumer commodity is not passed on to the consumer by raising the regular price of the consumer commodity that must be purchased in connection with the "free" offer.

(1) The meaning of "free".

(a) An offer of "free" consumer commodities is based upon a regular price for the merchandise or services which must be purchased by consumers in order to avail themselves of that which is represented to be "free." Such consumer commodities are not free if the supplier will directly and immediately recover, in whole or in part, the costs of the free consumer commodities by marking up the price of the other consumer commodities which must be purchased, by the substitution of inferior consumer commodities, or otherwise.

(b) For the purpose of this rule, all references to the word "free" shall include within the term all other words of similar import and meaning. Representative of the word or words to which this rule is applicable would be the following: "free"; "buy one, get one free"; "two for one sale"; "50% off the purchase of two"; "gift"; "given without charge"; "bonus" or other words and terms which tend to convey to the consuming public the impression that an item of a consumer commodity is "free".

(2) The meaning of "regular price".

(a) The term "regular price" means the price in the same quantity, quality, and with the same service, at which the seller or advertiser of the consumer commodity has openly and actively sold the consumer commodity in the geographic market or trade area in which he is making a "free" or similar offer in the most recent and regular course of business for a reasonably substantial period of time. For consumer products or services which fluctuate in price, the "regular price" shall be the lowest price at which any substantial sales were made during the aforementioned period of time.

(b) Negotiated sales. If a consumer commodity usually is sold at a price arrived at through bargaining, rather than at a regular price, it is improper to represent that another consumer commodity is being offered "free" with the sale, unless the supplier is able to establish a mean, average price immediately prior to the free offer. The same representation is also improper where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

(3) Frequency of offers.

(a) In order to establish a regular price over a reasonably substantial period of time, a single kind of consumer commodity should not be advertised with a "free" offer in a trade area for more than six months in any twelve-month period. At least 30 days should elapse before another such offer is promoted in the same trade area. No more than three such offers should be made in the same area in any twelve-month period.

B. Disclosure of Conditions. A "free" or similar offer is

deceptive unless all the terms, conditions, and obligations upon which receipt and retention of the "free" item are contingent are set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood.

C. **Combination Offer.** This rule does not preclude the use of nondeceptive, "combination" offers in which two or more items of consumer commodities such as, but not limited to, toothpaste and a toothbrush, or soap and deodorant, or clothing and alterations are offered for sale as a single unit at a single state price, and, in which no representation is made that the price is being paid for one item and the other is "free." Similarly, suppliers are not precluded from settling a price for an item of consumer commodities which also includes furnishing the consumer with a second, distinct item of consumer commodities at one inclusive price if no presentation is made that the latter is free.

D. **Introductory Offers.** No "free" offers should be made in connection with the introduction of a new consumer commodity offered for sale at a specified price unless the offerer expects in good faith to discontinue the offer after a limited time and to commence selling the consumer commodity promoted separately, at the same price at which it was promoted with a "free" offer.

#### **R152-11-5. Repairs and Service.**

A. It shall be a deceptive act or practice in connection with a consumer transaction involving repairs, inspections, or other services for a supplier to:

(1) Fail to obtain the consumer's express authorization for repairs, inspections, or other services. The authorization shall be obtained only after the supplier has clearly explained to the consumer the anticipated repairs, inspection or other services to be performed, the estimated charges for those repairs, inspections or other services, and the reasonably expected completion date of such repairs, inspection or other services to be performed, including any charge for re-assembly of any parts disassembled in regards to the providing of such estimate. For repairs, inspections or other services that exceed a value of \$25, the consumer's express authorization shall be in a form that is evidenced by written agreement signed by the consumer or by any electronically transferred authorization from the consumer such as a facsimile transmission, e-mail, telephonic, or other electronic means that is stored, recorded, or retained by the supplier evidencing the consumer's express authorization, a transcript or copy of which shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(2) Fail to obtain the consumer's express authorization for additional, unforeseen, but necessary, repairs, inspections, or other services when those repairs, inspections, or other services amount to ten percent (10%) or more (excluding tax) of the original estimate. The consumer's express authorization for such additional repairs, inspections, or other services shall be in a form that is evidenced by written agreement signed by the consumer or by any electronically transferred authorization from the consumer such as a facsimile transmission, e-mail, telephonic, or other electronic means that is stored, recorded, or retained by the supplier evidencing the consumer's express authorization, a transcript or copy of which shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(3) Fail to re-assemble any parts disassembled for inspection unless the consumer is so advised, prior to acceptance for inspection by supplier that there will be a charge for re-assembly of the parts or that it is not possible to re-

assemble such parts;

(4) Charge for repairs, inspections, or other services which have not been authorized by the consumer;

(5) In the case of an in-home service call where the consumer had initially contacted the supplier, to fail to disclose before the supplier's repairman goes to the consumer's residence that a service or diagnostic charge will be imposed, even though no repairs may be effected;

(6) Represent that repairs, inspections, or other services are necessary when such is not the fact;

(7) Represent that repairs, inspections, or other services must be performed away from the consumer's residence when such is not the fact;

(8) Represent that repairs, inspections or other services have been made when such is not the fact;

(9) Represent that the goods being inspected or diagnosed are in a dangerous condition or that the consumer's continued use of them may be harmful to him when such is not the fact;

(10) Intentionally understate or misstate materially the estimated cost of repairs, inspections, or other services;

(11) Fail to provide the consumer with an itemized list of repairs, inspections, or other services performed and the reason for such repairs, inspections, or other services, including:

(a) A list of parts and a statement of whether they are new, used, rebuilt, or after market, and the cost thereof to the consumer; and

(b) The number of hours of labor charged, apportioned for each part, service or repair, and the name or other reasonable means of identification of the mechanic or repairman performing the service, provided, however, that the requirements of (b) shall be satisfied by the statement of a flat rate price if such repairs are customarily done and billed on a flat rate price basis and such has been previously disclosed to the consumer in writing.

(12) Fail to give reasonable written notice before repairs, inspections, or other services are provided, that replaced or repaired parts may be inspected or fail to allow the consumer to inspect replaced or repaired parts on request, unless:

(a) the parts are to be rebuilt or sold by the supplier and such intended reuse is made known to the consumer by written notice on the original estimate; or

(b) the parts are to be returned to the manufacturer or distributor under a written warranty agreement; or

(c) the parts are impractical to return to the consumer because of size, weight, or other similar factors; or

(d) the consumer waives the return of such parts in writing after repairs are completed and a total cost is presented.

(13) Fail to provide to the consumer a written, itemized receipt for any consumer commodities that are left with, or turned over to, the supplier for repairs, inspections, or other services. Such receipt shall include:

(a) The exact name and business address of the business entity (or person, if the entity is not a corporation or partnership) which will repair or service the consumer commodities.

(b) The name and signature of the person who actually takes the consumer commodities into custody.

(c) The name of any entity to whom such repairs, inspections, or other services are sublet including the address, phone number and a contact person at such entity.

(d) A description including make and model number or such other features as will reasonably identify the consumer commodities to be repaired or serviced.

#### **R152-11-6. Prizes.**

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to notify in any way a consumer or prospective consumer that he has (1) won a prize or will receive anything of value, or (2) been selected, or is

eligible, to win a prize or receive anything of value, if the receipt of the prize or thing of value is conditioned upon the consumer's listening to or observing a sales promotional effort or entering into a consumer transaction, unless the supplier clearly and explicitly discloses, at the time of notification of the prize, that an attempt will be made to induce the consumer or prospective consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction. If a supplier states or implies a value to the prize or thing of value the true market value of such prize must be accurately stated. A supplier must further state that the prize or thing of value could not benefit the consumer or prospective consumer without the expenditure of the consumer's or prospective consumer's time or transportation expense, or that a salesman will be visiting the consumer's or prospective consumer's residence; if such is the case.

B. A statement to the effect that the consumer or prospective consumer must observe or listen to a "demonstration" or promotional effort in connection with a consumer transaction does not satisfy the requirements of this rule, unless it is reasonably clear from the information supplied to the consumer that the supplier is in the business of making consumer sales or that the intent is to encourage or induce the consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction.

#### **R152-11-7. New for Used.**

A. Except as provided in Section 7c and d of this rule, it shall be a deceptive act or practice in connection with a consumer transaction for a supplier to represent, directly or indirectly, that an item of consumer commodity, or that any part of an item of consumer commodity, is new or unused when such is not the fact, or to misrepresent the extent of previous use thereof, or to fail to make clear and conspicuous disclosures, prior to time of offer, to the consumer or prospective consumer that an item of consumer commodity has been used.

B. For the purpose of this rule, "used" shall include rebuilt, re-manufactured, reconditioned consumer commodity or parts, thereof, or used either as a demonstrator or as a consumer commodity by a previous consumer.

C. For the purpose of this rule, a returned consumer commodity which has not been used by a previous purchaser, shall be considered new or unused.

D. The disclosure that an item of consumer commodity has been used or contains used parts as required by Section 7a may be made by use of words such as, but not limited to, "used"; "second hand"; "repaired"; "re-manufactured"; "reconditioned"; "rebuilt"; or "reline"; whichever is applicable to the item of consumer commodity involved.

#### **R152-11-8. Substitution of Consumer Commodities.**

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to furnish similar consumer commodities of equal or greater value when there was no intention to ship, deliver or install the original consumer commodities ordered. The act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate this rule if such substitution is first approved by the consumer.

B. For the purpose of this rule, consumer commodities may not be considered of "equal or greater value" if they are not substantially similar to the consumer commodity ordered, or are not fit for the purposes intended, or if the supplier normally offers the substituted consumer commodities at a lower price than the "regular price".

C. It will be assumed that a supplier had no intention to deliver, ship, or install the original ordered or substitute goods if the supplier fails to ship, deliver or install the goods within 30 days of the date of the order, purchase or of the notice of delay

and fails to notify the purchaser of any delay or further delay; unless the supplier can show that it has made a good faith effort to ship, deliver or install the goods or to notify the purchaser of any delay or further delay within the prescribed period.

#### **R152-11-9. Direct Solicitations.**

A. It shall be a deceptive act or practice in connection with a consumer transaction involving any direct solicitation sale for a supplier to do any of the following:

(1) Solicit a sale without clearly, affirmatively, and expressly revealing at the time the seller initially contacts the consumer or prospective consumer, and before making any other statements or asking any questions, except for a greeting: the name of the seller, the name or trade name of the company, corporation or partnership the seller represents, and stating in general terms the nature of the consumer commodities the seller wishes to show or demonstrate.

(2) Represent that the consumer or prospective consumer will receive a discount, rebate, or other benefit for permitting his home or other property, real or personal, to be used as a so-called "model home" or "model property" for demonstration or advertising purposes when such, in fact, is not true;

(3) Represent that the consumer or prospective consumer has been specially selected to receive a bargain, discount, or other advantage when such, in fact, is not true;

(4) Represent that the consumer or prospective consumer is a winner of a contest when such, in fact, is not true;

(5) Represent that the consumer commodities that are being offered for sale cannot be purchased in any place of business, but only through direct solicitation, when such, in fact, is not true;

(6) Represent that the salesman representative, or agent has authority to negotiate the final terms of a consumer transaction when such, in fact, is not true;

(7) Sell, lease, or rent consumer goods or services with a purchase price of \$25 or more and fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution which is in the same language (e.g. Spanish) as that principally used in the oral sales presentation and which shows the date of the transaction and the name and address of the seller.

(8) Except as otherwise provided in the "Home Solicitations Sales Act", Section 70C-5-102(5) and or the "Telephone Fraud Prevention Act", Section 13-26-5, to fail to provide a notice of the buyer's right to cancel within three (3) business days at the time of purchase if the total of the sale exceeds \$25, unless the supplier's cancellation policy is communicated to the buyer and the policy offers greater rights to the buyer than three days, which notice shall be in conspicuous statement written in dark bold at least 12 point type on the front page of the purchase documentation, and shall read as follows: "You, the Buyer, May Cancel This Transaction At Any Time Prior to Midnight of the Third Business Day (or Time Period Reflecting the Supplier's Cancellation Policy But Not Less Than Three Business Days) After the Date of This Transaction or Receipt of The Product, Whichever is Later."

(a) Paragraph (8) shall not apply to "fixture" solicitation sales where the supplier:

(i) automatically provides the buyer a right to cancel within three (3) or more business days from the time of purchase; or

(ii) automatically provides a refund for return of goods within three (3) or more business days from the time of purchase, but prior to installation as a fixture; or

(iii) supplies merchandise to a buyer without prior full payment and allows the buyer three (3) or more business days from the time of receipt of the merchandise, but prior to installation as a fixture to cancel the order and return the merchandise; or



(iv) discloses its refund/return policy in its advertising, catalog and contract, and that policy provides for a return of merchandise within a period of three (3) or more business days from the time of purchase, but prior to installation as a fixture or that policy indicates no return or refund will be offered or made on special merchandise (such as uniquely sized items, custom made or special ordered items); or

(9) Fail or refuse to honor any valid notice of cancellation by a consumer and within 30 calendar days after the receipt of such notice, to: (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the supplier; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

B. "Direct Solicitation" means solicitation of a consumer transaction initiated by a supplier, at the residence or place of employment of any consumer, and includes a sale or solicitation of sale made by the supplier by direct mail or telephone or personal contact at the residence or place of employment of any consumer. In the case of a subscription or club membership (e.g., tape, book, or record club) solicitation, "direct solicitation" means solicitation of the initial consumer transaction pursuant to a subscription or club membership agreement, made by the supplier at the residence or place of employment of any consumer, and includes a solicitation of an initial sale made by the supplier by direct mail or telephone or personal contact at the residence or place of employment of any consumer, but excludes all subsequent consumer transactions which are provided for in the subscription or club membership agreement.

C. "Time of Purchase" is defined as the day on which the buyer signs an agreement or accepts an offer to purchase consumer goods or services where the total of the sale is \$25 or more.

#### **R152-11-10. Deposits and Refunds.**

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to accept a deposit unless the following conditions are met:

(1) The deposit obligates the supplier to refrain for a specified period of time from offering for sale to any other person the consumer commodities in relation to which the deposit has been made by the consumer if such consumer commodities are unique; provided that a supplier may continue to sell or offer to sell consumer commodities on which a deposit has been made if he has available sufficient consumer commodities to satisfy all consumers who have made deposits;

(2) All deposits accepted by a supplier must be evidenced by dated receipts, provided to the consumer at the time of the transaction, stating the following information:

(a) Description of the consumer commodity, (including model, model year, when appropriate, make, and color);  
 (b) The cash selling price;  
 (c) Allowance on the consumer commodity to be traded in, if any;

(d) Time during which the option is binding;

(e) Whether the deposit is refundable and under what conditions; and

(f) Any additional cost such as delivery charge.

(3) For the purpose of this rule "deposit" means any payment in cash, or of anything of value or an obligation to pay including, but not limited to, a credit device transaction incurred by a consumer as a deposit, refundable or non-refundable option, or as partial payment for consumer commodities.

B. It shall be a deceptive act or practice in connection with a consumer transaction when the consumer can provide reasonable proof of purchase from a supplier for the supplier to refuse to give refunds for:

(1) Used, damaged or defective products, unless they are clearly marked "as is" or with some other conspicuous disclaimer of any implied or express warranty, and also clearly marked that no refund will be given; or

(2) Non-used, non-damaged or non-defective products unless:

(a) Such non-refund, exchange or credit policy, including any applicable restocking fee, is clearly indicated by:

(i) a sign posted at the point of display, the point of sale, the store entrance;

(ii) adequate verbal or written disclosure if the transaction occurs through the mail, over the telephone, via facsimile machine, via e-mail, or over the Internet; or

(iii) a clear and conspicuous statement on the first or front page of any sales document or contract at the time of the sale.

(b) The consumer commodities are food, perishable items, merchandise which is substantially custom made or custom finished.

(3) For the purpose of this rule "refund" means cash if payment were made in cash provided that if payment were made by check the refund may be delayed until the check has cleared; and further provided that if payment were made by debit to a credit card or other account, then refund may be made by an appropriate credit or refund pursuant to the applicable law.

C. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier who has accepted a deposit and has received from the consumer within a reasonable time a valid request for refund of the deposit to fail to make the refund within 30 calendar days after receipt of such request.

(1) In determining the amount required to be refunded under this rule, the supplier may take into consideration the nature of the commodity returned, the condition of the commodity returned, shipping charges if agreed to and any lawful restocking fee.

(2) For purposes of this rule, "reasonable time" means within 30 days of the date of the deposit unless a longer period is justified due to the nature of the commodity returned or any agreement between the parties.

D. No deposit accepted by a supplier to secure the value of equipment or materials provided to a consumer for the consumer's use in any business opportunity where it is anticipated by either the consumer or the supplier that some remuneration will be paid to the consumer for services or goods supplied to the supplier or to some third party in the behalf of the supplier shall exceed the actual cost of the supplies or equipment paid by the supplier or any person acting on behalf of the supplier.

#### **R152-11-11. Franchises, Distributorships, Referral Sales.**

A. Definitions. As used in this chapter, the following words and terms shall have the following meanings, unless some other meaning is plainly indicated:

(1) "Referral Selling" means any consumer transaction where the seller gives or offers a rebate or discount to the buyer as an inducement for a sale in consideration of the buyer's providing the seller with the names of prospective purchasers.

(2) The term "franchise or distributorship" means a contract or agreement requiring substantial capital investment, either expressed or implied, whether oral or written, between two or more persons:

(a) Wherein a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) Wherein the purchaser, is granted the right to offer, sell and distribute consumer commodities manufactured, processed, distributed or, in the case of services, organized and directed by the seller; and the purchaser has not been previously engaged in such business opportunity;

(c) Wherein the franchise or distributorship as an independent business constitutes a component of seller's

distribution system; or

(d) Wherein the operation of the purchaser's business is substantially reliant on sellers for the basic supply of consumer commodities.

B. Franchises and Distributorships. It shall be an unfair or deceptive act or practice for any person in the trade or commerce of establishing a franchise, distributorship to:

(1) Misrepresent the prospects or chances for success of a proposed or existing franchise or distributorship;

(2) Misrepresent by failure to disclose or otherwise, the known required total investment for such franchise or distributorship;

(3) Misrepresent or fail to disclose efforts to sell or establish more franchises or distributorships than is reasonable to expect the market or market area for the particular franchise or distributorship to sustain;

(4) Misrepresent the quantity or quality of the products to be sold or distributed through the franchise or distributorship;

(5) Misrepresent the training and management assistance available to the franchise or distributorship;

(6) Misrepresent the amount of profits, net or gross, the franchisee can expect from the operation of the franchise or distributorship;

(7) Misrepresent the size, choice, potential or demographic feature of a franchise territory or misrepresent the number of present or future franchises or distributorships within the franchise territory;

(8) Misrepresent by failure to disclose or otherwise, the termination, transfer or renewal provision of a franchise or distributorship agreement;

(9) Falsely claim or infer that a primary marketer of trademark products or services sponsors or participates directly or indirectly in the franchise or distributorship operation;

(10) Assign a so-called exclusive territory encompassing the same area to more than one franchise;

(11) Provide vending locations for which written authorizations have not been granted by the property owners or lessees of the premises;

(12) Provide vending machines or displays of a brand or kind different from or inferior to those promised by the seller;

(13) Fail to provide to the purchaser a written contract which includes the following provisions:

(a) The total financial obligation of the purchaser to the seller;

(b) The date of delivery of the purchaser consumer commodity to the purchaser if the seller is responsible for delivery of such consumer commodity;

(c) The description and quantity of consumer commodities to be delivered to the purchaser if the seller is responsible for delivery of such consumer commodities; and

(d) All other disclosures and provisions required in the preceding subsections;

(14) Fail to honor his contract as required in this section with the purchaser.

#### **R152-11-12. Negative Options.**

A. A negative option, as defined in 16 C.F.R. 425.1, is a deceptive act or practice only if the negative option violates 16 C.F.R. 425.1.

#### **R152-11-13. Travel Packages.**

(1) This rule is authorized by Subsection 13-11-8(2). The purpose of this rule is to define one type of conduct that violates Subsection 13-11-4(1).

(2) It shall be a deceptive act or practice for a supplier to offer, knowingly or intentionally, a reduced rate travel package which:

(a) is tendered to a consumer as an incentive for the performance of some act the consumer has no legal obligation

to perform;

(b) is subject to redemption rules the violation of which will result in a default which discharges the supplier's obligation to perform under such rules; and

(c) is structured so that the supplier will only realize a profit if a majority of the consumers who receive reduced rate travel package default.

(3)(a) For a supplier to be held liable under this rule, it is not necessary that he contract directly with a consumer for a reduced rate travel package. It is a sufficient basis for liability for the supplier to offer such a package to any person knowing that a consumer eventually will look to him for performance.

(b) A supplier acts deceptively required by Subsection 13-11-4(2) when he consciously engages in conduct which constitutes a deceptive act or practice, even if he is unaware that such conduct is unlawful.

(4) The definitions appearing in Section 13-11-3 shall apply to this rule, with the following additional definitions:

(a) "reduced rate" means the payment of funds, whether styled as fees, taxes, a discounted payment, or otherwise, which is less than the fair market value of the travel package offered by a supplier; and

(b) "travel package" means air, land, or sea transportation, with or without lodging, for pleasure or business purpose within the scope of the term "consumer transaction".

**KEY: advertising, bait and switch, consumer protection, negative options**

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**13-11**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-1. General Rule of the Division of Occupational and Professional Licensing.**

**R156-1-101. Title.**

This rule is known as the General Rule of the Division of Occupational and Professional Licensing.

**R156-1-102. Definitions.**

In addition to the definitions in Title 58, as used in Title 58 or this rule:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

(a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

(e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;

(g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;

(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Branching questionnaire", as used in Section R156-1-601, means an adaptive, progressive inquiry used by a physician to determine a health history and assessment, and serves as the basis for a diagnosis.

(4) "Cancel" or "cancellation" means nondisciplinary action by the division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment, or who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards.

(5) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(6) "Denial of licensure" means action by the division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(7) "Disciplinary action" means adverse licensure action by the division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(8) "Diversion agreement" means a formal written agreement between a licensee, the division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(9) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

(10) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(11) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the division under the authority of Subsection 58-1-108(2).

(12) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(13) "Inactive" or "inactivation" means action by the division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(14) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the division regulatory and compliance officer, or if the division regulatory and compliance officer is unable to so serve for any reason, a bureau manager designated by the regulatory and compliance officer, or if both the division regulatory and compliance officer and the designated bureau manager are unable to so serve for any reason, a department administrative law judge.

(15) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(16) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(17) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) absence of dishonest or selfish motive;

(iii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iv) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(v) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(vi) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vii) imposition of other penalties or sanctions; and

(viii) remorse.

(b) The following factors should not be considered as

mitigating circumstances:

(i) forced or compelled restitution;  
 (ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;  
 (iv) failure of injured client to complain; and  
 (v) complainant's recommendation as to sanction.

(18) "Nondisciplinary action" means adverse licensure action by the division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(19) "Peer committees" mean advisory peer committees or boards created by the legislature in Title 58 or by the division under the authority of Subsection 58-1-203(1)(f).

(20) "Private reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a private record.

(21) "Probation" means disciplinary action placing terms and conditions upon a license;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(22) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(23) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(24) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(25) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(26) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (26)(a), placed on a license issued to an applicant for licensure.

(27) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(28) "Revoke" or "revocation" means disciplinary action by the division extinguishing a license.

(29) "Suspend" or "suspension" means disciplinary action by the division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(30) "Surrender" means voluntary action by a licensee giving back or returning to the division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(31) "Temporary license" or "temporary licensure" means a license issued by the division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

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

(33) "Warning or final disposition letters which do not

constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

#### **R156-1-102a. Global Definitions of Levels of Supervision.**

(1) Except as otherwise provided by statute or rule, the global definitions of levels of supervision herein shall apply to supervision terminology used in Title 58 and Title R156, and shall be referenced and used, to the extent practicable, in statutes and rules to promote uniformity and consistency.

(2) Except as otherwise provided by statute or rule, all unlicensed personnel specifically allowed to practice a regulated occupation or profession are required to practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(3) Except as otherwise provided by statute or rule, all license classifications required to practice under supervision shall practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(4) Levels of supervision are defined as follows:

(a) "Direct supervision" and "immediate supervision" mean the supervising licensee is present and available for face-to-face communication with the person being supervised when and where occupational or professional services are being provided.

(b) "Indirect supervision" means the supervising licensee:

(i) has given either written or verbal instructions to the person being supervised;

(ii) is present within the facility in which the person being supervised is providing services; and

(iii) is available to provide immediate face-to-face communication with the person being supervised as necessary.

(c) "General supervision" means that the supervising licensee:

(i) has authorized the work to be performed by the person being supervised;

(ii) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio or some other means, without regard to whether the supervising licensee is located on the same premises as the person being supervised; and

(iii) can provide any necessary consultation within a reasonable period of time and personal contact is routine.

(5) "Supervising licensee" means a licensee who has satisfied any requirements to act as a supervisor and has agreed to provide supervision of an unlicensed individual or a licensee in a classification or licensure status that requires supervision in accordance with the provisions of this chapter.

#### **R156-1-103. 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.

#### **R156-1-106. Division - Duties, Functions, and Responsibilities.**

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers and home addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is

properly authorized and shall not be sold or otherwise redisclosed by the requester:

(a) responses to requests from another governmental entity, government-managed corporation, a political subdivision, the federal government, another state, or a not-for-profit regulatory association to which the division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research;

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for credentialing or reimbursement purposes; and

(f) responses to requests from a person preparing for, participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) In accordance with Subsection 58-1-106(3)(a), the division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the division, if the reason for the request is deemed by the division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

#### **R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.**

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of all occupations and professions regulated in Title 58.

(3) The provisions of the other rules in Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

#### **R156-1-109. Presiding Officers.**

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division regulatory and compliance officer is unable to so serve for any reason, a bureau manager designated by the regulatory and compliance officer is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(f) through (g), and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (h),(j), (m), (n), (p), and (q), and R156-46b-202(2)(a) through (c), however resolved, including memorandums of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and shall issue a recommended order to the division based upon the record developed at the hearing determining all issues pending before the division to the director for a final order, and R156-46b-201(1)(e). The authority of the presiding officer in formal adjudicative proceedings described in R156-46b-201(1)(e) shall be limited to approval of claims, conditional denial of claims, and final denial of claims based upon jurisdictional defects;

(ii) formal adjudicative proceedings described in Subsection R156-46b-201(1)(h), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4); and

(iii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (c), (e), (g), (i), (k), and (o).

(iv) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Contested Citation Hearing Officer. The regulatory and compliance officer or other contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(l).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(f) for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-

109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-201(1)(e) and R156-46b-202(1)(g) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) for formal adjudicative proceedings described in Subsections R156-46b-201(1)(g) and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings;

(B) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (m), (n), (p), and (q), and R156-46b-202(2)(a) and (c), however resolved, including memorandums of understanding and stipulated settlements;

(C) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(D) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order

must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. Unless otherwise specified in writing by the commission, the director is designated as the presiding officer for conducting informal adjudicative proceedings specified in R156-46b-202(2)(b).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting:

(i) formal adjudicative proceedings specified in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board or commission who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and to adopt orders as set forth in this rule; and

(ii) informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (c), (e), (i), and (o) and R156-46b-202(2)(d) and (e).

(iii) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(e) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(f) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(g) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

#### **R156-1-110. Issuance of Investigative Subpoenas.**

(1) All requests for subpoenas in conjunction with a

division investigation made pursuant to Subsection 58-1-106(1)(c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of the division and the signature of the subpoena authority.

(2) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

**R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.**

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the division.

(7) Unless otherwise approved by the division, peer or advisory committee meetings shall be held in the building occupied by the division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The division shall provide a division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the

procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58 or Title R156.

**R156-1-206. Emergency Adjudicative Proceeding Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chairman and Secretary - Open and Public Meetings Act - Utah Administrative Procedures Act - Per Diem and Expenses.**

(1) The chairman of the board for the profession of the person against whom an action is proposed may appoint the members of emergency review committees on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-205(7), and (9) through (12).

**R156-1-301. Application for Licensure - Filing Date - Applicable Requirements for Licensure - Issuance Date.**

(1) The filing date for an application for licensure shall be the postmark date of the application or the date the application is received and date stamped by the division, whichever is earlier.

(2) Except as otherwise provided by statute, rule or order, the requirements for licensure applicable to an application for licensure shall be the requirements in effect on the filing date of the application.

(3) The issuance date for a license issued to an applicant for licensure shall be as follows:

(a) the date the approval is input into the division's electronic licensure database for applications submitted and processed manually; or

(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the division's Internet Renewal System.

**R156-1-302. Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.**

Pursuant to the provisions of Subsection 58-1-401(1) and (2), if an applicant or licensee has failed to demonstrate good moral character, has been involved in unlawful conduct, has been involved in unprofessional conduct, or has any other mental or physical condition which conduct or condition, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare, the Division may consider various relevant factors in determining what action to take regarding licensure including the following:

(1) aggravating circumstances, as defined in Subsection R156-1-102(2);

(2) mitigating circumstances, as defined in Subsection R156-1-102(17);

(3) the degree of risk to the public health, safety or welfare;

(4) the degree of risk that a conduct will be repeated;

(5) the degree of risk that a condition will continue;

(6) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(7) the length of time since the last conduct or condition has occurred;

(8) the current criminal probationary or parole status of the

applicant or licensee;

(9) the current administrative status of the applicant or licensee;

(10) results of previously submitted applications, for any regulated profession or occupation;

(11) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;

(12) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

(13) psychological evaluations; or

(14) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

**R156-1-305. Inactive Licensure.**

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

- (a) advanced practice registered nurse;
- (b) audiologist;
- (c) certified nurse midwife;
- (d) certified public accountant emeritus;
- (e) certified registered nurse anesthetist;
- (f) certified court reporter;
- (g) certified social worker;
- (h) chiropractic physician;
- (i) clinical social worker;
- (j) contractor;
- (k) deception detection examiner;
- (l) deception detection intern;
- (m) dental hygienist;
- (n) dentist;
- (o) direct-entry midwife;
- (p) genetic counselor;
- (q) health facility administrator;
- (r) hearing instrument specialist;
- (s) licensed substance abuse counselor;
- (t) marriage and family therapist;
- (u) naturopath/naturopathic physician;
- (v) optometrist;
- (w) osteopathic physician and surgeon;
- (x) pharmacist;
- (y) pharmacy technician;
- (z) physician assistant;
- (aa) physician and surgeon;
- (bb) podiatric physician;
- (cc) private probation provider;
- (dd) professional counselor;
- (ee) psychologist;
- (ff) radiology practical technician;
- (gg) radiology technologist;
- (hh) security personnel;
- (ii) speech-language pathologist; and
- (jj) veterinarian.

(3) Applicants for inactive licensure shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

**R156-1-308a. Renewal Dates.**

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE  
RENEWAL DATES

|   |              |            |
|---|--------------|------------|
| (1) Acupuncturist   | May 31       | even years |
| (2) Advanced Practice Registered Nurse  | January 31   | even years |
| (3) Alternate Dispute Resolution Provdr   | September 30 | even years |
| (4) Architect   | May 31       | even years |
| (5) Athlete Agent   | September 30 | even years |
| (6) Athletic Trainer  | May 31       | odd years  |
| (7) Audiologist   | May 31       | odd years  |
| (8) Barber  | September 30 | odd years  |
| (9) Barber School   | September 30 | odd years  |
| (10) Building Inspector   | November 30  | odd years  |
| (11) Burglar Alarm Security   | November 30  | even years |
| (12) C.P.A. Firm  | September 30 | even years |
| (13) Certified Court Reporter   | May 31       | even years |
| (14) Certified Dietitian  | September 30 | even years |
| (15) Certified Nurse Midwife  | January 31   | even years |
| (16) Certified Public Accountant  | September 30 | even years |
| (17) Certified Registered Nurse Anesthetist   | January 31   | even years |
| (18) Certified Social Worker  | September 30 | even years |
| (19) Chiropractic Physician   | May 31       | even years |
| (20) Clinical Social Worker   | September 30 | odd years  |
| (21) Construction Trades Instructor   | November 30  | odd years  |
| (22) Contractor   | November 30  | odd years  |
| (23) Controlled Substance Precursor Distributor   | May 31       | odd years  |
| (24) Controlled Substance Precursor Purchaser   | May 31       | odd years  |
| (25) Controlled Substance Handler   | May 31       | odd years  |
| (26) Cosmetologist/Barber   | September 30 | odd years  |
| (27) Cosmetology/Barber School  | September 30 | odd years  |
| (28) Deception Detection  | November 30  | even years |
| (29) Dental Hygienist   | May 31       | even years |
| (30) Dentist  | May 31       | even years |
| (31) Direct-entry Midwife   | September 30 | odd years  |
| (32) Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master | November 30  | even years |
| (33) Electrologist  | September 30 | odd years  |
| (34) Electrology School   | September 30 | odd years  |
| (35) Environmental Health Scientist   | May 31       | odd years  |
| (36) Esthetician  | September 30 | odd years  |
| (37) Esthetics School   | September 30 | odd years  |
| (38) Factory Built Housing Dealer   | September 30 | even years |
| (39) Funeral Service Director   | May 31       | even years |
| (40) Funeral Service Establishment  | May 31       | even years |
| (41) Genetic Counselor  | September 30 | even years |
| (42) Health Facility Administrator  | May 31       | odd years  |
| (43) Hearing Instrument Specialist  | September 30 | even years |
| (44) Landscape Architect  | May 31       | even years |
| (45) Licensed Practical Nurse   | January 31   | even years |
| (46) Licensed Substance Abuse Counselor   | May 31       | odd years  |
| (47) Marriage and Family Therapist  | September 30 | even years |
| (48) Massage Apprentice, Therapist  | May 31       | odd years  |
| (49) Master Esthetician   | September 30 | odd years  |
| (50) Medication Aide Certified  | March 31     | odd years  |



|      |   |              |            |
|------|---|--------------|------------|
| (51) | Nail Technologist   | September 30 | odd years  |
| (52) | Nail Technology School  | September 30 | odd years  |
| (53) | Naturopath/Naturopathic Physician   | May 31       | even years |
| (54) | Occupational Therapist  | May 31       | odd years  |
| (55) | Occupational Therapy Assistant  | May 31       | odd years  |
| (56) | Optometrist   | September 30 | even years |
| (57) | Osteopathic Physician and Surgeon   | May 31       | even years |
| (58) | Outfitter/Hunting Guide   | May 31       | even years |
| (59) | Pharmacy (Class A-B-C-D-E)  | September 30 | odd years  |
| (60) | Pharmacist  | September 30 | odd years  |
| (61) | Pharmacy Technician   | September 30 | odd years  |
| (62) | Physical Therapist  | May 31       | odd years  |
| (63) | Physical Therapist Assistant  | May 31       | odd years  |
| (64) | Physician Assistant   | May 31       | even years |
| (65) | Physician and Surgeon   | January 31   | even years |
| (66) | Plumber<br>Apprentice, Journeyman,<br>Master, Residential Master,<br>Residential Journeyman | November 30  | even years |
| (67) | Podiatric Physician   | September 30 | even years |
| (68) | Pre Need Funeral<br>Arrangement Provider  | May 31       | even years |
| (69) | Pre Need Funeral Arrangement<br>Sales Agent   | May 31       | even years |
| (70) | Private Probation Provider  | May 31       | odd years  |
| (71) | Professional Counselor  | September 30 | even years |
| (72) | Professional Engineer   | March 31     | odd years  |
| (73) | Professional Geologist  | March 31     | odd years  |
| (74) | Professional Land Surveyor  | March 31     | odd years  |
| (75) | Professional Structural<br>Engineer   | March 31     | odd years  |
| (76) | Psychologist  | September 30 | even years |
| (77) | Radiology Practical<br>Technician   | May 31       | odd years  |
| (78) | Radiology Technologist  | May 31       | odd years  |
| (79) | Recreational Therapy<br>Technician, Specialist,<br>Master Specialist                        | May 31       | odd years  |
| (80) | Registered Nurse  | January 31   | odd years  |
| (81) | Respiratory Care<br>Practitioner  | September 30 | even years |
| (82) | Security Personnel  | November 30  | even years |
| (83) | Social Service Worker   | September 30 | even years |
| (84) | Speech-Language Pathologist   | May 31       | odd years  |
| (85) | Veterinarian  | September 30 | even years |
| (86) | Vocational Rehabilitation<br>Counselor  | March 31     | annually   |

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Certified Marriage and Family Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(b) Certified Professional Counselor Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first. An intern license may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(d) Funeral Service Apprentice licenses shall be issued for

a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(e) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(f) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

**R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.**

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish a renewal period shall increased or decreased proportionately.

**R156-1-308c. Renewal of Licensure Procedures.**

The procedures for renewal of licensure shall be as follows:

(1) The division shall mail a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's automated license system. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee to maintain a current address with the division.

(3) Renewal notices shall specify the renewal requirements and require that each licensee document or certify that the licensee meets the renewal requirements.

(4) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(5) Licensees licensed during the last four months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

**R156-1-308d. Waiver of Continuing Education Requirements - Renewal Requirements.**

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

(b) A request must be submitted no later than the deadline for completing any continuing education requirement.

(c) A licensee submitting a request has the burden of proof and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the practice of the profession, as recommended by the appropriate board, in order to assure competent practice.

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall not be exempted from the requirements of Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities and education of the licensee. If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee limiting practice to areas in which the licensee has the required competency, abilities and education.

**R156-1-308e. Automatic Expiration of Licensure Upon Dissolution of Licensee.**

(1) A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

(a) upon written application for reinstatement of licensure submitted prior to the expiration date shown on the license, be retroactively reinstated to the date of expiration of licensure; and

(b) upon written application for reinstatement submitted after the expiration date shown on the current license, be reinstated on the effective date of the approval of the application for reinstatement, rather than relating back retroactively to the date of expiration of licensure.

**R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.**

(1) Denial of renewal of licensure shall be classified as a formal adjudicative proceeding under Rule R156-46b.

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the division's action as permitted by Subsection 63G-4-201(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(1)(h).

(3)(a) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit or investigation.

(b) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(c) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(d) Upon completion of the audit or investigation, the

division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(e) A notice of unconditional denial or partial denial of licensure to an applicant the division conditionally licensed, renewed, or reinstated shall include the following:

(i) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

(ii) the division's file or other reference number of the audit or investigation;

(iii) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested;

(iv) that the applicant's conditional license automatically will or did expire on the expiration date shown on the conditional license, and that the applicant will not be issued, renewed, or reinstated unless or until the applicant timely requests review; and

(v) that if the applicant timely requests review, the applicant's conditionally issued, renewed, or reinstated license does not expire until an order is issued unconditionally issuing, renewing, reinstating, denying, or partially denying the initial issuance, renewal, or reinstatement of the applicant's license.

**R156-1-308g. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.**

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between the date of the expiration of the license and 31 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested;

(c) if the applicant has not been engaged in unauthorized practice of the applicant's occupation or profession following

the expiration of the applicant's license, pay the established license fee for a new applicant for licensure and the reinstatement fee; and

(d) if the applicant has been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the current license renewal fee multiplied by the number of renewal periods for which the license renewal fee has not been paid since the time of expiration of license, plus a reinstatement fee.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) provide documentation of prior licensure in the State of Utah;

(b) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(c) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(d) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

(e) pay the established license renewal fee and the reinstatement fee.

**R156-1-308h. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.**

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

**R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted, Suspended or Probationary Status - Requirements.**

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted, suspended or probationary status shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee;

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or

placed on probation; and

(4) pay any fines or citations owed to the Division prior to the expiration of license.

**R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.**

An applicant for relicensure following revocation of licensure shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

**R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.**

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Section R156-1-308.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) pay the established license fee for a new applicant for licensure;

(c) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;

(d) pay any fines or citations owed to the Division prior to the surrender of license.

**R156-1-308l. Reinstatement of Licensure and Relicensure - Term of Licensure.**

Except as otherwise governed by the terms of an order issued by the division, a license issued to an applicant for reinstatement or relicensure issued during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

**R156-1-310. Cheating on Examinations.**

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an

appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the division will again consider the applicant for licensure.

(4) Notification.

The division shall notify all proctors, test administrators and examinees of the rules concerning cheating.

**R156-1-404a. Diversion Advisory Committees Created.**

(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by

the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.

(2) Committee members are appointed by and serve at the pleasure of the director.

(3) A majority of the diversion committee members shall constitute a quorum and may act on behalf of the diversion committee.

(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.

**R156-1-404b. Diversion Committees Duties.**

The duties of diversion committees shall include:

(1) reviewing the details of the information regarding licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

(3) supervising compliance with all terms and conditions of diversion agreements;

(4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

**R156-1-404c. Diversion - Eligible Offenses.**

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

**R156-1-404d. Diversion - Procedures.**

(1) Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no later than 60 days following the referral of a licensee to the diversion committee for possible diversion.

(2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404.

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(5) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement and at any hearing before the director relating to a diversion program.

**R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.**

(1) The division may enter into agreements with

professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the division shall enter agreements under this section, the division shall ensure the parties are competent to provide the required services. The division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

#### **R156-1-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing; or

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference.

#### **R156-1-503. Reporting Disciplinary Action.**

The division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

#### **R156-1-601. Online Assessment, Diagnosis and Prescribing Protocols.**

(1) In accordance with Subsection 58-1-501(4), a person licensed to prescribe under this title may prescribe legend drugs to a person located in this state following an online assessment and diagnosis in accordance with the following conditions:

(a) the prescribing practitioner is licensed in good standing in this state;

(b) an assessment and diagnosis is based upon a comprehensive health history and an assessment tool that requires the patient to provide answers to all the required questions and does not rely upon default answers, such as a branching questionnaire;

(c) only includes legend drugs and may not include controlled substances;

(d) the practice is authorized by this rule and a written agreement signed by the Division and the practitioner and approved by a panel comprised of three board members from the Physicians Licensing Board or the Osteopathic Physician and Surgeon's Licensing Board and three members from the Utah State Board of Pharmacy. The written agreement shall include:

(i) the specific name of the drug or drugs approved to be prescribed;

(ii) the policies and procedures that address patient confidentiality;

(iii) a method for electronic communication by the physician and patient;

(iv) a mechanism for the Division to be able to conduct audits of the website and records to ensure an assessment and diagnosis has been made prior to prescribing any medications; and

(v) a mechanism for the physician to have ready access to all patients' records.

#### **KEY: diversion programs, licensing, occupational licensing, supervision**

**August 10, 2009**

**Notice of Continuation March 1, 2007**

**58-1-106(1)(a)**

**58-1-308**

**58-1-501(4)**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule.**  
**R156-11a-101. Title.**

This rule is known as the "Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule."

**R156-11a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or this rule:

(1) "Advanced pedicures", as used in Subsection 58-11a-102(31)(a)(i)(D), means any of the following while caring for the nails, cuticles or calluses of the feet:

(a) utilizing manual instruments, implements, advanced electrical equipment, tools, or microdermabrasion for cleaning, trimming, softening, smoothing, or buffing;

(b) utilizing blades, including corn or callus planer or rasp, for smoothing, shaving or removing dead skin from the feet as defined in Section R156-11a-611; or

(c) utilizing topical products and preparations for chemical exfoliation as defined in Subsection R156-11a-610(4).

(2) "Aroma therapy" means the application of essential oils which are applied directly to the skin, undiluted or in a misted dilution with a carrier oil or lotion. for varied applications such as massage, hot packs, cold packs, compress, inhalation, steam or air diffusion, or in hydrotherapy services.

(3) "BCA acid" means bicloroacetic acid.

(4) "Body wraps", as used in Subsection 58-11a-102(31)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body.

(5) "Chemical exfoliation", as defined in Subsections 58-11a-102(31)(a)(i)(C) and R156-11a-610(4), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.

(6) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.

(7) "Dermaplane" means the use of a scalpel or bladed instrument under the direct supervision of a health care practitioner to shave the upper layers of the stratum corneum.

(8) "Direct supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(a).

(9) "Equivalent number of credit hours" means:

(a) the following conversion table if on a semester basis:

(i) theory - 1 credit hour - 30 clock hours;

(ii) practice - 1 credit hour - 30 clock hours; and

(iii) clinical experience - 1 credit hour - 45 clock hours;

and

(b) the following conversion table if on a quarter basis:

(i) theory - 1 credit hour - 20 clock hours;

(ii) practice - 1 credit hour - 20 clock hours; and

(iii) clinical experience - 1 credit hour - 30 clock hours.

(10) "Exfoliation" means the sloughing off of non-living skin cells by superficial and non-invasive means.

(11) "Extraction" means the following:

(a) "advanced extraction", as used in Subsections 58-11a-102(31)(a)(i)(F) and R156-11a-611(2)(b), means to perform extraction with a lancet or device that removes impurities from the skin;

(b) "manual extraction", as used in Subsection 58-11a-102(25)(a), means to remove impurities from the skin with protected fingertips, cotton swabs or a loop comedone extractor.

(12) "Galvanic current" means a constant low-voltage direct current.

(13) "General supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(c).

(14) "Health care practitioner" means a physician/surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act.

(15) "Hydrotherapy", as used in Subsection 58-11a-102(31)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.

(16) "Indirect supervision" means the supervising instructor who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(b).

(17) "Limited chemical exfoliation" means a non-invasive chemical exfoliation and is further defined in Subsection R156-11a-610(3).

(18) "Lymphatic massage", as used in Subsections 58-11a-102(31)(a)(ii) and 58-11a-302(11)(a)(i)(C), means a method using a light rhythmic pressure applied by manual or other means to the skin using specific lymphatic maneuvers to promote drainage of the lymphatic fluid through the tissue.

(19) "Manipulating", as used in Subsection 58-11a-102(25)(a), means applying a light pressure by the hands to the skin.

(20) "Microdermabrasion", as used in Subsection 58-11a-102(31)(a)(i)(E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(21) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear to determine possible allergies of the client to the chemical preparation.

(22) "Pedicure" means any of the following:

(a) cleaning, trimming, softening, or caring for the nails, cuticles, or calluses of the feet;

(b) the use of manual instruments or implements on the nails, cuticles, or calluses of the feet;

(c) callus removal by sanding, buffing, or filing; or

(d) massaging of the feet or lower portion of the leg.

(23) "TCA acid" means trichloroacetic acid.

(24) "Unprofessional conduct" is further defined, in accordance with Section 58-1-501, in Section R156-11a-502.

**R156-11a-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 11a.

**R156-11a-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.

**R156-11a-301. Change of Legal Entity.**

In accordance with Section 58-11a-301, a school shall be required to submit a new application for licensure upon any change of legal entity status. The new legal entity may not engage in practice as a licensed school, pursuant to Subsections 58-11a-102(16) through (19), until the application is approved and a license issued.

**R156-11a-302. Good Moral Character - Disqualifying Convictions.**

(1) When reviewing an application to determine the good

moral character of an applicant as set forth in Section 58-11a-302 and whether the applicant has been involved in unprofessional conduct as set forth in Subsection 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Part 12 and 13, may disqualify an applicant from becoming licensed; and

(b) a criminal conviction for the following crimes may disqualify an applicant from becoming licensed:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

#### **R156-11a-302a. Qualifications for Licensure - Examination Requirements.**

In accordance with Section 58-11a-302, the examination requirements for licensure are established as follows:

(1) Applicants for each classification listed below shall pass within one year prior to the date of application, the respective examination with a passing score as determined by the examination provider.

(a) Applicants for licensure as a barber shall pass the National Interstate Council of State Boards of Cosmetology (NIC) Barber Theory and Practical Examinations.

(b) Applicants for licensure as a cosmetologist/barber shall pass the NIC Cosmetology/Barber Theory and Practical Examinations.

(c) Applicants for licensure as an electrologist shall pass the NIC Electrologist Theory and Practical Examinations.

(d) Applicants for licensure as a basic esthetician shall pass the NIC Esthetics Theory and Practical Examinations.

(e) Applicants for licensure as a master esthetician shall pass the NIC Master Esthetician Theory and Esthetics Practical Examinations.

(f) Applicants for licensure as a barber instructor, cosmetologist/barber instructor, electrology instructor, esthetician instructor, or nail technology instructor shall pass the NIC Instructor Examination.

(g) Applicants for licensure as a nail technician shall pass the NIC Nail Technician Theory and Practical Examinations.

(2) Any equivalent theory, practical or instructor examination approved by the licensing authority of any other state is acceptable for any of the examinations specified in Subsection (1).

#### **R156-11a-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licenses and certificates under Title 58, Chapter 11a is established by rule in Section R156-1-308a.

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

#### **R156-11a-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) failing to provide direct supervision of an apprentice, a student attending a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or a student instructor;

(2) failing to obtain accreditation as a barber, cosmetology/barber, esthetics, electrology, or nail technology school in accordance with the requirements of Section R156-11a-601;

(3) failing to maintain accreditation as a barber, cosmetology/barber, esthetics, electrology or nail technology school after having been approved for accreditation;

(4) failing to comply with the standards of accreditation applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools;

(5) failing to provide adequate instruction or training as applicable to a student of a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or in an approved cosmetology/barber, esthetics, or nail technology apprenticeship;

(6) failing to comply with Title 26, Utah Health Code;

(7) failing to comply with the apprenticeship requirements applicable to barber, cosmetologist/barber, basic esthetician, master esthetician, or nail technician apprenticeships as set forth in Sections R156-11a-800 through R156-11a-804;

(8) failing to comply with the standards for curriculums applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools as set forth in Sections R156-11a-700 through R156-11a-706;

(9) using any device classified by the Food and Drug Administration as a prescriptive medical device without the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice;

(10) performing services within the scope of practice as a basic esthetician, or a master esthetician without having been adequately trained to perform such services;

(11) violating any standard established in Sections R156-11a-601 through R156-11a-612;

(12) performing a procedure while the licensee has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease; and

(13) performing a procedure on a client who has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease.

#### **R156-11a-503. Administrative Penalties - Unlawful Conduct.**

In accordance with Subsections 58-1-501(1)(a) and (c), 58-11a-301(1) and (2), 58-11-502(1), (2) or (4), and 58-11a-503(4), unless otherwise ordered by the presiding officer, the following fine schedule shall apply to citations issued under Title 58, Chapter 11a.

(1) Practicing or engaging in, or attempting to practice or engage in activity for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(1).

First Offense: \$200

Second Offense: \$300

(2) Knowingly employing any other person to engage in

or practice or attempt to engage in or practice any occupation or profession for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(2).

First Offense: \$400

Second Offense: \$800

(3) Using as a nail technician a solution composed of at least 10% methyl methacrylate on a client in violation of Subsection 58-11a-501(4)

First Offense: \$500

Second Offense: \$1,000

(4) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-11a-503(4)(h).

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

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

(7) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

#### **R156-11a-601. Standards for Accreditation.**

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), the accreditation standards for a barber school, a cosmetology/barber school, an electrology school, an esthetics school, and a nail technology school include:

(1) Each school shall be required to become accredited by:

(a) the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS); or

(b) other accrediting commissions recognized by the Utah Board of Regents for post secondary schools.

(2) Each school shall maintain and keep the accreditation current.

(3) A newly licensed school shall pursue accreditation under this section using the following procedure:

(a) A new school shall:

(i) submit an application for candidate status for accreditation to an accrediting commission within one month of the date when the school was licensed by the Division as a barber school, a cosmetology/barber school, an electrology school, an esthetics school, or a nail technology school;

(ii) provide evidence received from the accrediting commission to the Division of achieving candidate status within 12 months of the date the school was licensed;

(iii) file an "Exemption of Registration as a Post-Secondary Proprietary School" form with the Division of Consumer Protection pursuant to Sections 13-34-101 and R152-34-1;

(iv) comply with all applicable accreditation standards during the pendency of its application for accreditation status; and

(v) have 24 months following the date of achieving candidate status to be approved for accreditation.

(b)(i) If the entity is a newly licensed school, but the facility is operated on essentially the same premises with essentially the same staff then the newly licensed school shall meet the accreditation deadlines that were applicable to the predecessor licensed school.

(ii) The determination of whether a newly licensed school entity has succeeded a predecessor shall be made by the Division.

(4) A licensee who fails to obtain or maintain accreditation status, as required herein, shall immediately surrender to the

Division its license as a school. Failure to do so shall constitute a basis for immediate revocation of licensure in accordance with Section 63G-4-502.

#### **R156-11a-602. Standards for the Physical Facility.**

In accordance with Subsections 58-11a-302(3)(c)(iii), (6)(c)(iii), (9)(c)(iii), (13)(c)(iii) and (16)(c)(iii), the standards for the physical facility of a barber, cosmetology/barber, electrology, esthetics, or nail technology schools shall include:

(1) the governing standards established by the accreditation commission; and

(2) whether or not addressed in the governing standards, each facility shall have the following available:

(a) enough of each type of training equipment so that each student has an equal opportunity to be properly trained;

(b) laundry facilities to maintain sanitation and sterilization; and

(c) appropriate amounts of clean towels, sheets, linen, sponges, headbands, compresses, robes, drapes and other necessary linens for each student's and client's use.

#### **R156-11a-603. Standards for a Student Kit.**

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall provide a list of all basic kit supplies needed by each student.

(2) The basic kit may be supplied by the school or purchased independently by the student.

#### **R156-11a-604. Standards for Prohibition Against Operation as a Barbershop, Salon or Spa.**

(1) In accordance with Subsections 58-11a-302(3)(c)(iii), (6)(c)(iii), (9)(c)(iv), (13)(c)(iii), and (16)(c)(iii), when a barbershop, professional salon or spa is under the same ownership or is otherwise associated with a school, the barbershop, salon or spa shall maintain separate operations from the school.

(2) If the barbershop, salon or spa is located in the same building as a school, separate entrances and visitor reception areas are required. The barbershop, salon or spa shall also use separate public information releases, advertisements and names than that used by the school.

#### **R156-11a-605. Standards for Protection of Students.**

In accordance with Subsections 58-11a-302(3)(c)(iii) and (iv), (6)(c)(iii) and (iv), (9)(c)(iii) and (iv), (13)(c)(iii) and (iv), (16)(c)(iii) and (iv), standards for the protection of students shall include the following:

(1) In the event a school ceases to operate for any reason, the school shall notify the division within 15 days by registered or certified mail and shall name a trustee who will be responsible to maintain the student records. Upon request, the trustee shall provide information such as accumulated student hours and dates of attendance.

(2) Schools shall not use students to perform maintenance, janitorial or remodeling work such as scrubbing floor, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work areas, including the floor space, shampoo bowls, laundering of towels and linen and other general cleanup duties that are related to the performance of client services.

(3) Schools shall not require students to sell products applicable to their industry as a condition to graduate, but may provide instruction in product sales techniques as part of their curriculums.

(4) Schools shall keep a daily written record of student



attendance.

(5) Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may require the student to retake the class before giving credit for the class.

(6) In accordance with Subsection 58-11a-502(3)(a), schools shall not require students to participate in hair removal training that pertains to the genitals or anus of a client.

**R156-11a-606. Standards for Protection of Schools.**

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), standards for the protection of barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall include the following:

(1) Schools shall not be required to release documentation of hours earned to a student until the student has paid the tuition or fees owed to the school as provided in the terms of the contract.

(2) Schools may accept transfer students. Schools shall determine the amount of hours to be accepted toward graduation based upon an evaluation of the student's level of training.

(3) Hours obtained while enrolled in a barber, cosmetology/barber, esthetics, master esthetics, or nail technology apprenticeship shall not be used to satisfy any of the required hours of school instruction.

**R156-11a-607. Standards for a Written Contract.**

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall complete a written contract with each student prior to admission.

(2) Each contract shall contain, as a minimum:

- (a) the current status of the school's accreditation;
- (b) rules of conduct;
- (c) attendance requirements;
- (d) provisions for make up work;
- (e) grounds for probation, suspension or dismissal; and
- (f) a detailed fee schedule which shall include the student's financial responsibility upon voluntarily leaving the school or upon being suspended from the school.

(3) The school shall maintain on file a copy of the contract for each student and shall provide a copy of the contract to the division upon request.

**R156-11a-608. Standards for Staff Requirements of Schools.**

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), the staff requirement for barber, cosmetology/barber, electrology, esthetics and nail technology schools shall include:

(1) Schools shall be required to have, as a minimum, one licensed instructor for every 20 students, or fraction thereof, attending a practical session, and one licensed instructor for any group attending a theory session. Special guest speakers shall not reduce the number of licensed instructors required to be present.

(2) Schools may give credit for special workshops, training seminars, and competitions, or may invite special guest speakers who are not licensed in accordance with Section 58-11a-302, to provide instruction or give practical demonstrations to supplement the curriculum as long as a licensed instructor from the school is present.

(3) Student instructors shall not be counted as part of the instructor staff.

**R156-11a-609. Standards for Instructors.**

(1) In accordance with Subsections 58-11a-302(2)(e) and (f), (5)(e) and (f), (8)(e) and (f), (12)(e) and (f), and (15)(e) and (f), barber, cosmetology/barber, electrology, esthetics, and nail

technology instructors may only teach in those areas for which they have received training and are qualified to teach.

(2) In accordance with Subsection 58-11a-102(9), an individual licensed as a cosmetology/barbering instructor may teach barbering, basic esthetics or nail technology in a licensed barber school, a licensed cosmetology/barber school or a licensed nail technology school or in an approved barber, cosmetology/barber, basic esthetics or nail technology apprenticeship, provided the individual can demonstrate the same experience as required in Subsection (1).

(3) An instructor may only teach the use of a mechanical or electrical apparatus for which the instructor is trained and qualified.

**R156-11a-610. Standards for the Use of Acids.**

In accordance with Subsections 58-11a-102(25)(b) and (31)(a)(i)(C) and 58-11a-501(17), the standards for the use of any acid or concentration of acids, shall be:

(1) The use of any acid or acid solution which would exfoliate the skin below the stratum corneum, including those listed in Subsections (3) and (4), is prohibited unless used under the supervision of a licensed health care practitioner.

(2) The following acids are prohibited unless used under the supervision of a licensed health care practitioner:

- (a) phenol;
- (b) bichloroacetic acid;
- (c) resorcinol, except as provided in Subsection (4)(b); and
- (d) any acid in any concentration level that requires a prescription.

(3) Limited chemical exfoliation for a basic esthetician does not include the mixing, combining or layering of skin exfoliation products or services, but does include:

(a) alpha hydroxy acids of 30% or less, with a pH of not less than 3.0; and

(b) salicylic acid of 15% or less.

(4) Chemical exfoliation for a master esthetician includes:

- (a) acids allowed for a basic esthetician;
- (b) modified jessner solution on the face and the tissue immediately adjacent to the jaw line;

(c) alpha hydroxy acids with a pH of not less than 1.0 and at a concentration of 50% must include partially neutralized acids, and any acid above the concentration of 50% is prohibited;

(d) beta hydroxy acids with a concentration of not more than 30%;

(e) trichloroacetic acid, in accordance with Subsection 58-11a-501(17)(c), may be used in a concentration of not more than 15%, but no manual, mechanical or acid exfoliation can be used prior to treatment unless under the general supervision of a licensed health care practitioner; and

(f) vitamin based acids.

(5) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion within the previous seven days unless under the general supervision of a licensed health care practitioner.

(6)(a) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

- (i) courses of instruction;
- (ii) specialized training;
- (iii) on-the-job experience; and
- (iv) the approximate percentage that chemical exfoliation represents in the licensee's overall business.

(b) A licensee shall provide the documentation required by Subsection (6)(a) to the division upon request.

(7) A licensee may not use an acid or perform a chemical exfoliation for which the licensee is not competent to use or perform through training and experience and as documented in accordance with Subsection (6).

(8) Only commercially available products utilized in accordance with manufacturers' instructions may be used for chemical exfoliation purposes.

(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

**R156-11a-611. Standards for Approval of Mechanical or Electrical Apparatus.**

In accordance with Subsections 58-11a-102(31)(a)(i)(G)(II) and (H), the standards for approval of mechanical or electrical apparatus shall be:

(1) No mechanical or electrical apparatus that is considered a prescription medical device by the FDA may be used by a licensee, unless such use is completed under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.

(2) Dermaplane procedures, dermabrasion procedures, blades, knives, and lancets are prohibited except for:

- (a) advanced pedicures;
- (b) advanced extraction of impurities from the skin; and
- (c) dermaplane procedures for advanced exfoliation as defined in Subsection R156-11a-102(7) by a master esthetician under direct supervision of a health care practitioner.

(3) The use of any procedure in which human tissue is cut or altered by laser energy or ionizing radiation is prohibited for all individuals licensed under this chapter unless it is within the scope of practice for the licensee and under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.

(4) To be approved, a microdermabrasion machine must:

- (a) be specifically labeled for cosmetic or esthetic purposes;
- (b) be a closed-loop vacuum system that uses a tissue retention device; and
- (c) the normal and customary use of the machine does not result in the removal of the epidermis beyond the stratum corneum.

**R156-11a-612. Standards for Disclosure.**

(1) In accordance with Subsections 58-11a-102(25)(b) and (31)(i)(C), a licensee acting within the licensee's scope of practice shall inform a client of the following before applying a chemical exfoliant or using a microdermabrasion machine:

- (a) the procedure may only be performed for cosmetic and not medical purposes, unless the licensee is working under the supervision of a licensed health care practitioner, who is working within the scope of the practitioner's license; and
- (b) the benefits and risks of the procedure.

**R156-11a-700. Curriculum for Barber Schools.**

In accordance with Subsection 58-11a-302(3)(c)(iv), the curriculum for a barber school shall consist of 1,000 hours of instruction in the following subject areas:

- (1) introduction consisting of:
  - (a) history of barbering;
  - (b) an overview of the barber curriculum;
- (2) personal, client and shop safety including:
  - (a) aseptic techniques and sanitary procedures;
  - (b) disinfection and sterilization methods and procedures;
  - (c) health risks to the barber;
- (3) business and shop management including:
  - (a) developing a clientele;
  - (b) professional image;
  - (c) professional ethics;
  - (d) professional associations;
  - (e) public relations;
  - (f) advertising;
- (4) legal issues including:

- (a) malpractice liability;
- (b) regulatory agencies;
- (c) tax laws;
- (5) human immune system;
- (6) diseases and disorders of the hair and scalp including:
  - (a) bacteriology;
  - (b) sanitation;
  - (c) sterilization;
  - (d) decontamination;
  - (e) infection control;
- (7) implements, tools and equipment for barbering;
- (8) first aid;
- (9) anatomy;
- (10) science of barbering;
- (11) chemistry for barbering;
- (12) analysis of the hair and scalp;
- (13) properties of the hair, skin, and scalp;
- (14) basic hairstyling and hair cutting including:
  - (a) draping;
  - (b) clipper variations;
  - (c) scissor cutting; and
  - (d) wet and thermal styling;
- (15) shaving and razor cutting;
- (16) mustache and beard design;
- (17) elective topics; and
- (18) the Utah Barber Examination review.

**R156-11a-701. Curriculum for Electrology Schools.**

In accordance with Subsection 58-11a-302(9)(c)(iv), the curriculum for an electrology school shall consist of 600 hours of instruction in the following subject areas:

- (1) introduction consisting of:
  - (a) the history of electrology; and
  - (b) an overview of the curriculum;
- (2) personal, client, and salon safety including:
  - (a) aseptic techniques and sanitary procedures;
  - (b) disinfection and sterilization methods and procedures;

and

- (c) health risks to the electrologist;
- (3) business and salon management including:
  - (a) developing a clientele;
  - (b) professional image;
  - (c) professional ethics;
  - (d) professional associations;
  - (e) public relations; and
  - (f) advertising;
- (4) legal issues including:
  - (a) malpractice and liability;
  - (b) regulatory agencies; and
  - (c) tax laws;
  - (5) human immune system;
  - (6) diseases and disorders of hair and skin;
  - (7) implements, tools, and equipment for electrology;
  - (8) first aid;
  - (9) anatomy;
  - (10) science of electrology;
  - (11) analysis of the skin;
  - (12) physiology of hair and skin;
  - (13) medical definitions including:
    - (a) dermatology;
    - (b) endocrinology;
    - (c) angiology; and
    - (d) neurology;
  - (14) evaluating the characteristics of skin;
  - (15) evaluating the characteristics of hair;
  - (16) medications affecting hair growth including:
    - (a) over-the-counter preparations;
    - (b) anesthetics; and
    - (c) prescription medications;

- (17) contraindications;
- (18) disease and blood-borne pathogens control including:
  - (a) pathogenic bacteria and non-bacterial causes; and
  - (b) American Electrology Association (AEA) infection control standards;
- (19) principles of electricity and equipment including:
  - (a) types of electrical currents, their measurements and classifications;
  - (b) Food and Drug Administration (FDA) approved needle type epilation equipment;
  - (c) FDA approved hair removal devices; and
  - (d) epilator operation and care;
- (20) modalities for need type electrolysis including:
  - (a) needle/probe types, features, and selection;
  - (b) insertions, considerations, and accuracy;
  - (c) galvanic multi needle technique;
  - (d) thermolysis manual and flash technique;
  - (e) blend and progressive epilation technique; and
  - (f) one and two handed techniques;
- (21) clinical procedures including:
  - (a) consultation;
  - (b) health/medical history;
  - (c) pre and post treatment skin care;
  - (d) normal healing skin effects;
  - (e) tissue injury and complications;
  - (f) treating ingrown hairs;
  - (g) face and body treatment;
  - (h) cosmetic electrology; and
  - (i) positioning and draping;
- (22) elective topics; and
- (23) Utah Electrology Examination review.

**R156-11a-702. Curriculum for Esthetics School - Basic Esthetician Programs.**

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school basic esthetician program shall consist of 600 hours of instruction in the following subject areas:

- (1) introduction consisting of:
    - (a) history of esthetics; and
    - (b) an overview of the curriculum;
  - (2) personal, client, and salon safety including:
    - (a) aseptic techniques and sanitary procedures;
    - (b) disinfection and sterilization methods and procedures;
- and
- (c) health risks to the basic esthetician;
  - (3) business and salon management including:
    - (a) developing a clientele;
    - (b) professional image;
    - (c) professional ethics;
    - (d) professional associations;
    - (e) public relations; and
    - (f) advertising.
  - (4) legal issues including:
    - (a) malpractice liability;
    - (b) regulatory agencies; and
    - (c) tax laws;
    - (5) human immune system;
    - (6) diseases and disorders of the skin including:
      - (a) bacteriology;
      - (b) sanitation;
      - (c) sterilization;
      - (d) decontamination; and
      - (e) infection control;
    - (7) implements, tools, and equipment for basic esthetics including:
      - (a) high frequency or galvanic current; and
      - (b) heat lamps;
      - (8) first aid;

- (9) anatomy;
- (10) science of basic esthetics;
- (11) analysis of the skin;
- (12) physiology of the skin;
- (13) facials, manual and mechanical;
- (14) limited chemical exfoliation including:
  - (a) pre-exfoliation consultation;
  - (b) post-exfoliation treatments; and
  - (c) chemical reactions;
- (15) chemistry for basic esthetics;
- (16) temporary removal of superfluous hair by waxing;
- (17) treatment of the skin;
- (18) packs and masks;
- (19) Aroma therapy;
- (20) application of makeup including:
  - (a) application of artificial eyelashes;
  - (b) arching of the eyebrows; and
  - (c) tinting of the eyelashes and eyebrows;
- (21) medical devices;
- (22) cardio pulmonary resuscitation (CPR);
- (23) basic facials;
- (24) chemistry of cosmetics;
- (25) skin treatments, manual and mechanical;
- (26) massage of the face and neck;
- (27) natural nail manicures and pedicures;
- (28) elective topics; and
- (29) Utah Esthetic Examination review.

**R156-11a-703. Curriculum for Esthetics School -- Master Esthetician Programs.**

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school master esthetician program shall consist of 1,200 hours of instruction, 600 of which consist of the curriculum for a basic esthetician program, the remaining 600 of which shall be in the following subject areas:

- (1) introduction consisting of:
    - (a) history of esthetics and master esthetics; and
    - (b) an overview of the curriculum;
  - (2) personal, client, and salon safety including:
    - (a) aseptic techniques and sanitary procedures;
    - (b) disinfection and sterilization methods and procedures;
- and
- (c) health risks to the master esthetician;
  - (3) business and salon management consisting of:
    - (a) developing clients;
    - (b) professional image;
    - (c) professional ethics;
    - (d) professional associations;
    - (e) advertising; and
    - (f) public relations;
  - (4) legal issues including:
    - (a) malpractice liability;
    - (b) regulatory agencies; and
    - (c) tax laws;
    - (5) the human immune system;
    - (6) diseases and disorders of the skin including:
      - (a) bacteriology;
      - (b) sanitation;
      - (c) sterilization;
      - (d) contamination; and
      - (e) infection controls;
    - (7) implements, tools and equipment for master esthetics;
    - (8) first aid;
    - (9) anatomy;
    - (10) science of master esthetics;
    - (11) analysis of the skin;
    - (12) physiology of the skin;
    - (13) advanced facials, manual and mechanical;
    - (14) chemistry for master esthetics;

- (15) advanced chemical exfoliation, including:
  - (a) pre-exfoliation consultation;
  - (b) post-exfoliation treatments; and
  - (c) reactions;
- (16) temporary removal of superfluous hair by waxing and advanced waxing;
- (17) advanced pedicures;
- (18) advanced Aroma therapy;
- (19) the aging process and its damage to the skin;
- (20) medical devices;
- (21) cardio pulmonary resuscitation (CPR) training;
- (22) hydrotherapy;
- (23) advanced mechanical and electrical devices including instruction in using:
  - (a) sanding and microdermabrasion techniques;
  - (b) galvanic or high-frequency current for treatment of the skin;
  - (c) devices equipped with a brush to cleanse the skin;
  - (d) devices that apply a mixture of steam and ozone to the skin;
  - (e) devices that spray water and other liquids on the skin; and
  - (f) any other mechanical devices, esthetic preparations or procedures approved by the division in collaboration with the board for the care and treatment of the skin;
- (24) elective topics;
- (25) for schools teaching lymphatic massage, in accordance with Subsections 58-11a-102(31)(a)(ii) and 58-11a-302(11)(d)(i)(C), 200 hours of instruction is required and shall consist of:
  - (a) 40 hours of training in anatomy and physiology of the lymphatic system;
  - (b) 70 applications of one hour each in manual lymphatic massage of the full body; and
  - (c) 90 hours of training in lymphatic massage by other means, including but not limited to energy, mechanical devices, suction assisted massage with or without rollers, compression therapy with equipment, or garment therapy; and
- (26) Utah Master Esthetician Examination review.

**R156-11a-704. Curriculum for Nail Technology Schools.**

- In accordance with Subsection 58-11a-302(16)(c)(iv), the curriculum for a nail technology school shall consist of 300 hours of instruction in the following subject areas:
- (1) introduction consisting of:
    - (a) history of nail technology; and
    - (b) an overview of the curriculum;
  - (2) personal, client and salon safety including:
    - (a) aseptic techniques and sanitary procedures;
    - (b) disinfection and sterilization methods and procedures; and
    - (c) health risks to the nail technician;
  - (3) business and salon management including:
    - (a) developing clientele;
    - (b) professional image;
    - (c) professional ethics;
    - (d) professional associations;
    - (e) public relations; and
    - (f) advertising;
  - (4) legal issues including:
    - (a) malpractice liability;
    - (b) regulatory agencies; and
    - (c) tax laws;
    - (5) human immune system;
    - (6) diseases and disorders of the nails and skin including:
      - (a) bacteriology;
      - (b) sanitation;
      - (c) sterilization;
      - (d) decontamination; and

- (e) infection control;
- (7) implements, tools and equipment for nail technology;
- (8) first aid;
- (9) anatomy;
- (10) science for nail technology;
- (11) theory of basic manicuring including hand and arm massage;
- (12) physiology of the skin and nails;
- (13) chemistry for nail technology;
- (14) artificial nail techniques consisting of:
  - (a) wraps;
  - (b) nail tips;
  - (c) gel nails;
  - (d) sculptured and other acrylic nails; and
  - (e) nail art;
- (15) pedicures and massaging the lower leg and foot;
- (16) elective topics; and
- (17) Utah Nail Technology Examination review.

**R156-11a-705. Curriculum for Cosmetology/Barber Schools.**

- In accordance with Subsection 58-11a-302(6)(c)(iv), the curriculum for a cosmetology/barber school shall consist of 2,000 hours of instruction in all of the following subject areas:
- (1) introduction consisting of:
    - (a) history of barbering, cosmetology/barbering, esthetics, nail technology; and
    - (b) overview of the curriculum;
  - (2) personal, client and salon safety including:
    - (a) aseptic techniques and sanitary procedures;
    - (b) disinfection and sterilization methods and procedures;
    - (c) health risks to the cosmetologist/barber;
  - (3) business and salon management including:
    - (a) developing clientele;
    - (b) professional image;
    - (c) professional ethics;
    - (d) professional associations;
    - (e) public relations; and
    - (f) advertising;
  - (4) legal issues including:
    - (a) malpractice liability;
    - (b) regulatory agencies; and
    - (c) tax laws;
    - (5) human immune system;
    - (6) diseases and disorders of skin, nails, hair, and scalp including:
      - (a) bacteriology;
      - (b) sanitation;
      - (c) sterilization;
      - (d) decontamination; and
      - (e) infection control;
    - (7) implements, tools and equipment for cosmetology, barbering, basic esthetics and nail technology, including:
      - (a) high frequency or galvanic current; and
      - (b) heat lamps;
      - (8) first aid;
      - (9) anatomy;
      - (10) science of cosmetology/barbering, basic esthetics and nail technology;
      - (11) analysis of the skin, hair and scalp;
      - (12) physiology of the human body including skin and nails;
      - (13) electricity and light therapy;
      - (14) limited chemical exfoliation including:
        - (a) pre-exfoliation consultation;
        - (b) post-exfoliation treatments; and
        - (c) chemical reactions;
      - (15) chemistry for cosmetology/barbering, basic esthetics and nail technology;

(16) temporary removal of superfluous hair including by waxing;

- (17) properties of the hair, skin and scalp;
- (18) basic hairstyling including:
  - (a) wet and thermal styling;
  - (b) permanent waving;
  - (c) hair coloring;
  - (d) chemical hair relaxing; and
  - (e) thermal hair straightening;
- (19) haircuts including:
  - (a) draping;
  - (b) clipper variations;
  - (c) scissor cutting;
  - (d) shaving; and
  - (e) wigs and artificial hair;
- (20) razor cutting for men;
- (21) mustache and beard design;
- (22) basic esthetics including:
  - (a) treatment of the skin, manual and mechanical;
  - (b) packs and masks;
  - (c) aroma therapy;
  - (d) chemistry of cosmetics;
  - (e) application of makeup including:
    - (i) application of artificial eyelashes;
    - (ii) arching of the eyebrows;
    - (iii) tinting of the eyelashes and eyebrows;
  - (f) massage of the face and neck; and
  - (g) natural manicures and pedicures;
- (23) medical devices;
- (24) cardio pulmonary resuscitation (CPR);
- (25) artificial nail techniques consisting of:
  - (a) wraps;
  - (b) nail tips;
  - (c) gel nails;
  - (d) sculptured and other acrylic nails; and
  - (e) nail art;
- (26) pedicures and massaging of the lower leg and foot;
- (27) elective topics; and
- (28) Utah Cosmetology/Barber Examination review.

**R156-11a-706. Curriculum for Instructors Schools.**

In accordance with Subsections 58-11a-302(2)(e)(i), (5)(e)(i), (8)(e)(i), (12)(e)(i) and (15)(e)(i), the curriculum for an approved instructor school shall consist of instructor training in the following subjects:

- (1) motivation and the learning process;
- (2) teacher preparation;
- (3) teaching methods;
- (4) classroom management;
- (5) testing;
- (6) instructional evaluation;
- (7) laws, rules and regulations; and
- (8) Utah Barber, Cosmetology/Barber, Esthetics (Master level), Electrology and Nail Technology Instructors Examination review.

**R156-11a-800. Approved Barber Apprenticeship Requirements.**

In accordance with Subsection 58-11a-102(1), the requirements for an approved barber apprenticeship shall include the following:

- (1) The instructor shall have only one apprentice at a time.
- (2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".
- (3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the

Division upon request.

(4) A complete set of barber texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 1250 hours using the curriculum defined in Section R156-11a-700.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-700.

(9) Any hours obtained while enrolled in a barber school or a cosmetology/barber school shall not be used to satisfy the required 1250 hours of apprentice training.

**R156-11a-801. Approved Cosmetologist/Barber Apprenticeship Requirements.**

In accordance with Subsection 58-11a-102(1), the requirements for an approved cosmetology/barber apprenticeship include:

(1) The instructor shall have only one apprentice at a time.

(2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of cosmetology/barber texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 2,500 hours using the curriculum defined in Section R156-11a-705.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-705.

(9) Hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 2,500 hours of apprentice training.

**R156-11a-802. Approved Basic Esthetician Apprenticeship Requirements.**

In accordance with Subsection 58-11a-102(2), the requirements for an approved basic esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training".

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of esthetics texts shall be available to the apprentice.

(5) An apprentice may be compensated for services

performed.

(6) The instructor shall provide training and technical instruction of 800 hours using the curriculum defined in Section R156-11a-702.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours required in technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-702.

(9) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 800 hours of apprentice training.

#### **R156-11a-803. Approved Master Esthetician Apprenticeship Requirements.**

In accordance with Subsection 58-11a-102(3), the requirements for an approved master esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of esthetics texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 1,500 hours using the curriculum defined in Section R156-11a-703.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the required hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-703.

(9) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 1,500 hours of apprentice training.

#### **R156-11a-804. Approved Nail Technician Apprenticeship Requirements.**

In accordance with Subsection 58-11a-102(4), the requirements for an approved nail technician apprenticeship include:

(1) The instructor shall have no more than two apprentices at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of nail technician texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 375 hours using the curriculum defined in Section R156-11a-704.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-704.

(9) Hours obtained while enrolled in a nail technology school or a cosmetology/barber school shall not be used to satisfy the required 375 hours of apprentice training.

#### **R156-11a-805. Conflicts of Interest.**

An apprentice instructor may not be an employee of an apprentice or be involved in any relationship with an apprentice or others that would interfere with the instructor's ability to teach and train the apprentice.

#### **R156-11a-901. Standards for an On the Job Training Internship.**

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in an on the job training internship if they meet the following requirements:

(1) The on the job training intern shall have completed at least 1000 hours of the training contracted with a cosmetology/barber school, of which 400 hours shall be clinical hours.

(2) There shall be a conspicuous sign near the work station of the on the job training intern stating "Intern in Training".

(3) A licensed "on-site" cosmetology/barber shall supervise only one on the job training intern at a time.

(4) An on the job training intern, while working under the direct supervision of an "on-site" licensed cosmetologist/barber, may perform the following procedures:

- (a) draping;
- (b) shampooing;
- (c) roller setting;
- (d) blow drying styling;
- (e) applying color;
- (f) removing color by rinsing and shampooing;
- (g) removing permanent chemicals;
- (h) removing permanent rods;
- (i) removing rollers;
- (j) applying temporary rinses, reconditioners, and rebuilders;
- (k) acting as receptionists;
- (l) doing retail sales;
- (m) sanitizing the salon;
- (o) doing inventory and ordering supplies; and
- (p) handing equipment to the cosmetologist/barber supervisor.

(5) The "on-site" cosmetologist/barber supervisor shall have in the supervisor's possession a letter, which must be updated on a quarterly basis, from the school where the on the job training intern is enrolled stating that the on the job training intern is currently in good standing at the school and is complying with school requirements.

(6) Hours of training spent while performing on the job training as an intern shall not apply towards credits required for graduation.

#### **KEY: cosmetologists/barbers, estheticians, electrologists, nail technicians**

**August 10, 2009**

**Notice of Continuation April 12, 2007**

**58-11a-101**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-24b. Physical Therapy Practice Act Rule.**  
**R156-24b-101. Title.**

This rule is known as the "Physical Therapy Practice Act Rule".

**R156-24b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 24b, as used in Title 58, Chapters 1 and 24b or this rule:

(1) "A recognized accreditation agency", as used in Subsections 58-24b-302(1)(c) and (2)(c), means a college or university:

(a) accredited by CAPTE; or

(b) a foreign education program which is equivalent to a CAPTE accredited program as determined by FSBPT's Foreign Credentialing Commission on Physical Therapy.

(2) "Credential evaluation", as used in Subsections R156-24b-302a(2) and (3), means the appropriate Course Work Tool (CWT) adopted by the Federation of State Boards of Physical Therapy. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist or physical therapist assistant graduated from the physical therapy program.

(3) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(4) "FSBPT" means the Federation of State Licensing Boards of Physical Therapy.

(5) "Joint mobilization", as used in Subsection 58-24b-102(14)(d), means passive and active movements of the joints of a patient, including the spine, to increase the mobility of joint systems; but, does not include specific vertebral adjustment and manipulation of the articulation of the spine by those methods or techniques which are generally recognized as the classic practice of chiropractic.

(6) "Routine assistance", as used in Subsections 58-24b-102(10) and 58-24b-401(3)(b) means:

(a) engaging in assembly and disassembly, maintenance and transportation, preparation and all other operational activities relevant to equipment and accessories necessary for treatment; and

(b) providing only that type of elementary and direct patient care which the patient and family members could reasonably be expected to learn and perform.

(7) "Supportive personnel", as used in Subsection R156-24b-503(1), means a physical therapist assistant or a physical therapy aide and does not include a student in a physical therapist or physical therapist assistant program.

(8) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 24b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-24b-502.

**R156-24b-103. Authority - Purpose.**

This rule is adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 24b.

**R156-24b-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.

**R156-24b-302a. Qualifications for Licensure - Education Requirements.**

(1) In accordance with Subsection 58-24b-302(1)(c), the accredited school of physical therapy for a physical therapist shall be accredited by CAPTE at the time of graduation.

(2) In accordance with Subsection 58-24b-302(3), an applicant for licensure as a physical therapist who is educated outside the United States whose degree was not accredited by CAPTE shall document that the applicant's education is equal to a CAPTE accredited degree by submitting to the Division a

credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in the humanities, social sciences and liberal arts may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas.

(3) In accordance with Subsection 58-24b-302(2), a physical therapist assistant shall complete one of the following CAPTE accredited physical therapy education programs:

(a) an associates, bachelors, or masters program; or

(b) in accordance with Section 58-1-302, an applicant for a license as a physical therapist assistant who has been licensed in a foreign country whose degree was not accredited by CAPTE shall document that the applicant's education is substantially equivalent to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in the humanities, social sciences and liberal arts may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas.

**R156-24b-302b. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsections 58-24b-302(1)(e), (2)(e) and (3)(e), each applicant for licensure as a physical therapist or physical therapist assistant shall pass the FSBPT's National Physical Therapy Examination with a passing score as established by the FSBPT.

(2) In accordance with Section 58-1-309 and Subsections 58-24b-302(1)(d), (2)(d) and (3)(d), each applicant for licensure as a physical therapist or physical therapist assistant, including endorsement applicants, shall pass all questions on the open book, take home Utah Physical Therapy Law and Rule Examination.

(3) An applicant for licensure as a physical therapist or a physical therapist assistant must have completed the education requirements set forth in Section R156-24b-302, or be enrolled in the final semester of a CAPTE accredited program, in order to be eligible to sit for the examination required for Utah licensure as set forth in Subsection (1) above.

**R156-24b-303a. 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 24b is established by rule in Section R156-1-308a.

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

**R156-24b-303b. Continuing Education.**

(1) In accordance with Subsection 58-24b-303(2), there is hereby established a continuing education requirement for all individuals licensed under Title 58, Chapter 24b as a physical therapist and a physical therapist assistant.

(2) During each two year period commencing on June 1 of each odd numbered year:

(a) a physical therapist shall be required to complete not less than 40 hours of continuing education directly related to the licensee's professional practice of which a minimum of six hours must be completed in ethics/law;

(b) a physical therapist assistant shall be required to complete not less than 20 hours of continuing education directly related to the licensee's professional practice of which a minimum of three hours must be completed in ethics/law.

(3) The required number of hours of continuing education for an individual who first becomes licensed during the two year

period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Continuing education under this section shall:

- (a) be relevant to the licensee's professional practice;
- (b) be prepared and presented by individuals who are qualified by education, training and experience to provide physical therapy continuing education; and
- (c) have a method of verification of attendance and completion.

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

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, conferences or training sessions which meet the criteria listed in Subsection (4) above and which are approved by, or under sponsorship of:

- (i) the American Physical Therapy Association;
  - (ii) the Utah Physical Therapy Association;
  - (iii) accredited universities or colleges; or
  - (iv) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of physical therapy;
- (b) a maximum of ten hours per two year period may be recognized for teaching in a college or university and teaching continuing education courses in the field of physical therapy;
- (c) a maximum of six hours per two year period may be recognized for clinical reading or in-service directly related to physical therapy practice; and
- (d) a maximum of 12 hours per two year period may be recognized for internet or distance learning courses that include an examination and issuance of a completion certificate.

(6) A licensee shall be responsible for maintaining competent records of continuing 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 information with respect to continuing education to demonstrate it meets the requirements of this section.

#### **R156-24b-502. Unprofessional Conduct.**

Unprofessional conduct includes:

- (1) violating, as a physical therapist, any provision of the American Physical Therapy Association's Code of Ethics, last amended June 2000, which is hereby adopted and incorporated by reference;
- (2) violating, as a physical therapist, any provision of the American Physical Therapy Association's Guide for Professional Conduct, last amended January 2004, which is hereby adopted and incorporated by reference;
- (3) not providing supervision, as a physical therapist, as set forth in Section R156-24b-503;
- (4) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Standards of Ethical Conduct for the Physical Therapist Assistant, last amended June 2000, which is hereby adopted and incorporated by reference; and
- (5) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Guide for Conduct of the Physical Therapist Assistant, last amended February 2004, which is hereby adopted and incorporated by reference.

#### **R156-24b-503. Physical Therapist Supervisory Authority and Responsibility.**

In accordance with Section 58-24b-404, a physical therapist's supervision of a physical therapist assistant or a physical therapy aide shall meet the following conditions:

- (1) a full-time equivalent physical therapist can supervise

no more than three full-time equivalent supportive personnel unless approved by the board and Division; and

(2) a physical therapist shall provide treatment to a patient at least every tenth treatment day but no longer than 30 days from the day of the physical therapist's last treatment day, whichever is less.

**KEY: licensing, physical therapy, physical therapist, physical therapist assistant**

**August 10, 2009**

**Notice of Continuation January 30, 2007**

**58-24b-101**

**58-1-106(1)(a)**

**58-1-202(1)(a)**



**R156. Commerce, Occupational and Professional Licensing.**  
**R156-26a. Certified Public Accountant Licensing Act Rule.**  
**R156-26a-101. Title.**

This rule is known as the "Certified Public Accountant Licensing Act Rule".

**R156-26a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 26a, as defined or used in this rule:

(1) "Administering organization" means an organization approved by the Division of Occupational and Professional Licensing and the Utah Board of Accountancy which will administer peer reviews in the Peer Review Program.

(2) "AICPA" means American Institute of Certified Public Accountants.

(3) "Incidental to regular practice" as defined in Subsection 58-26a-305(1)(b) is further defined to mean:

(a) An individual or a firm licensed as a certified public accountant or equivalent designation in any other state, district, or territory of the United States or any foreign country may perform services in this state for a client whose principal office or residence is located outside of this state as long as the services are incidental to primary services being performed outside of this state for that client.

(b) An individual or firm licensed in another jurisdiction, as incidental to their practice in such other jurisdiction, may advertise in this state that their services are available by any means including, but not limited to television, radio, newspaper, magazine or Internet advertising provided such representations are not false, misleading or deceptive; and provided that such individual or firm does not establish a CPA/Client relationship to perform services requiring a CPA license or CPA firm registration with any individual, business or other legal entity having its principal office or residence in this state without first obtaining a CPA license and CPA firm registration in this state.

(c) Incidental to regular practice in another jurisdiction includes a licensed CPA or equivalent designation continuing a CPA/Client relationship with an individual which originated while the client's residence was located outside of this state but thereafter the client moved their residence to this state.

(4) "Qualified continuing professional education (CPE)" as used in this rule means continuing education that meets the standards set forth in Section R156-26a-303b.

(5) "Standard setting bodies" means the Financial Accounting Standards Board, the Government Accounting Standards Board, the American Institute of Certified Public Accountants, the Securities and Exchange Commission, and the Federal Accounting Standards Advisory Board and other generally recognized standard setting bodies.

(6) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 26a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-26a-501.

(7) "Year of review" means the calendar year during which a peer review is to be conducted.

**R156-26a-103. Authority.**

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 26a.

**R156-26a-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.

**R156-26a-201. Advisory Peer Committees Created - Membership - Duties.**

(1) There is created in accordance with Subsection 58-1-203(1)(f), the Education Advisory Committee to the Utah Board of Accountancy consisting of one full-time faculty from each of

five or more colleges or universities in Utah which has an accredited program as set forth in Section R156-26a-302a(1)(a), a majority of which committee are to be licensed CPAs.

(2) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-205. The duties and responsibilities of the Education Advisory Committee shall include assisting the Division in collaboration with the Board in their duties, functions, and responsibilities and shall include:

(a) advising the Board as to the acceptability of an educational institution;

(b) assisting the Board to make a final determination pursuant to R156-26a-302a(4)(c) of whether an applicant is qualified to sit for the AICPA examination; and

(c) advising the Board regarding proposed changes to rules.

(3) The committee shall consider, when advising the Board of the acceptability of the educational institution, the following:

(a) the institution's accreditation;

(b) the acceptability by other state licensing boards;

(c) the faculty qualifications; and

(d) other educational resources.

(4) There is created in accordance with Subsection 58-1-203(1)(f), the Peer Review Committee to the Utah Board of Accountancy consisting of not more than ten licensed CPAs. The committee shall be appointed and serve in accordance with Section R156-1-205.

(5) The duties and responsibilities of the Peer Review Committee shall be advising the Board on peer reviews matters and shall include:

(a) reviewing the results of peer reviews administered by approved organizations and requiring corrective action of firms with significant deficiencies noted in the review process when considered necessary in addition to those required by the administering organization;

(b) evaluating compliance of CPE programs;

(c) performing random audits to determine compliance with the CPE requirements and the standards for CPE programs;

(d) reviewing complaints and recommending whether certain acts, practices or omissions violate the ethical standards of the profession;

(e) providing technical assistance to the Division; and

(f) serving as expert witnesses at administrative hearings.

**R156-26a-302a. Qualifications for CPA Licensure - Education Requirements.**

The education requirements for CPA licensure in Subsection 58-26a-302(1)(d) are defined, clarified, or established as follows:

(1) An applicant shall submit transcripts showing completion of course work consisting of a minimum of 150 semester hours (225 quarter hours) as follows:

(a) a graduate or undergraduate program within an institution whose business or accounting education program is accredited by the Association of Advanced Collegiate Schools of Business (AACSB), or the Association of Collegiate Business Schools and Programs (ACBSP), from which the applicant received one of the following:

(i) a graduate degree in accounting;

(ii) a graduate degree in taxation, or a master of business administration degree which includes not less than:

(A) 24 semester hours (36 quarter hours) in upper division accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting;

(B) 15 semester hours (23 quarter hours) graduate level accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting;

(C) an equivalent combination of graduate and upper division accounting courses covering the subjects of financial

accounting, auditing, taxation, and management accounting with one hour of graduate level course work being equivalent to 1.6 hours of upper division course work; or

(iii) a baccalaureate degree in business or accounting and 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree which includes not less than:

(A) 16 semester hours (24 quarter hours) in upper division accounting courses, which when combined with the accounting courses listed in Subsection (B) below, have at least one course with a minimum of two semester hours (three quarter hours) each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(B) eight semester hours (12 quarter hours) in graduate level accounting courses, which when combined with the accounting courses listed in Subsection (A) above, have at least one course each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(C) 12 semester hours (18 quarter hours) in upper division non-accounting business courses;

(D) 12 semester hours (18 quarter hours) in graduate level business or accounting courses; and

(E) 10 semester hours (15 quarter hours) of either graduate or upper division accounting or business courses.

(b) a graduate or undergraduate program from an institution accredited by the Northwest Commission on Colleges and Universities, North Central Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, Southern Association of Colleges and Schools and Western Association of Schools and Colleges from which the applicant received a baccalaureate or graduate degree with not less than:

(i) 30 semester hours (45 quarter hours) in business or related courses providing a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) business law;

(B) computers;

(C) economics;

(D) ethics;

(E) finance;

(F) statistics and quantitative methods;

(G) written and oral communications; and

(H) business administration such as marketing, production, management, policy or organizational behavior;

(ii) 24 semester hours (36 quarter hours) in upper division accounting courses with a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) auditing;

(B) finance;

(C) managerial or cost;

(D) systems; and

(E) taxes; and

(iii) 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree of additional business related course work including not less than:

(A) eight semester hours (12 quarter hours) in graduate accounting courses;

(B) 12 semester hours (18 quarter hours) in graduate accounting or graduate business courses; and

(C) 10 semester hours (15 quarter hours) of additional business related hours shall be taken in upper division undergraduate or graduate level courses.

(2) The Division in collaboration with the Board or the education subcommittee of the board may make a written finding for cause that a particular accredited institution or program is not acceptable.

(3) The Division in collaboration with the Board or the education subcommittee of the board may accept education of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has

obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 2007 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

(4) In accordance with Section 58-26a-306, the qualifications to sit for the AICPA examination are clarified or supplemented as follows:

(a) In accordance with Subsection 58-26a-306(1)(a), the form of application approved by the Division shall be the application that CPA Examination Services (CPAES) requires in order to sit for the examination.

(b) In accordance with Subsection 58-26a-306(1)(b), the fee shall be the fee charged by CPAES. No additional fee shall be due to the Division.

(c) In accordance with Subsections 58-26a-306(1)(c) and (d), the Board has approved CPAES to make the determination of whether the applicant has met the education requirements, provided however that, if an applicant disputes the finding of CPAES, the Board shall make a final determination of whether the applicant is qualified to sit for the AICPA examination.

#### **R156-26a-302b. Qualifications for Licensure - Experience Requirements.**

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the experience requirements for licensure in Section 58-26a-302 are clarified, or supplemented as follows:

(1) The Division in collaboration with the board may accept experience of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 2007 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

#### **R156-26a-302c. Qualifications for Licensure - Examinations.**

The Division in collaboration with the Board may accept testing of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 2007 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

#### **R156-26a-303a. Renewal Requirements - Peer Review.**

(1) General.

In accordance with Subsections 58-1-308(3)(b) and 58-26a-303(2)(b), there is created a peer review requirement as a condition for renewal of licenses issued under the Certified Public Accountant Licensing Act, providing for review of the work products of CPA and CPA firm licensees.

(a) The purpose of the program is to monitor compliance

with professional standards.

(b) The program shall emphasize education and may include other remedial actions when non-compliance is found.

(c) If a licensee is unwilling or unable to comply with or intentionally disregards professional standards, the administering organization shall refer the matter to the Division for consultation and determination of appropriate action.

(2) Scheduling of the Peer Review.

(a) A firm's initial peer review shall be assigned a due date to require that the initial review be started no later than 18 months after the date of the issuance of its initial report as defined in Subsection 58-26a-102(20).

(b) Not less than once in each three years a firm engaged in the practice of public accounting shall undergo, at its own expense, a peer review commensurate in scope with its practice.

(c) The administering organization will assign the year of review.

(d) A portion of the peer review may be performed by a regulatory body if the Utah Board of Accountancy approves the regulatory body as an administering organization. This does not by itself satisfy the peer review requirement unless the other standards as specified in this rule are fulfilled by the regulatory body.

(3) Selection of a Peer Reviewer or inspector in the case of inspections mandated by law or regulatory bodies.

A firm scheduled for peer review shall engage a reviewer qualified to conduct the peer review. Regulatory bodies will assign inspectors.

(4) Qualifications of a Peer Reviewer and inspectors.

(a) Peer reviewers must provide evidence of one of the two following minimum qualifications to the administering organization:

(i) acceptance as a peer reviewer by the AICPA; or  
(ii) compliance with the qualifications required by the AICPA to qualify as a peer reviewer.

(b) Peer reviewers must be licensed or hold a permit to practice as a CPA in the state of Utah or another state or jurisdiction of the United States.

(c) The administering organization will approve reviewers for those reviews not administered by the AICPA.

(d) Regulatory bodies will determine the qualifications of inspectors.

(5) Conduct of the Peer Review or inspection. Peer reviews shall be conducted as follows:

(a) Peer reviews shall be conducted according to the "Standards for Performing and Reporting on Peer Reviews" promulgated by the AICPA, effective January 1, 2009 as amended, which are hereby incorporated by reference and adopted as the minimum standards for peer reviews of all firms. This section shall not require any firm or licensee to become a member of the AICPA or any administering organization.

(b) The Utah Board of Accountancy may review the standards used by the regulatory body to determine if those standards are sufficient to satisfy all or part of the peer review requirements, or what additional review may be required to meet the peer review requirements under this rule.

(6) If an administering organization finds that a peer review was not performed in accordance with this rule or the peer review results in a pass with deficiencies or fail report, the Peer Review Committee may require remedial action to assure that the review or performance of the CPA or CPA firm being reviewed meets the objectives of the peer review program.

(7) Review of Multi-State Firms.

(a) With respect to a multi-state firm, the Division may accept a peer review based solely upon work conducted outside of this state as satisfying the requirement to undergo peer review under this rule, if:

(i) the peer review is conducted during the year scheduled or rescheduled under R156-26a-303a(2);

(ii) the peer review is performed in accordance with requirements equivalent to those of this state;

(iii) the peer review:

(A) studies, evaluates and reports on the quality control system of the firm as a whole in the case of system reviews; or

(B) results in an evaluation and report on selected engagements in the case of engagement reviews;

(iv) the firm's internal inspection procedures require that the firm's personnel from another office outside the state perform the inspection of the office located in this state not less than once in each three year period; and

(v) at the conclusion of the peer review, the peer reviewer issues a report equivalent to that required by R156-26a-303a(5) or in the case of an approved regulatory body, a report is issued under their standards.

(b) A multi-state firm seeking approval under R156-26a-303a(7)(a) shall submit an application to the administering organization by February 1 of the year of review establishing that the peer review it proposes to undergo meets all of the requirements of R156-26a-303a(5).

(8) A firm which does not perform services encompassed in the scope of minimum standards as set out in R156-26a-303a(5)(a) or (b) is exempt from peer review and shall notify the Division of Occupational and Professional Licensing of the exemption at the time of renewal of its registration. A firm which begins providing these services must commence a peer review within 18 months of the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(9) Mergers, Combinations, Dissolutions or Separations.

(a) Mergers or combinations: In the event that two or more firms are merged or sold and combined, the surviving firm shall retain the year of review of the largest firm.

(b) Dissolutions or separations: In the event that a firm is divided, the new firms shall retain the year of review of the former firm. In the event that this period is less than 12 months, a new year shall be assigned so that the review occurs after 12 months of operation.

(c) Upon application to the administering organization and a showing of hardship caused solely by compliance with R156-26a-303a(10), the Division may authorize a change in a firm's year of review.

(10) If the firm can demonstrate that the time established for the conduct of a peer review will create an unreasonable hardship upon the firm, the Division may approve an extension not to exceed 180 days from the date the peer review was originally scheduled. A request for extension shall be addressed in writing by the firm to the Division with a copy to the administering organization responsible for administration of that firm's peer review. The written request for extension must be received by the Division and the administering organization not less than 30 days prior to the date of scheduled review or the request will not be considered. The Division shall inform the administering organization of the approval of any extension.

(11) Retention of Documents Relating to Peer Reviews.

(a) All documentation necessary to establish that each peer review was performed in conformity with peer review standards adopted by the Board, including the peer review working papers, the peer review report, comment letters and related correspondence indicating the firm's concurrence or nonconcurrence, and any proposed remedial actions and related implementation shall be maintained.

(b) The documents described in R156-26a-303a(11)(a) shall be retained for a period of time corresponding to the designated retention period of the relevant administering organization. In no event shall the retention period be less than 120 days.

(12) Costs and Fees for Peer Review.

(a) All costs associated with firm-on-firm reviews will be negotiated between the firm and the reviewer and paid directly

to the reviewer. All costs associated with committee assigned review team (CART) reviews will be set by the administering organization. The administering organization will collect the fees associated with CART reviews and pay the reviewer.

(b) All costs associated with the administration of the review process will be paid from fees charged to the firms. The fees will be collected by the administering organization. The schedule of fees will be included in the administering organization's proposal. The fee schedule will specify how much is to be paid each year and will be based on the firm size.

(13) All financial statements, working papers, or other documents reviewed are confidential. Access to those documents shall be limited to being made available, upon request, to the Peer Review Committee or the technical reviewer for purposes of assuring that peer reviews are performed according to professional standards.

**R156-26a-303b. Renewal and Reinstatement Requirements - Continuing Professional Education (CPE).**

(1) All CPAs are required to maintain current knowledge, skills, and abilities in all areas in which they provide services in order to provide services in a competent manner. To maintain or to obtain the knowledge, skills and abilities to competently provide services, a CPA may be required to obtain CPE above and beyond the 80 minimum CPE credits specified in Section 58-26a-304.

The following standards have been broadly stated in recognition of the diversity of practice and experience among CPAs. They establish a framework for the development, presentation, measurement, and reporting of CPE programs and thereby help to ensure that CPAs maintain the required knowledge, skills and abilities necessary to competently provide services and to enable the CPA to provide evidence of meeting the minimum CPE requirements specified under this rule.

(2) General Standards for CPAs.

(a) Standard No. 1. All CPAs must participate in CPE learning activities that maintain and/or improve their professional competence. This CPE must include a minimum of 80 hours of CPE in each two-year period ending on December 31 of each odd numbered year.

(i) The term "must", as used in these standards, means departure from those specific standards is not permitted. The term "should", as used in these standards, means that CPAs and CPE program sponsors are expected to follow such standards as written and are required to justify any departures from such standards when unusual circumstances warrant such departures.

(ii) Selection of CPE learning activities should be a thoughtful, reflective process addressing the individual CPA's current and future professional plans, current knowledge and skills level, and desired or needed additional competence to meet future opportunities and/or professional responsibilities.

(iii) A CPA's field of employment does not limit the need for CPE. CPAs performing professional services need to have a broad range of knowledge, skills, and abilities. Thus, the concept of professional competence should be interpreted broadly. Accordingly, acceptable continuing education encompasses programs contributing to the development and maintenance of both technical and non-technical professional skills.

(iv) Acceptable CPE subjects include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including personal development, may also be acceptable if they maintain and/or improve the CPA's professional competence. Such subjects may include, but are not limited to: accounting and auditing, taxation, management advisory services, information technology, communication arts, mathematics, statistics, probability and quantitative analysis,

economics, business law and litigation support, functional fields of business such as finance, production, marketing, personnel relations, development and management, business management and organizations, social environment of business, and specialized areas of industry such as film industry, real estate, or farming.

(v) To help guide their professional development, CPAs may find it useful to develop a learning plan. The learning plan can be used to evaluate learning and professional competence development.

(A) A learning plan means a structured process that helps guide CPAs in their professional development. A learning plan is used to evaluate and document learning and professional competence development. A learning plan should be reviewed regularly and modified as a CPA's professional competence needs change. A learning plan should include:

(I) a self-assessment of the gap between current and needed knowledge, skills, and abilities;

(II) a set of learning objectives arising from this assessment; and

(III) learning activities to be undertaken to fulfill the learning plan.

(b) Standard No 2. CPAs should comply with all applicable CPE requirements and should claim CPE credit only for CPE programs when the CPE program sponsors have complied with the Standards for CPE Program Presentation (Nos. 8 - 11) and Standard for CPE Program Reporting No. 17.

(i) In addition to minimum CPE requirements specified in this rule, CPAs are responsible for compliance with all applicable CPE requirements, rules, and regulations of other state licensing bodies, other governmental entities and other professional organizations or bodies who have standard setting authority. CPAs should contact each appropriate entity to which they report to determine its specific requirements or any exceptions it may have to the standards presented herein.

(ii) Periodically, CPAs may participate in learning activities which do not comply with all applicable CPE requirements, for example specialized industry programs offered through industry sponsors. If CPAs propose to claim credit for such learning activities, they should retain all relevant information regarding the program to provide documentation to the Division, other state licensing bodies, and/or all other professional organizations or bodies showing that the learning activity is equivalent to one which meets all these or other applicable Standards.

(c) Standard No. 3. CPAs are responsible for accurate reporting of CPE credits earned and should retain appropriate documentation of their participation in learning activities, including: name and contact information of CPE program sponsor, title and description of content, date of program, location and number of CPE credits, all of which should be included in documentation provided by the CPE program sponsor.

(i) Although CPAs are required to document a minimum level of CPE hours, through periodic reporting of CPE, the objective of CPE must always be maintenance/enhancement of professional competence, not just attainment of minimum credits.

(ii) Compliance with regulatory and other requirements mandates that CPAs keep documentation of their participation in activities designed to maintain and/or improve professional competence. In the absence of legal or other requirements for longer retention, a CPA must retain documentation for a minimum of five years from the end of the year in which the learning activities were completed.

(iii) Participants must document their claims of CPE credit. Examples of acceptable evidence of completion include:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program

sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs, (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer or publisher.

(d) Standard No. 4. CPAs who complete sponsored learning activities that maintain or improve their professional competence should claim the CPE credits recommended by CPE program sponsors.

(i) CPAs may participate in a variety of sponsored learning activities, such as workshops, seminars and conferences, self-study courses, Internet-based programs, and independent study. While CPE program sponsors determine credits, CPAs should claim credit only for activities through which they maintained or improved their professional competence. CPAs who participate in only part of a program should claim CPE credit only for the portion they attended or completed.

(ii) In order to qualify as CPE, an Internet-based program must qualify as a group program as provided in Subsection R156-26a-303b(3)(b)(i) or as a self-study program as provided in Subsection R156-26a-303b(3)(g).

(e) Standard No. 5. CPAs may engage in independent study under the direction of a CPE program sponsor who has met the applicable standards for CPE program sponsors when the subject matter and level of study maintain or improve their professional competence.

(i) Independent study is an educational process designed to permit a participant to learn a given subject under the guidance of a CPE program sponsor one-on-one. Participants in an independent study program should:

(A) Enter into a written learning contract with a CPE program sponsor who must comply with the applicable standards for CPE program sponsors.

(B) Accept the written recommendation of the CPE program sponsor as to the number of credits to be earned upon successful completion of the proposed learning activities. CPE credits will be awarded only if:

(I) all the requirements of the independent study as outlined in the learning contract are met;

(II) the CPE program sponsor reviews and signs the participant's report;

(III) the CPE program sponsor reports to the participant the actual credits earned; and

(IV) the CPE program sponsor provides the participant with contact information.

(ii) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

(iii) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(iv) Complete the program of independent study in 15 weeks or less.

(3) Standards for CPE Program Sponsors (Standard 1), Standards for CPE Program Development (Standards 2-7), Standards for CPE Program Presentation (Standards 8-11), Standards for Program Measurement (Standards 12-16), and Standards for CPE Program Reporting (Standards 17-18). "CPE sponsor", as used herein, means the individual or organization responsible for setting learning objectives, developing the program materials to achieve such objectives, offering a program to participants, and maintaining the documentation required by these standards. The term "CPE program sponsor" may include associations of CPAs, whether formal or informal, as well as employers who offer in-house programs.

(a) Standard No. 1. CPE program sponsors are responsible for compliance with all applicable standards and other CPE requirements.

(i) In addition to the minimum requirements under this rule, CPE program sponsors may have to meet specific CPE requirements of other state licensing bodies, other governmental entities, and/or other professional organizations or bodies. CPE program sponsors should contact the appropriate entity to determine requirements.

(b) Standard No. 2. Sponsored learning activities must be based on relevant learning objectives and outcomes that clearly articulate the knowledge, skills, and abilities that can be achieved by participants in the learning activities.

(i) Learning activities, meaning an educational endeavor that improves or maintains professional competence, provided by CPE program sponsors for the benefit of CPAs, should specify the level, content, and learning objectives so that potential participants can determine if the learning activities are appropriate to their professional competence development needs. Learning activity levels include, for example, basic, intermediate, advanced, update, and overview as defined as follows:

(A) Advanced. Learning activity level most useful for individuals with mastery of the particular topic. This level focuses on the development of in-depth knowledge, a variety of skills, or a broader range of applications. Advanced level programs are often appropriate for seasoned professionals within organizations; however, they may also be beneficial for other professionals with specialized knowledge in a subject area.

(B) Basic. Learning activity level most beneficial to CPAs new to a skill or an attribute. These individuals are often at the staff or entry level in organizations, although such programs may also benefit a seasoned professional with limited exposure to the area.

(C) Intermediate. Learning activity level that builds on a basic program, most appropriate for CPAs with detailed knowledge in an area. Such persons are often at a mid-level within the organization, with operational and/or supervisory responsibilities.

(D) Overview. Learning activity level that provides a general review of a subject area from a broad perspective. These programs may be appropriate for professionals at all organizational levels.

(E) Update. Learning activity level that provides a general review of new developments. This level is for participants with a background in the subject area who desire to keep current.

(c) Standard No. 3. CPE program sponsors should develop and execute learning activities in a manner consistent with the prerequisite education, experience, and/or advance preparation of participants.

(i) To the extent it is possible to do so, CPE program sponsors should make every attempt to equate program content and level with the backgrounds of intended participants. All programs must clearly identify prerequisite education, experience, and/or advance preparation, if any, in precise language so that potential participants can readily ascertain

whether they qualify for the program.

(d) Standard No. 4. CPE program sponsors must use activities, materials, and delivery systems that are current, technically accurate, and effectively designed, and include discussions of ethical issues that may apply to the subject matter. CPE program sponsors must be qualified in the subject matter.

(i) To best facilitate the learning process, sponsored programs and materials must be prepared, presented and updated in a timely manner. Learning activities must be developed by individuals or teams having expertise in the subject matter. Expertise may be demonstrated through practical experience or education.

(ii) CPE program sponsors must review the course materials periodically to ensure that they are accurate and consistent with currently accepted standards relating to the program's subject matter.

(e) Standard No. 5. CPE program sponsors of group and self-study programs must ensure learning activities are reviewed by qualified persons other than those who developed them to ensure that the program is technically accurate and current and addresses the stated learning objectives. These reviews must occur before the first presentation of these materials and again after each significant revision of the CPE programs.

(i) Individuals or teams qualified in the subject matter must review programs. When it is impractical to review certain programs in advance, such as lectures given only once, greater reliance should be placed on the recognized professional competence of the instructors or presenters. Using independent reviewing organizations familiar with these standards may enhance quality assurance.

(f) Standard No. 6. CPE program sponsors of independent study learning activities must be qualified in the subject matter.

(i) A CPE program sponsor of independent study learning activities must have expertise in the specific subject area related to the independent study. The CPE program sponsor must also:

(A) Review, evaluate, approve and sign the proposed independent study learning contract, including agreeing in advance on the number of credits to be recommended upon successful completion.

(B) Review and sign the written report developed by the participant in independent study.

(C) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(g) Standard No. 7. Self-study programs must employ learning methodologies that clearly define learning objectives, guide the participant through the learning process, and provide evidence of a participant's satisfactory completion of the program.

(i) To guide participants through a learning process, CPE program sponsors of self-study programs must elicit participant responses to test for understanding of the material, offer evaluative feedback to incorrect responses, and provide reinforcement feedback to correct responses. To provide evidence of satisfactory completion of the course, CPE program sponsors of self-study programs must require participants to successfully complete a final examination with a minimum-passing grade of at least 70 percent before issuing CPE credit for the course.

(A) Evaluative feedback, as used in this subsection, means: specific response to correct answers to questions in self-study programs. Unique feedback must be provided for each incorrect response, as each one is likely to be wrong for differing reasons.

(B) Reinforcement feedback, as used in this subsection, means: specific responses to correct answers to questions in self-study programs. Such feedback restates why the answer selected was correct.

(ii) Examinations may contain questions of varying format

(for example, multiple-choice, essay and simulations.) If objective type questions are used, at least five questions per CPE credit must be included on the final examination. For example, the final examination for a five-credit course must include at least 25 questions.

(iii) Self-study programs must be based on materials specifically developed for instructional use. Self-study programs requiring only the reading of general professional literature, IRS publications, or reference manuals followed by a test will not be acceptable. However, the use of the publications and reference materials in self-study programs as supplements to the instructional materials could qualify if the self-study program complies with each of the CPE standards.

(h) Standard No. 8. CPE program sponsors must provide descriptive materials that enable CPAs to assess the appropriateness of learning activities. To accomplish this, CPE program sponsors must inform participants in advance of: learning objectives, prerequisites, program level, program content, advance preparation, instructional delivery methods, recommended CPE credit, and course registration requirements. Instructional delivery methods, as used in this subsection, means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs.

(i) For potential participants to effectively plan their CPE, the program sponsor should disclose the significant features of the program in advance (e.g., through the use of brochures, Internet notices, invitations, direct mail, or other announcements). When CPE programs are offered in conjunction with non-educational activities, or when several CPE programs are offered concurrently, participants should receive an appropriate schedule of events indicating those components that are recommended for CPE credit. The CPE program sponsor's registration policies and procedures should be formalized, published, and made available to participants.

(ii) CPE program sponsors should distribute program materials in a timely manner and encourage participants to complete any advance preparation requirements. All programs should clearly identify prerequisite education, experience, and/or advance preparation requirements, if any, in the descriptive materials. Prerequisites should be written in precise language so that potential participants can readily ascertain whether they qualify for the program.

(i) Standard No. 9. CPE program sponsors must ensure instructors are qualified with respect to both program content and instructional methods used.

(i) Instructors are key ingredients in the learning process for any group program. Therefore, it is imperative that CPE program sponsors exercise great care in selecting qualified instructors for all group programs. Qualified instructors are those who are capable, through training, education, or experience of communicating effectively and providing an environment conducive to learning. They should be competent and current in the subject matter, skilled in the use of the appropriate instructional methods and technology, and prepared in advance. As used in this subsection, Group Program means: An educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the Internet.

(ii) CPE program sponsors should evaluate the instructor's performance at the conclusion of each program to determine the instructor's suitability to serve in the future.

(j) Standard No. 10. CPE program sponsors must employ an effective means for evaluating learning activity quality with respect to content and presentation, as well as provide a mechanism for participants to assess whether learning objectives

were met.

(i) The objectives of evaluation are to assess participant satisfaction with specific programs and to increase subsequent program effectiveness. Evaluations, whether written or electronic, should be solicited from participants and instructors for each program session, including self-study, to determine, among other things, whether:

(A) Stated learning objectives were met.

(B) If applicable, prerequisite requirements were appropriate.

(C) Program materials were accurate.

(D) Program materials were relevant and contributed to the achievement of the learning objectives.

(E) Time allotted to the learning activity was appropriate.

(F) If applicable, individual instructors were effective.

(G) Facilities and/or technological equipment was appropriate.

(H) Handout or advance preparation materials were satisfactory.

(I) Audio and video materials were effective.

(ii) CPE program sponsors should periodically review evaluation results to assess program effectiveness and should inform developers and instructors of evaluation results.

(k) Standard No. 11. CPE program sponsors must ensure instructional methods employed are appropriate for the learning activities. Instructional methods means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs. Learning activities should be presented in a manner consistent with the descriptive and technical materials provided.

(i) CPE program sponsors should evaluate the instructional methods employed for the learning activities to determine if the delivery is appropriate and effective. Integral aspects in the learning environment that should be carefully monitored include the number of participants and the facilities and technologies employed in the delivery of the learning activity.

(ii) CPE program sponsors are expected to present learning activities that comply with course descriptions and objectives. Appropriate supplemental materials may also be used.

(l) Standard No. 12. Sponsored learning activities are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(i) For learning activities in which individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three CPE credits.

(ii) When the total minutes of a sponsored learning activity are greater than 50, but not equally divisible by 50, the CPE credits granted should be rounded down to the nearest one-half credit. Thus, learning activities with segments totaling 140 minutes should be granted two and one-half CPE credits.

(iii) While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must monitor group learning activities to assign the correct number of CPE credits.

(iv) For university or college credit courses that meet these CPE Standards, each unit of college credit shall equal the following CPE credits: semester system 15 credits; quarter system 10 credits.

(v) For university or college non-credit courses that meet these CPE standards, CPE credits shall be awarded only for the actual classroom time spent in the non-credit course.

(vi) Credit is not granted to participants for preparation time.

(vii) Only the portions of committee or staff meetings that are designed as programs of learning and comply with these standards qualify for CPE credit.

(m) Standard No. 13. CPE credit for self-study learning activities must be based on a pilot test of the average completion time.

(i) A sample of intended professional participants should be selected to test program materials in an environment and manner similar to that in which the program is to be presented. The sample group of at least three individuals must be independent of the program development group and possess the appropriate level of knowledge before taking the program.

(ii) The sample does not have to ensure statistical validity. CPE credits should be recommended based on the average completion time for the sample. If substantive changes are subsequently made to program materials, further pilot tests of the revised program materials should be conducted to affirm or amend, as appropriate, the average completion time.

(n) Standard No. 14. Instructors or discussion leaders of learning activities should receive CPE credit for both their preparation and presentation time to the extent the activities maintain or improve their professional competence and meet the requirements of these CPE standards.

(i) Instructors, discussion leaders, or speakers who present a learning activity for the first time should receive CPE credit for actual preparation time up to two times the number of CPE credits to which participants would be entitled, in addition to the time for presentation. For example, for learning activities in which participants could receive 8 CPE credits, instructors may receive up to 24 CPE credits (16 for preparation plus 8 for presentation).

(ii) For repeat presentations, CPE credit can be claimed only if it can be demonstrated that the learning activity content was substantially changed and such change required significant additional study or research.

(iii) The maximum credit for instructors, discussion leaders or speakers cannot exceed 50 percent of the CPE requirement.

(o) Standard No. 15. Writers of published articles, books, or CPE programs should receive CPE credit for their research and writing time to the extent it maintains or improves their professional competence.

(i) Writing articles, books, or CPE programs for publication is a structured activity that involves a process of learning. For the writer to receive CPE credit, the article, book, or CPE program must be formally reviewed by an independent party. CPE credits should be claimed only upon publication.

(ii) The maximum credit for books or articles cannot exceed 25 percent of the CPE requirement.

(p) Standard No. 16. CPE credits recommended by a CPE program sponsor of independent study must not exceed the time the participant devoted to complete the learning activities specified in the learning contract.

(i) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

(q) Standard No. 17. CPE program sponsors must provide program participants with documentation of their participation, which includes the following: CPE program sponsor name and contact information, participant's name, course title, course field of study, date offered or completed, if applicable, location, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, type of instructional/delivery method used, amount of CPE credit recommended, verification by CPE program sponsor representative.

(i) CPE program sponsors should provide participants with documentation to support their claims of CPE credit. Acceptable evidence of completion includes:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs: (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer(s) or publisher.

(r) Standard No. 18. CPE program sponsors must retain adequate documentation for five years to support their compliance with these standards and the reports that may be required of participants.

(i) Evidence of compliance with responsibilities set forth under these Standards which is to be retained by CPE program sponsors includes, but is not limited to: records of participation, dates and locations, instructor names and credentials, number of CPE credits earned by participants, and results of program evaluations.

(ii) Information to be retained by developers includes copies of program materials, evidence that the program materials were developed and reviewed by qualified parties, and a record of how CPE credits were determined.

(iii) For CPE program sponsors offering self-study programs, appropriate pilot test records must be retained regarding the following:

(A) When the pilot test was conducted.

(B) The intended participant population.

(C) How the sample was determined.

(D) Names and profiles of sample participants.

(E) A summary of participants' actual completion time.

(4) Programs or Activities Which Do Not Qualify. The following activities do not satisfy the standards for programs of this section and are not eligible for satisfaction of CPE requirements:

(a) Personal study: personal study includes reading professional journals and publications, studying and researching matters such as tax code revisions, practicing software programs on a computer and watching video movies of a conference; and

(b) Committee meetings, dinner and luncheon meetings, firm meetings or other activities that do not meet the standards outlined in this section.

(5) Reporting Requirements. Each licensee applying for license renewal shall report, by January 31 of each even numbered year, demonstrating completion of at least the minimum number of credits required in Section 58-26a-304 for qualified continuing professional education hours completed for the preceding two calendar years. Each person applying for license reinstatement shall file a report at the time of application demonstrating completion of the CPE required under Subsection R156-26a-307.

(a) Such report shall be by means of one of the following:

(i) certification from an approved continuing professional education registry of the hours of qualified continuing education completed; or

(ii) a report to the Division for review and approval of continuing professional education.

(b) It is the responsibility of the applicant or licensee to demonstrate to the Division that the applicant or licensee successfully completed all CPE reported and meets the requirements of this section or that the CPE has been approved by an approved continuing professional education registry and that reported courses maintained or increased the professional competence of the applicant or licensee.

(6) Continuing Professional Education Registry. To obtain approval as a continuing professional education registry, an organization shall:

(a) be a professional association primarily consisting of individuals licensed as certified public accountants;

(b) be organized and in good standing according to the laws of the state;

(c) enter into a written agreement with the Division under which the organization agrees to:

(i) review and approve only those programs which meet the standards set forth under this section;

(ii) publish and disseminate to their members or other CPAs on request, listings of continuing professional education programs which meet the standards and are approved for qualified continuing professional education credit;

(iii) maintain accurate records of qualified continuing professional education completed by each of its registrants and provide each of its registrants with a certificate on a timely basis to permit the registrant to file that certificate with the registrant's application to the Division for renewal or reinstatement of his license as a certified public accountant. The certificate shall contain the name of the instructor, the date of the program, location of the program, title of the program, the name of the sponsor, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, and the number of CPE hours granted; and

(iv) make records of approved of qualified continuing professional education programs and records of qualified continuing professional education completed by registrants available for audit by representatives of the Division, the Board or peer advisory committees of the board.

(7) Fees. A registry may charge a reasonable fee to registrants for services provided for approval of courses. Sponsors of approved courses may charge a lower fee to members of the sponsoring association for participation as a registrant than it charges to non-members of the association.

(8) Other CPE requirements and failure to complete CPE requirements.

(a) Interim Licensure CPE requirements. Those individuals who become licensed or certified between renewal periods shall be required to complete CPE based upon ten hours per calendar quarter for the remaining quarters of the reporting period.

(b) Carry Forward Provision. A licensee who completes more than 80 hours of CPE during the two year reporting period may carry forward up to 40 hours to the next succeeding reporting period.

(c) Failure to comply with CPE requirements.

(i) Failure to meet the 80 hour requirement. An individual holding a current Utah license who fails to complete the required 80 hours of CPE by the reporting deadline will not be allowed to renew their license unless they complete and report to the Division at least 30 days prior to their expiration date two times the number of CPE hours the license holder was short for the reporting period (penalty hours). The penalty hours shall not be considered to satisfy in whole or part any of the CPE hours required for subsequent renewal of the license.

(ii) Non-Qualifying or Disqualified CPE hours. An individual who reports nonqualifying hours or who has hours disqualified by the Utah Board of Accountancy shall not be



allowed to renew their license unless they complete and report to the Division, within 60 days of receiving notification by the Division of their shortage and the relevant penalty hours requirement under R156-26-303b(8)(c)(i).

(iii) Waiver for Medical Reasons. A licensee may request the Board to waive the requirements or grant an extension for continuing professional education on the basis that the licensee was not able to complete the continuing professional education due to medical or related conditions confirmed by a qualified health care provider. Such medical confirmation shall include the beginning and ending dates during which the medical condition would have prevented the licensee from completing the continuing professional education, the extent of the medical condition and the effect that the medical condition had upon the ability of the licensee to continue to engage in the practice of accountancy. The Board in determining whether the waiver is appropriate shall consider whether or not the licensee continued to be engaged in the practice of accountancy practice on a full or part time basis during the period specified by the medical confirmation. Granting a waiver of meeting the minimum CPE hours shall not be construed as a waiver of a CPA being required to provide services in a competent manner with current knowledge, skill and ability. When medical or other conditions prevent the CPA from providing services in a competent manner, the CPA shall refrain from providing such services.

#### **R156-26a-303c. Renewal Cycle.**

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 26a is established by rule in Section R156-1-308.

#### **R156-26a-303d. Renewal Procedures.**

Renewal procedures shall be in accordance with Section R156-1-308.

#### **R156-26a-307. Reinstatement of Licenses.**

(1) An individual having held a Utah license which has expired for failure to renew for nonpayment of fees, or an individual applying for reinstatement from emeritus status, may be relicensed upon satisfactory completion of:

(a) submission of an application on forms supplied by the Division which shall contain information as to why the person allowed their license to lapse;

(b) 80 hours of acceptable CPE, completed within the 12 months preceding the submission of an application for reinstatement, which shall include a minimum of 16 hours in accounting or auditing or both and shall include successful completion of the AICPA Ethics Self-Study Examination and the Utah Law and Rules Examination with a minimum score of at least the minimum score required for initial licensure. Successful completion of the two examinations will count as eight hours of CPE towards the 80 hour requirement.

(i) The requirements in Subsection R156-26-307(1)(b) are waived if the reinstatement applicant has not been practicing within the state of Utah since the expiration of the license being reinstated, the reinstatement applicant has continuously since the expiration been licensed and practicing in another state and the reinstatement applicant demonstrates that the applicant has met all the CPE requirements that would have been applicable in the state of Utah during the time the license was expired in the state of Utah.

(ii) The requirements in Subsection R156-26a-307(1)(b) are waived, if the applicant failed to renew because of inadvertent failure to pay the renewal fees, to sign application documents, or to meet similar technical application requirements and the application for reinstatement is filed with the Division within 24 months after expiration date of the license and at time of application for reinstatement the applicant demonstrates by

proof of attendance at acceptable CPE courses that at all times the applicant was in full compliance with the CPE requirements.

(2) A licensee who reinstates their license must obtain ten hours of CPE per full calendar quarter remaining in the current CPE reporting period after reinstatement is granted.

(3) The number of hours required to reinstate the license shall not be considered to satisfy in whole or part any of the 80 hours of CPE required for subsequent renewal of the license.

#### **R156-26a-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) a licensee willfully failing to comply with continuing professional education or fraudulently reporting continuing professional education; or

(2) commission of an act or omission that fails to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Code of Professional Conduct" of the American Institute of Certified Public Accountants (AICPA) as adopted June 1, 2008, which is hereby incorporated by reference.

#### **KEY: accountants, licensing, peer review, continuing professional education**

**August 10, 2009**

**Notice of Continuation February 1, 2007**

**58-26a-101**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.  
R156-56. Utah Uniform Building Standard Act Rules.  
R156-56-101. Title.**

These rules are known as the "Utah Uniform Building Standard Act Rules".

**R156-56-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1, 55 and 56, as used in Title 58, Chapter 56 or these rules:

(1) "Building permit" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), a warrant, license or authorization to build or construct a building or structure or any part thereof.

(2) "Building permit fee" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), fees assessed by an agency of the state or political subdivision of the state for the issuance of permits for construction, alteration, remodeling, and repair and installation including building, electrical, mechanical and plumbing components.

(3) "Employed by a local regulator, state regulator or compliance agency" means, with respect to Subsection 58-56-9(1), the hiring of services of a qualified inspector whether by an employer/employee relationship, an independent contractor relationship, a fee-for-service relationship or any other lawful arrangement under which the regulating agency purchases the services of a qualified inspector.

(4) "Inspector" means a person employed by a local regulator, state regulator or compliance agency for the purpose of inspecting building, electrical, plumbing or mechanical construction, alteration, remodeling, repair or installation in accordance with the codes adopted under these rules and taking appropriate action based upon the findings made during inspection.

(5) "Permit number", as used in Sections R156-56-401 and R156-56-402, means the standardized building permit number described below in R156-56-401.

(6) "Refuses to establish a method of appeal" means with respect to Subsection 58-56-8(3), that a compliance agency does not in fact adopt a formal written method of appealing uniform building standard matters in accordance with generally recognized standards of due process; or, that the compliance agency does not convene an appeals board and render a decision in the matter within ninety days from the date on which the appeal is properly filed with the compliance agency.

(7) "Uniform Building Standards" means the codes identified in Section R156-56-701 and as amended under these rules.

(8) "Unprofessional conduct" as defined in Title 58, Chapter 1 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-56-502.

**R156-56-103. Authority.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 56.

**R156-56-104. 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.

**R156-56-105. Board of Appeals.**

If the commission is required to act as an appeals board in accordance with the provisions of Subsection 58-56-8(3), the following shall regulate the convening and conduct of the special appeals board:

(1) If a compliance agency refuses to establish a method of appeal regarding a uniform building standard issue, the appealing party may petition the commission to act as the board

of appeals.

(2) The person making the appeal shall file the request to convene the commission as an appeals board in accordance with the requirements for a request for agency action, as set forth in Subsection 63G-4-201(3)(a) and Section R151-46b-7. A request by other means shall not be considered. Any request received by the commission or division by any other means shall be returned to the appellant with appropriate instructions.

(3) A copy of the final written decision of the compliance agency interpreting or applying a code which is the subject of the dispute shall be submitted as an attachment to the request. If the person making the appeal requests, but does not timely receive a final written decision, the person shall submit an affidavit to this effect in lieu of the final written decision.

(4) The request shall be filed with the division no later than 30 days following the issuance of the disputed written decision by the compliance agency.

(5) The compliance agency shall file a written response to the request not later than 20 days after the filing of the request. The request and response shall be provided to the commission in advance of any hearing in order to properly frame the disputed issues.

(6) Except with regard to the time period specified in Subsection (7), the time periods specified in this section may, upon a showing of good cause, be modified by the presiding officer conducting the proceeding.

(7) The commission shall convene as an appeals board within 45 days after a request is properly filed.

(8) Upon the convening of the commission as an appeals board, the board members shall review the issue to be considered to determine if a member of the board has a conflict of interest which would preclude the member from fairly hearing and deciding the issue. If it is determined that a conflict does exist, the member shall be excused from participating in the proceedings.

(9) The hearing shall be a formal hearing held in accordance with the Utah Administrative Procedures Act, Title 63G, Chapter 4.

(10) Decisions relating to the application and interpretation of the code made by a compliance agency board of appeals shall be binding for the specific individual case and shall not require commission approval.

**R156-56-106. Fees.**

In accordance with Subsection 58-56-9(4), on April 30, July 31, October 31 and January 31 of each year, each agency of the state and each political subdivision of the state which assesses a building permit fee shall file with the division a report of building fees and surcharge for the immediately preceding calendar quarter; and, shall remit 80% of the amount of the surcharge to have been assessed to the division.

**R156-56-201. Building Inspector Licensing Board.**

In accordance with Section 58-56-8.5, the board shall be as follows:

- (1) one member licensed as a Combination Inspector;
- (2) one member licensed as an Inspector who is qualified in the electrical code;
- (3) one member licensed as an Inspector who is qualified in the plumbing code;
- (4) one member licensed as an Inspector who is qualified in the mechanical code; and
- (5) one member shall be from the general public.

**R156-56-202. Advisory Peer Committees Created - Membership - Duties.**

(1) There is created in accordance with Subsection 58-1-203(1)(f) and 58-56-5(10)(e), the following committees as advisory peer committees to the Uniform Building Codes

**Commission:**

(a) the Education Advisory Committee consisting of nine members, which shall include a design professional, a general contractor, an electrical contractor, a mechanical or plumbing contractor, an educator, and four inspectors (one from each of the specialties of plumbing, electrical, mechanical and general building);

(b) the Plumbing and Health Advisory Committee consisting of nine members;

(c) the Structural Advisory Committee consisting of seven members;

(d) the Architectural Advisory Committee consisting of seven members;

(e) the Fire Protection Advisory Committee consisting of five members;

(i) This committee shall join together with the Fire Advisory and Code Analysis Committee of the Utah Fire Prevention Board to form the Unified Code Analysis Council.

(ii) The Unified Code Analysis Council shall meet as directed by the Utah Fire Prevention Board or as directed by the Uniform Building Code Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

(iii) The Unified Code Analysis Council shall select one of its 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.

(iv) The chair or vice chair shall report to the Utah Fire Prevention Board or Uniform Building Code Commission recommendations of the council with regard to the review of fire and building codes;

(f) the Mechanical Advisory Committee consisting of seven members; and

(g) the Electrical Advisory Committee consisting of seven members.

(2) The committees shall be appointed and serve in accordance with Section R156-1-205. The membership of each committee shall be made up of individuals who have direct knowledge or involvement in the area of code involved in the title of that committee.

(3) The duties and responsibilities of the committees shall include:

(a) review of requests for amendments to the adopted codes as assigned to each committee by the division with the collaboration of the commission;

(b) submission of recommendations concerning the requests for amendment; and

(c) the Education Advisory Committee shall review and make recommendations regarding funding requests which are submitted, and review and make recommendations regarding budget, revenue and expenses of the education fund established pursuant to Subsection 58-56-9(4).

**R156-56-301. Reserved.**

Reserved.

**R156-56-302. Licensure of Inspectors.**

In accordance with Subsection 58-56-9(1), the licensee classifications, scope of work, qualifications for licensure, and application for license are established as follows:

(1) License Classifications. Each inspector required to be licensed under Subsection 58-56-9(1) shall qualify for licensure and be licensed by the division in one of the following classifications:

(a) Combination Inspector; or

(b) Limited Inspector.

(2) Scope of Work. The scope of work permitted under

each inspector classification is as follows:

(a) Combination Inspector.

(i) Inspect the components of any building, structure or work for which a standard is provided in the specific edition of the codes adopted under these rules or amendments to these codes as included in these rules.

(ii) Determine whether the construction, alteration, remodeling, repair or installation of all components of any building, structure or work is in compliance with the adopted codes.

(iii) After determination of compliance or noncompliance with the adopted codes take appropriate action as is provided in the aforesaid codes.

(b) Limited Inspector.

(i) A Limited Inspector may only conduct activities under Subsections (ii), (iii) or (iv) for which the Limited Inspector has maintained current certificates under the adopted codes as provided under Subsections R156-56-302(3)(b) and R156-56-302(2)(c)(ii).

(ii) Subject to the limitations of Subsection (i), inspect the components of any building, structure or work for which a standard is provided in the specific edition of the codes adopted under these rules or amendments to these codes as included in these rules.

(iii) Subject to the limitations under Subsection (i), determine whether the construction, alteration, remodeling, repair or installation of components of any building, structure or work is in compliance with the adopted codes.

(iv) Subject to the limitations under Subsection (i), after determination of compliance or noncompliance with the adopted codes, take appropriate action as is provided in the adopted codes.

(3) Qualifications for Licensure. The qualifications for licensure for each inspector classification are as follows:

(a) Combination Inspector.

Has passed the examination for and maintained as current the following national certifications for codes adopted under these rules:

(i) the "Combination Inspector Certification" issued by the International Code Council; or

(ii) all of the following certifications:

(A) the "Building Inspector Certification" issued by the International Code Council or both the "Commercial Building Inspector Certification" and the "Residential Building Inspector Certification" issued by the International Code Council;

(B) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of Electrical Inspectors, or both the "Commercial Electrical Inspector Certification" and the "Residential Electrical Inspector Certification" issued by the International Code Council;

(C) the "Plumbing Inspector Certification" issued by the International Code Council, or both the "Commercial Plumbing Inspector Certification" and the "Residential Plumbing Inspector Certification" issued by the International Code Council; and

(D) the "Mechanical Inspector Certification" issued by the International Code Council or both the "Commercial Mechanical Inspector Certification" and the "Residential Mechanical Inspector Certification" issued by the International Code Council.

(b) Limited Inspector.

Has passed the examination for and maintained as current one or more of the following national certifications for codes adopted under these rules:

(i) the "Building Inspector Certification" issued by the International Code Council;

(ii) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of

Electrical Inspectors;

(iii) the "Plumbing Inspector Certification" issued by the International Code Council;

(iv) the "Mechanical Inspector Certification" issued by the International Code Council;

(v) the "Residential Combination Inspector Certification" issued by the International Code Council;

(vi) the "Commercial Combination Certification" issued by the International Code Council;

(vii) the "Commercial Building Inspector Certification" issued by the International Code Council;

(viii) the "Commercial Electrical Inspector Certification" issued by the International Code Council;

(ix) the "Commercial Plumbing Inspector Certification" issued by the International Code Council;

(x) the "Commercial Mechanical Inspector Certification" issued by the International Code Council;

(xi) the "Residential Building Inspector Certification" issued by the International Code Council;

(xii) the "Residential Electrical Inspector Certification" issued by the International Code Council;

(xiii) the "Residential Plumbing Inspector Certification" issued by the International Code Council;

(xiv) the "Residential Mechanical Inspector Certification" issued by the International Code Council;

(xv) any other special or otherwise limited inspector certifications used by the International Code Council which certifications cover a part of the codes adopted under these rules including but not limited to each of the following: Reinforced Concrete Special Inspector, Prestressed Concrete Special Inspector, Structural Masonry Special Inspector, Structural Steel and Bolting Special Inspection, Structural Welding Special Inspection, Spray Applied Fire Proofing Special Inspector, Residential Energy Inspector, Commercial Energy Inspector;

(xvi) the Certified Welding Inspector Certification issued by the American Welding Society;

(xvii) any other certification issued by an agency specified in Chapter 17 of the IBC or an agency specified in the referenced standards; or

(xviii) any combination certification which is based upon a combination of one or more of the above listed certifications.

(c) If no qualification is listed in the IBC for a special inspector, the special inspector may submit his qualifications to the licensing board for approval.

(4) Application for License.

(a) An applicant for licensure shall:

(i) submit an application in a form prescribed by the division; and

(ii) pay a fee determined by the department pursuant to Section 63J-1-504.

(5) Code transition provisions.

(a) If an inspector or applicant obtains a new, renewal or recertification or replacement national certificate after a new code or code edition is adopted, the inspector or applicant is required to obtain that certification under the currently adopted code or code edition.

(b) After a new code or new code edition is adopted under these rules, the inspector is required to re-certify their national certification to the new code or code edition at the next available renewal cycle of the national certification.

(c) If a licensed inspector fails to obtain the national certification as required in Subsection (a) or (b), their authority to inspect for the area covered by the national certification automatically expires at the expiration date of the national certification that was not obtained as required.

(d) If an inspector recertifies a national certificate on a newer edition of the codes adopted before that newer edition is adopted under these rules, such recertification shall be considered as a current national certification as required by

these rules.

(e) If an inspector complies with these transition provisions, the inspector shall be considered to have a current national certification as required by these rules.

#### **R156-56-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year cycle applicable to licenses under Title 58, Chapter 56 is established by rule in Section R156-1-308.

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

#### **R156-56-401. Standardized Building Permit Number.**

As provided in Section 58-56-19, beginning on July 1, 2009, any agency issuing a permit for construction within the state of Utah shall use the standardized building permit numbering system. The standardized building permit numbering system described under Subsection 58-56-19(4) shall include a combination of alpha or numeric characters arranged in a format acceptable to the issuing agency.

#### **R156-56-402. Standardized Building Permit Content.**

As provided in Section 58-56-19, beginning January 1, 2007, any agency issuing a permit for construction within the state of Utah shall use a permit form that incorporates standardized building permit content as follows:

(1) permit number, as set forth in Subsection R156-56-401(1), shall be printed by typewriter, computer printer or rubber stamp in the upper right-hand corner of the building permit in at least 12-point type;

(2) the name of the owner of the project;

(3) the name of the original contractor or owner-builder for the project;

(4) whether the permit applicant is an original contractor or owner-builder; and

(5) street address of the project or a general description of the project.

#### **R156-56-420. Administration of Building Code Training Fund.**

In accordance with Subsection 58-56-9(3)(a), the Division shall use monies received under Subsection 58-56-9(4) to provide education regarding codes and code amendments to building inspectors and individuals engaged in construction-related trades or professions. The following procedures, standards and policies are established to apply to the administration of the fund:

(1) The Division shall not approve or deny expenditure requests from the Building Code Training Fund ("the fund") until the Uniform Building Code Commission (UBCC) Education Advisory Committee ("the Committee"), created in accordance with Subsections 58-1-203(1)(f), 58-56-5(10)(d) and (e), and R156-56-202(1)(a) has considered and made its recommendations on the requests.

(2) Appropriate funding expenditure categories include:

(a) grants in the form of reimbursement funding to the following organizations which administer code related educational events, seminars or classes:

(i) schools, colleges, universities, departments of universities or other institutions of learning;

(ii) professional associations or organizations; and

(iii) governmental agencies.

(b) costs or expenses incurred as a result of educational events, seminars or classes directly administered by the Division;

(c) expenses incurred for the salary, benefits or other compensation and related expenses resulting from the employment of a Board Secretary;

(d) office equipment and associated administrative expenses required for the performance of the duties of the Board Secretary, including but not limited to computer equipment, telecommunication equipment and costs and general office supplies; and

(e) other related expenses as determined by the Division.

(3) The following procedure shall be used for submission, review and payment of funding grants:

(a) A funding grant applicant shall submit a "Tentative Training Plans and Funding Request Estimate" preferably prior to the beginning of the fiscal year for budget consideration.

(b) A funding grant applicant shall submit a completed "Application for Building Code Training Funds Grant" preferably a minimum of 15 days prior to the meeting at which the request is to be considered and prior to the training event on forms provided for that purpose by the Division. Applications received less than 15 days prior to a meeting may be denied.

(c) A funding grant applicant shall include in its application a summary and analysis of training costs based upon the estimated costs of the proposed training.

(d) Payment of approved funding grants will be made as reimbursement after the approved event, class, or seminar has been held and the required receipts, invoices and supporting documentation have been submitted to the Division.

(4) The Committee shall consider the following in determining whether to recommend approval of a proposed funding request to the Division:

(a) costs of the facility including:

(i) the location of a facility or venue to the type of event, seminar or class;

(ii) the suitability of said facility or venue with regard to the anticipated attendance at or in connection with additional non-funded portions of an event or conference;

(iii) the duration of the proposed educational event, seminar or class; and

(iv) whether the proposed cost of the facility is reasonable compared to the cost of alternative available facilities;

(b) the estimated cost for instructor fees including:

(i) the experience or expertise of the instructor in the proposed training area;

(ii) the quality of training based upon events, seminars or classes that have been previously taught by the instructor;

(iii) the drawing power of the instructor, meaning the ability to increase the attendance at the proposed educational event, seminar or class;

(iv) travel expenses; and

(v) whether the proposed cost for the instructor or instructors is reasonable compared to the costs of similar educational events, seminars or classes;

(c) the estimated cost of advertising materials, brochures, registration and agenda materials including:

(i) printing costs which may include creative or design expenses; and

(ii) whether delivery or mailing costs, including postage and handling, are reasonable compared to the cost of alternate available means of delivery;

(d) other reasonable and comparable cost alternatives for each proposed expense item; and

(e) any other information the Committee reasonably believes may assist in evaluating a proposed expenditure.

(5) Joint Functions.

(a) "Joint function" means a proposed event, class, seminar or program that provides code or code related education and education or activities in other areas.

(b) Only the prorated portions of a joint function which are code and code related education are eligible for a funding grant.

(c) In considering a proposed funding request that involves a joint function, the Committee shall consider whether:

(i) the expenses subject to funding are reasonably prorated

for the costs directly related to the code and code amendment education; and

(ii) the education being proposed will be reasonable and successful in the training objective in the context of the entire program or event.

(6) Advertising materials, brochures and agenda or training materials for a funded educational event, seminar or class shall include a statement which acknowledges that partial funding of the training program has been provided by the Utah Division of Occupational and Professional Licensing from the 1% surcharge funds on all building permits.

#### **R156-56-501. Administrative Penalties - Unlawful Conduct.**

In accordance with Subsections 58-56-9.1 and 58-56-9.5, unless otherwise ordered by the presiding officer, the following fine schedule shall apply:

(1) Engaging in the sale of factory built housing without being registered.

First offense: \$500

Second offense: \$1,000

(2) Selling factory built housing within the state as a dealer without collecting and remitting to the division the fee required by Section 58-56-17.

First offense: \$500

Second offense: \$1,000

(3) Acting as a building inspector or representing oneself to be acting as a building inspector, unless licensed or exempted from licensure under Title 58, Chapter 56 or using the title building inspector or any other description, words, letters, or abbreviation indicating that the person is a building inspector if the person has not been licensed under Title 58, Chapter 56.

First offense: \$500

Second offense: \$1,000

(4) Acting as a building inspector beyond the scope of the license held.

First offense: \$500

Second offense: \$1,000

(5) Hiring or employing in any manner an unlicensed person as a building inspector, unless exempted from licensure.

First offense: \$800

Second offense: \$1,600

(6) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Section 58-56-9.5.

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

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

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

#### **R156-56-502. Reserved.**

Reserved.

#### **R156-56-601. Modular Unit Construction and Set-up.**

Modular construction and set-up shall be as set forth in accordance with the following:

(1) Construction shall be in accordance with the building standards accepted by the state pursuant to Section 58-56-4.

(2) The inspection of the construction, modification of or set-up of a modular unit shall be the responsibility of the local regulator; however, nothing in these rules shall preclude the local regulator from entering into an agreement with another qualified person for the inspection of the unit(s) in the

manufacturing facility.

**R156-56-602. Factory Built Housing Dealer Bonds.**

(1) Pursuant to the provisions of Subsection 58-56-16(2)(c), a factory built housing dealer shall provide a registration bond issued by a surety acceptable to the Division in the amount of \$50,000. An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, current revision, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".

(2) The coverage of the registration bond shall include losses which may occur as the result of the factory built housing dealer's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 56.

**R156-56-603. Factory Built Housing Dispute Resolution Program.**

(1) Pursuant to Subsection 58-56-15(1)(f)(i), the dispute resolution program is defined and clarified as follows:

(a) Persons having disputes regarding manufactured housing issues may file a complaint with the Division.

(b) The Division shall investigate such complaints and as part of the investigation may take any of the following actions:

(i) The Division may negotiate with the parties involved for informal resolution of such complaints.

(ii) The Division may take any informal or formal action allowed by any applicable statute including, but not limited to:

(A) pursuing disciplinary proceedings under Section 58-1-401;

(B) pursuing civil sanctions under Subsection 58-56-15(2); and

(C) referring matters to appropriate criminal prosecuting agencies and cooperating or assisting with the investigation and prosecution of cases by such agencies.

(c) In addition, persons having disputes regarding manufactured housing issues may also institute civil action.

**R156-56-604. Factory Built Housing Continuing Education Requirements.**

(1) Pursuant to Subsection 58-56-15(1)(f)(ii), continuing education required for manufactured housing installation contractors is defined and clarified as follows:

(a) the continuing education required by Subsection 58-55-501(21), which is effective July 1, 2005.

**R156-56-701. Specific Editions of Uniform Building Standards.**

(1) In accordance with Subsection 58-56-3(1)(b)(ii), and subject to the limitations contained in Subsection (6), (7), and (8), the following codes are hereby incorporated by reference, which codes together with any amendments specified under these rules, are adopted as the construction standards to be applied to building construction, alteration, remodeling and repair and in the regulation of building construction, alteration, remodeling and repair in the state:

(a) the 2006 edition of the International Building Code (IBC), including Appendix J promulgated by the International Code Council shall become effective on January 1, 2007;

(b) the 2008 edition of the National Electrical Code (NEC) promulgated by the National Fire Protection Association, to become effective January 1, 2009;

(c) the 2006 edition of the International Plumbing Code (IPC) promulgated by the International Code Council shall become effective on January 1, 2007;

(d) the 2006 edition of the International Mechanical Code (IMC) promulgated by the International Code Council shall become effective on January 1, 2007;

(e) the 2006 edition of the International Residential Code

(IRC) promulgated by the International Code Council shall become effective on January 1, 2007;

(f) the 2006 edition of the International Energy Conservation Code (IECC) promulgated by the International Code Council shall become effective on January 1, 2007;

(g) the 2006 edition of the International Fuel Gas Code (IFGC) promulgated by the International Code Council shall become effective on January 1, 2007;

(h) subject to the provisions of Subsection (4), the Federal Manufactured Housing Construction and Safety Standards Act (HUD Code) as promulgated by the Department of Housing and Urban Development and published in the Federal Register as set forth in 24 CFR parts 3280 and 3282 as revised April 1, 1990;

(i) subject to the provisions of Subsection (4), Appendix E of the 2006 edition of the International Residential Code promulgated by the International Code Council shall become effective on January 1, 2007;

(j) subject to the provisions of Subsection (4), the 2005 edition of the NFPA 225 Model Manufactured Home Installation Standard promulgated by the National Fire Protection Association shall become effective January 1, 2007; and

(k) the 2006 edition of the Utah Wildland Urban Interface Code (UWUI) promulgated by the International Code Council together with alternatives or amendments approved by the Utah Division of Forestry shall be effective July 1, 2008 as an approved code that may be adopted by the local compliance agency by local ordinance or other similar action as a local amendment to the codes listed in this Subsection.

(2) In accordance with Subsection 58-56-4(6), and subject to the limitations contained in Subsection 58-56-4(7), the following codes or standards are hereby incorporated by reference and approved for use and adoption by a compliance agency as the construction standards which may be applied to existing buildings in the regulation of building alteration, remodeling, repair, removal, seismic evaluation and rehabilitation in the state:

(a) the 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings (UCADB) promulgated by the International Code Council;

(b) the 2006 edition of the International Existing Building Code (IEBC), including its appendix chapters, promulgated by the International Code Council;

(c) ASCE 31-03, Seismic Evaluation of Existing Buildings, promulgated by the American Society of Civil Engineers;

(d) Pre-standard and Commentary for the Seismic Rehabilitation of Buildings (FEMA 356) published by the Federal Emergency Management Agency (November 2000).

(3) Amendments adopted by rule to prior editions of the Uniform Building Standards shall remain in effect until specifically amended or repealed.

(4) In accordance with Subsection 58-56-3(1)(b)(ii), the following are hereby adopted as the installation standard for manufactured housing for new installations or for existing manufactured or mobile homes which are subject to relocation, building alteration, remodeling or rehabilitation in the state:

(a) The manufacturer's installation instruction for the model being installed shall be the primary standard.

(b) If the manufacturer's installation instruction for the model being installed is not available or is incomplete, the following standards shall be applicable:

(i) Appendix E of the 2006 edition of the International Residential Code as promulgated by the International Code Council for installations defined in Section AE101 of Appendix E; or

(ii) If an installation is beyond the scope of the 2006 edition of the International Residential Code as defined in Section AE101 of Appendix E, then the 2005 edition of the

NFPA 225 Model Manufactured Home Installation Standard promulgated by the National Fire Protection Association shall apply.

(c) The manufacturer, dealer or homeowner shall be permitted to design for unusual installation of a manufactured home not provided for in the manufacturer's standard installation instruction Appendix E of the 2006 edition of the International Residential Code, or the 2005 edition of the NFPA 225, provided the design is approved in writing by a professional engineer or architect licensed in Utah.

(d) For mobile homes built prior to June 15, 1976, the home shall also comply with the additional installation and safety requirements specified in Section R156-56-808.

(5) Pursuant to the Federal Manufactured Home Construction and Safety Standards Section 604(d), a manufactured home may be installed in the state of Utah which does not meet the local snow load requirements as specified in Subsection R156-56-801; however all such homes which fail to meet the standards of Subsection R156-56-801 shall have a protective structure built over the home which meets the International Building Code and the snow load requirements under Subsection R156-56-801.

(6) To the extent that the building codes adopted under Subsection (1) establish local administrative functions or establish a method of appeal which pursuant to Section 58-56-8 are designated to be established by the compliance agency, such provisions are not included in the codes adopted hereunder but authority over such provisions are reserved to the compliance agency to establish such provisions.

(7) To the extent that the building codes adopted under Subsection (1) establish provisions, standards or references to other codes which by state statutes are designated to be established or administered by other state agencies or local city, town or county jurisdictions, such provisions are not included in the codes adopted herein but authority over such provisions are reserved to the agency or local government having authority over such provisions. Provisions excluded under this Subsection include but are not limited to:

(a) the International Property Maintenance Code;

(b) the International Private Sewage Disposal Code, authority over which would be reserved to the Department of Health and the Department of Environmental Quality;

(c) the International Fire Code which pursuant to Section 53-7-106 authority is reserved to the Utah Fire Prevention Board;

(d) day care provisions which are in conflict with the Child Care Licensing Act, authority over which is designated to the Utah Department of Health; and

(e) wildland urban interface provisions which go beyond the authority of Subsection 58-56-4(2), authority over which is designated to the Utah Division of Forestry or to the local compliance agencies.

(8) To the extent that the codes adopted under Subsection (1) establish provisions that exceed the authority granted to the Division, under the Utah Uniform Building Standards Act, to adopt codes or amendments to such codes by rulemaking procedures, such provisions, to the extent such authority is exceeded, are not included in the codes adopted.

#### **R156-56-703. Code Amendments.**

In accordance with Subsection 58-56-7(1), the procedure and manner under which requests for amendments to codes shall be filed with the division and recommended or declined for adoption are as follows:

(1) All requests for amendments to any of the uniform building standards shall be submitted to the division on forms specifically prepared by the division for that purpose.

(2) The processing of requests for code amendments shall be in accordance with division policies and procedures.

#### **R156-56-801. Statewide Amendments to the IBC.**

The following are adopted as amendments to the IBC to be applicable statewide:

(1) All references to the ICC Electrical Code are deleted and replaced with the National Electrical Code adopted under Subsection R156-56-701(1)(b).

(2) Section 101.4.1 is deleted and replaced with the following:

101.4.1 Electrical. The provisions of the National Electrical Code (NEC) shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

(3) Section 106.3.2 is deleted and replaced with the following:

106.3.2 Previous approval. If a lawful permit has been issued and the construction of which has been pursued in good faith within 180 days after the effective date of the code and has not been abandoned, then the construction may be completed under the code in effect at the time of the issuance of the permit.

(4) In Section 109, a new section is added as follows:

109.3.5 Weather-resistive barrier and flashing. An inspection shall be made of the weather-resistive barrier as required by Section 1403.2 and flashing as required by Section 1405.3 to prevent water from entering the weather-resistant exterior wall envelope.

The remaining sections will be renumbered as follows:

109.3.6 Lath or gypsum board inspection

109.3.7 Fire-resistant penetrations

109.3.8 Energy efficiency inspections

109.3.9 Other inspections

109.3.10 Special inspections

109.3.11 Final inspection.

(5) Section 114.1 is deleted and replaced with the following:

114.1 Authority. Whenever the building official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or other pertinent laws or ordinances or dangerous or unsafe, the building official is authorized to stop work.

(6) In Section 202, the definition for Assisted Living Facility is deleted and replaced with the following:

ASSISTED LIVING FACILITY. See Section 308.1.1.

(7) Section 305.2 is deleted and replaced with the following:

305.2 Day care. The building or structure, or portion thereof, for educational, supervision, child day care centers, or personal care services of more than four children shall be classified as a Group E occupancy. See Section 421 for special requirements for Group E child day care centers.

Exception: Areas used for child day care purposes with a Residential Certificate, Family License or Family Group License may be located in a Group R-2 or R-3 occupancy as provided in Section 310.1 or shall comply with the International Residential Code in accordance with Section 101.2.

Child day care centers providing care for more than 100 children 2 1/2 years or less of age shall be classified as Group I-4.

(8) In Section 308 the following definitions are added:

308.1.1 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

TYPE I ASSISTED LIVING FACILITY. A residential facility licensed by the Utah Department of Health that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

TYPE II ASSISTED LIVING FACILITY. A residential facility licensed by the Utah Department of Health that provides

an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

SEMI-INDEPENDENT. A person who is:

A. Physically disabled but able to direct his or her own care; or

B. Cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

RESIDENTIAL TREATMENT/SUPPORT ASSISTED LIVING FACILITY. A residential treatment/support assisted living facility which creates a group living environment for four or more residents licensed by the Utah Department of Human Services, and provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

(9) Section 308.2 is deleted and replaced with the following:

308.2 Group I-1. This occupancy shall include buildings, structures, or parts thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following: residential board and care facilities, type I assisted living facilities, residential treatment/support assisted living facility, half-way houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or fewer persons shall be classified as a Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2. A facility such as above, housing at least six and not more than 16 persons, shall be classified as a Group R-4.

(10) Section 308.3 is deleted and replaced with the following:

308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than three persons who are not capable of self-preservation. This group shall include, but not be limited to the following: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals, detoxification facilities, 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 II assisted living facilities. Type II assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type II assisted living facilities as defined in 308.1.1 with at least six and not more than sixteen residents shall be classified as a Group I-1 facility.

(11) Section 308.3.1 is deleted and replaced with the following:

308.3.1 Child care facility. A child care facility that provides care on a 24 hour basis to more than four children 2 1/2 years of age or less shall be classified as Group I-2.

(12) Section 308.5 is deleted and replaced with the following:

308.5 Group I-4, day care facilities. This group shall include buildings and structures occupied by persons of any age who receive custodial care less than 24 hours by individuals other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. A facility such as the above with four or fewer persons shall be classified as an R-3 or shall comply with the International

Residential Code in accordance with Section 101.2. Places of worship during religious functions and Group E child day care centers are not included.

(13) Section 308.5.2 is deleted and replaced with the following:

308.5.2 Child care facility. A facility that provides supervision and personal care on less than a 24 hour basis for more than 100 children 2 1/2 years of age or less shall be classified as Group I-4.

(14) Section 310.1 is deleted and replaced with the following:

310.1 Residential Group "R". Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classed as an Institutional Group I. Residential occupancies shall include the following:

R-1: Residential occupancies where the occupants are primarily transient in nature (less than 30 days) including: Boarding Houses (transient) and congregate living facilities, Hotels (transient), and Motels (transient).

Exception: Boarding houses and congregate living facilities accommodating 10 persons or less shall be classified as a Residential Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2.

R-2: Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including: Apartment Houses, Boarding houses (not transient) and congregate living facilities, Convents, Dormitories, Fraternities and Sororities, Monasteries, Vacation timeshare properties, Hotels (non transient), and Motels (non transient).

Exception: Boarding houses and congregate living facilities accommodating 10 persons or less shall be classified as a Residential Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2.

R-3: Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4 or I and where buildings do not contain more than two dwelling units, as applicable in Section 101.2, or adult and child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours. Adult and child care facilities that are within a single family home are permitted to comply with the International Residential Code in accordance with Section 101.2. Areas used for day care purposes may be located in a residential dwelling unit under all of the following conditions:

1. Compliance with the Utah Administrative Code, R710-8, Day Care Rules, as enacted under the authority of the Utah Fire Prevention Board.

2. Use is approved by the State Department of Health, as enacted under the authority of the Utah Child Care Licensing Act, UCA, Sections 26-39-101 through 26-39-110, and in any of the following categories:

a. Utah Administrative Code, R430-50, Residential Certificate Child Care Standards.

b. Utah Administrative Code, R430-90, Licensed Family Child Care.

3. Compliance with all zoning regulations of the local regulator.

R-4: Residential occupancies shall include buildings arranged for occupancy as Residential Care/Assisted Living Facilities or Residential Treatment/Support Assisted Living Facilities including more than five but not more than 16 occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3 except as otherwise provided for in this code or shall comply with the International Residential Code in accordance with Section 101.2.

(15) In Section 310.2 the definition for Residential



Care/Assisted Living Facilities is deleted and replaced with the following:

See Section 308.1.1.

(16) A new section 421 is added as follows:

Section 421 Group E Child Day Care Centers. Group E child day care centers shall comply with Section 421.

421.1 Location at grade. Group E child day care centers shall be located at the level of exit discharge.

Exception: Child day care spaces for children over the age of 24 months may be located on the second floor of buildings equipped with automatic fire protection throughout and an automatic fire alarm system.

421.2 Egress. All Group E child day care spaces with an occupant load of more than 10 shall have a second means of egress. If the second means of egress is not an exit door leading directly to the exterior, the room shall have an emergency escape and rescue window complying with Section 1026.

(17) In Section 504.2 a new section is added as follows:

504.2.1 Notwithstanding the exceptions to Section 504.2, Group I-2 Assisted Living Facilities shall be allowed to be two stories of Type V-A construction when all of the following apply:

1. All secured units are located at the level of exit discharge in compliance with Section 1008.1.8.3 as amended;
2. The total combined area of both stories shall not exceed the total allowable area for a one-story building; and
3. All other provisions that apply in Section 407 have been provided.

(18) In Section (F)902, the definition for record drawings is deleted and replaced with the following:

(F)RECORD DRAWINGS. Drawings ("as built") that document all aspects of a fire protection system as installed.

(19) In Section (F)903.2.3 condition 2 is deleted and replaced with the following:

2. Where a Group F-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

(20) In Section (F)903.2.6 condition 2 is deleted and replaced with the following:

2. Where a Group M fire area is located more than three stories above the lowest level of fire department vehicle access; or

(21) Section (F)903.2.7 is deleted and replaced with the following:

(F)903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

Exceptions:

1. 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.

2. Group R-4 fire areas not more than 4,500 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.

(22) In Section (F)903.2.8 condition 2 is deleted and replaced with the following:

2. Where a Group S-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

(23) Section (F)903.2.9 is deleted and replaced with the following:

(F)903.2.9 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.

Exception 1: Parking garages of less than 5,000 square feet

(464 m<sup>2</sup>) accessory to Group R-3 occupancies.

Exception 2: Open parking garages not located beneath other groups if one of the following conditions is met:

- a. Access is provided for fire fighting operations to within 150 feet (45,720 mm) of all portions of the parking garage as measured from the approved fire department vehicle access; or
- b. Class I standpipes are installed throughout the parking garage.

(24) In Section (F)903.2.9.1 the last clause "where the fire area exceeds 5,000 square feet (464 m<sup>2</sup>)" is deleted.

(25) Section (F)904.11 and Subsections (F)904.11.3, (F)904.11.3.1, (F)904.11.4 and (F)904.11.4.1 are deleted and replaced with the following:

(F)904.11 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 of the type and arrangement protected. Pre-engineered automatic extinguishing systems shall be tested in accordance with UL 300 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. Automatic fire-extinguishing systems shall be installed in accordance with the referenced standard for wet-chemical extinguishing systems, NFPA 17A.

Exception: Factory-built commercial cooking recirculating systems that are tested in accordance with UL 710B and listed, labeled and installed in accordance with Section 304.1 of the International Mechanical Code.

(Subsections (F)904.11.1 and (F)904.11.2 remain unchanged.

(26) Section (F)907.2.10 is deleted and replaced with the following:

(F)907.2.10 Single- and multiple-station alarms. Listed single- and multiple-station smoke alarms complying with U.L. 217 shall be installed in accordance with the provision of this code and the household fire-warning equipment provision of NFPA 72. Listed single- and multiple-station carbon monoxide detectors shall comply with U.L. 2034 and shall be installed in accordance with the provisions of this code and NFPA 720.

(F)907.2.10.1 Smoke alarms. Single- or multiple-station smoke alarms shall be installed in the locations described in Sections (F)907.2.10.1.1 through (F)907.2.10.1.3.

(F)907.2.10.1.1 Group R-1. Single- or multiple-station smoke alarms shall be installed in all of the following locations in Group R-1:

1. In sleeping areas.
2. In every room in the path of the means of egress from the sleeping area to the door leading from the sleeping unit.
3. In each story within the sleeping unit, including basements. For sleeping units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

(F)907.2.10.1.2 Groups R-2, R-3, R-4 and I-1. Single- or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and I-1, regardless of occupant load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.
2. In each room used for sleeping purposes.
3. In each story within a dwelling unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

(F)907.2.10.1.3 Group I-1. Single- or multiple-station

smoke alarms shall be installed and maintained in sleeping areas in occupancies in Group I-1.

Exception: Single- or multiple-station smoke alarms shall not be required where the building is equipped throughout with an automatic fire detection system in accordance with Section (F)907.2.6.

(F)907.2.10.2 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.

(F)907.2.10.3. Power source. In new construction, required alarms shall receive their primary power from the building wiring where such wiring is served from a commercial source and shall be equipped with a battery backup. Alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

Exception: Alarms are not required to be equipped with battery backup in Group R-1 where they are connected to an emergency electrical system.

(F)907.2.10.4 Interconnection. Where more than one alarm is required to be installed with an individual dwelling unit in Group R-2, R-3, or R-4, or within an individual sleeping unit in Group R-1, the alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Approved combination smoke and carbon-monoxide detectors shall be permitted.

(F)907.2.10.5 Acceptance testing. When the installation of the alarm devices is complete, each detector and interconnecting wiring for multiple-station alarm devices shall be tested in accordance with the household fire warning equipment provisions of NFPA 72 and NFPA 720, as applicable.

(27) In Section 1007.3 a new exception 6 is added as follows:

6. Areas of refuge are not required at exit stairways in buildings or facilities equipped throughout with an automatic fire sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

(28) In Section 1007.4 the word "exception" is changed to "exception 1" and an exception 2 is added as follows:

2. Elevators are not required to be accessed from an area of refuge or horizontal exit in buildings or facilities equipped throughout with an automatic fire sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

(29) In Section 1008.1.8.3, a new subparagraph (5) is added as follows:

(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:

5.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or automatic fire detection system.

5.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.

5.3 The controlled egress doors shall unlock upon loss of power.

(30) In Section 1009.3, Exception #4 is deleted and replaced with the following:

4. In Group R-3 occupancies, within dwelling units in Group R-2 occupancies, and in Group U occupancies that are accessory to a Group R-3 occupancy, or accessory to individual dwelling units in Group R-2 occupancies, the maximum riser height shall be 8 inches (203 mm) and the minimum tread depth shall be 9 inches (229 mm). The minimum winder tread depth at the walk line shall be 10 inches (254 mm), and the minimum winder tread depth shall be 6 inches (152 mm). A nosing not

less than 0.75 inch (19.1 mm) but not more than 1.25 inches (32 mm) shall be provided on stairways with solid risers where the tread depth is less than 10 inches (254 mm).

(31) In Section 1009.10 Exception 6 is added as follows:

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.

(32) Section 1012.3 is amended to include the following exception at the end of the section:

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 (160 mm) 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 (19 mm) measured vertically from the tallest portion of the profile and achieve a depth of at least 5/16 inch (8 mm) within 7/8 inch (22 mm) below the widest portion of the profile. This required depth shall continue for at least 3/8 inch (10 mm) to a level that is not less than 1 3/4 inches (45 mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be 1 1/4 inches (32 mm) to a maximum of 2 3/4 inches (70 mm). Edges shall have a minimum radius of 0.01 inch (0.25 mm).

(33) In Section 1013.2 Exception 3 is added as follows:

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 (914 mm) in height.

(34) In Section 1015.2.2 the following sentence is added at the end:

Additional exits or exit access doorways shall be arranged a reasonable distance apart so that if one becomes blocked, the others will be available.

(35) A new Section 1109.7.1 is added as follows:

1109.7.1 Platform (wheelchair) lifts. All platform (wheelchair) lifts shall be capable of independent operation without a key.

(36) In Section 1208.4 subparagraph 1 is deleted and replaced with the following:

1. The unit shall have a living room of not less than 165 square feet (15.3 m<sup>2</sup>) of floor area. An additional 100 square feet (9.3 m<sup>2</sup>) of floor area shall be provided for each occupant of such unit in excess of two.

(37) Section 1405.3 is deleted and replaced with the following:

1405.3 Flashing. Flashing shall be installed in such a manner so as to prevent moisture from entering the wall or to redirect it to the exterior. Flashings shall be installed at the perimeters of exterior door and window assemblies, penetrations and terminations of exterior wall assemblies, exterior wall intersections with roofs, chimneys, porches, decks, balconies and similar projections and at built-in gutters and similar locations where moisture could enter the wall. Flashing with projected flanges shall be installed on both sides and the ends of copings, under sills and continuously above projected trim. A flashing shall be installed at the intersection of the foundation to stucco, masonry, siding or brick veneer. The flashing shall be on an approved corrosion-resistant flashing with a 1/2" drip leg extending past exterior side of the foundation.

(38) In Section 1605.2.1, the formula shown as "f<sub>2</sub> = 0.2 for other roof configurations" is deleted and replaced with the following:

f<sub>2</sub> = 0.20 + .025(A-5) for other configurations where roof snow load exceeds 30 psf

f<sub>2</sub> = 0 for roof snow loads of 30 psf (1.44kN/m<sup>2</sup>) or less.

Where A = Elevation above sea level at the location of the structure (ft/1000).

(39) In Section 1605.3.1 and section 1605.3.2, Exception number 2 in each section is deleted and replaced with the following:

2. Flat roof snow loads of 30 pounds per square foot (1.44 kNm<sup>2</sup>) or less need not be combined with seismic loads. Where flat roof snow loads exceed 30 pounds per square foot (1.44 kNm<sup>2</sup>), the snow loads may be reduced in accordance with the following in load combinations including both snow and seismic loads.  $W_s$  as calculated below, shall be combined with seismic loads.

$$W_s = (0.20 + 0.025(A-5))P_f \text{ is greater than or equal to } 0.20 P_f$$

Where

$W_s$  = Weight of snow to be included in seismic calculations;

A = Elevation above sea level at the location of the structure (ft/1000)

$P_f$  = Design roof snow load, psf

For the purpose of this section, snow load shall be assumed uniform on the roof footprint without including the effects of drift or sliding. The Importance Factor, I, used in calculating  $P_f$  may be considered 1.0 for use in the formula for  $W_s$ .

(40) In Table 1607.1 number 9 is deleted and replaced with the following:

| Occupancy or Use             | Uniform (psf)                         | Concentrated (lbs) |
|------------------------------|---------------------------------------|--------------------|
| 9. Decks, except residential | Same as occupancy served <sup>a</sup> |                    |
| 9.1 Residential decks        | 60 psf                                |                    |

(41) Section 1608.1 is deleted and replaced with the following:

1608.1 General. Except as modified in section 1608.1.1, 1608.1.2, and 1608.1.3 design snow loads shall be determined in accordance with Section 7 of ASCE 7, but the design roof load shall not be less than that determined by Section 1607.

(42) Section 1608.1.1 is added as follows:

1608.1.1 Section 7.4.5 of Section 7 of ASCE 7 referenced in Section 1608.1 of the IBC is deleted and replaced with the following:

Section 7.4.5 Ice Dams and Icicles Along Eaves. Where ground snow loads exceed 75 psf, eaves shall be capable of sustaining a uniformly distributed load of  $2p_r$  on all overhanging portions. No other loads except dead loads shall be present on the roof when this uniformly distributed load is applied. All building exits under down-slope eaves shall be protected from sliding snow and ice.

(43) Section 1608.1.2 is added as follows:

1608.1.2 Utah Snow Loads. The ground snow load,  $P_g$ , to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula:  $P_g = (P_o^2 + S^2(A-A_o)^2)^{0.5}$  for A greater than  $A_o$ , and  $P_g = P_o$  for A less than or equal to  $A_o$ .

WHERE

$P_g$  = Ground snow load at a given elevation (psf)

$P_o$  = Base ground snow load (psf) from Table No. 1608.1.2(a)

S = Change in ground snow load with elevation (psf/100 ft.) From Table No. 1608.1.2(a)

A = Elevation above sea level at the site (ft./1000)

$A_o$  = Base ground snow elevation from Table 1608.1.2(a) (ft./1000)

The building official may round the roof snow load to the nearest 5 psf. The ground snow load,  $P_g$ , may be adjusted by the building official when a licensed engineer or architect submits data substantiating the adjustments. A record of such action together with the substantiating data shall be provided to the division for a permanent record.

The building official may also directly adopt roof snow

loads in accordance with Table 1608.1.2(b), provided the site is no more than 100 ft. higher than the listed elevation.

Where the minimum roof live load in accordance with section 1607.11 is greater than the design roof snow load, such roof live load shall be used for design, however, it shall not be reduced to a load lower than the design roof snow load. Drifting need not be considered for roof snow loads less than 20 psf.

(44) Table 1608.1.2(a) and Table 1608.1.2(b) are added as follows:

TABLE NO. 1608.1.2(a)  
STATE OF UTAH - REGIONAL SNOW LOAD FACTORS

| COUNTY     | $P_o$ | S  | $A_o$ |
|------------|-------|----|-------|
| Beaver     | 43    | 63 | 6.2   |
| Box Elder  | 43    | 63 | 5.2   |
| Cache      | 50    | 63 | 4.5   |
| Carbon     | 43    | 63 | 5.2   |
| Daggett    | 43    | 63 | 6.5   |
| Davis      | 43    | 63 | 4.5   |
| Duchesne   | 43    | 63 | 6.5   |
| Emery      | 43    | 63 | 6.0   |
| Garfield   | 43    | 63 | 6.0   |
| Grand      | 36    | 63 | 6.5   |
| Iron       | 43    | 63 | 5.8   |
| Juab       | 43    | 63 | 5.2   |
| Kane       | 36    | 63 | 5.7   |
| Millard    | 43    | 63 | 5.3   |
| Morgan     | 57    | 63 | 4.5   |
| Piute      | 43    | 63 | 6.2   |
| Rich       | 57    | 63 | 4.1   |
| Salt Lake  | 43    | 63 | 4.5   |
| San Juan   | 43    | 63 | 6.5   |
| Sanpete    | 43    | 63 | 5.2   |
| Sevier     | 43    | 63 | 6.0   |
| Summit     | 86    | 63 | 5.0   |
| Tooele     | 43    | 63 | 4.5   |
| Uintah     | 43    | 63 | 7.0   |
| Utah       | 43    | 63 | 4.5   |
| Wasatch    | 86    | 63 | 5.0   |
| Washington | 29    | 63 | 6.0   |
| Wayne      | 36    | 63 | 6.5   |
| Weber      | 43    | 63 | 4.5   |

TABLE NO. 1608.1.2(b)  
RECOMMENDED SNOW LOADS FOR SELECTED UTAH CITIES AND TOWNS(2)

|                  | Roof Snow Load (PSF) | Ground Snow Load (PSF) |
|------------------|----------------------|------------------------|
| Beaver County    |                      |                        |
| Beaver           | 5920 ft., 43         | 62                     |
| Box Elder County |                      |                        |
| Brigham City     | 4300 ft., 30         | 43                     |
| Tremonton        | 4290 ft., 30         | 43                     |
| Cache County     |                      |                        |
| Logan            | 4530 ft., 35         | 50                     |
| Smithfield       | 4595 ft., 35         | 50                     |
| Carbon County    |                      |                        |
| Price            | 5550 ft., 30         | 43                     |
| Daggett County   |                      |                        |
| Manila           | 5377 ft., 30         | 43                     |
| Davis County     |                      |                        |
| Bountiful        | 4300 ft., 30         | 43                     |
| Farmington       | 4270 ft., 30         | 43                     |
| Layton           | 4400 ft., 30         | 43                     |
| Fruit Heights    | 4500 ft., 40         | 57                     |
| Duchesne County  |                      |                        |
| Duchesne         | 5510 ft., 30         | 43                     |
| Roosevelt        | 5104 ft., 30         | 43                     |
| Emery County     |                      |                        |
| Castledale       | 5660 ft., 30         | 43                     |
| Green River      | 4070 ft., 25         | 36                     |
| Garfield County  |                      |                        |
| Panguitch        | 6600 ft., 30         | 43                     |
| Grand County     |                      |                        |
| Moab             | 3965 ft., 25         | 36                     |
| Iron County      |                      |                        |
| Cedar City       | 5831 ft., 30         | 43                     |
| Juab County      |                      |                        |
| Nephi            | 5130 ft., 30         | 43                     |
| Kane County      |                      |                        |
| Kanab            | 5000 ft., 25         | 36                     |
| Millard County   |                      |                        |

|                   |          |        |     |
|-------------------|----------|--------|-----|
| Millard           | 5000 ft. | 30     | 43  |
| Delta             | 4623 ft. | 30     | 43  |
| Morgan County     |          |        |     |
| Morgan            | 5064 ft. | 40     | 57  |
| Piute County      |          |        |     |
| Piute             | 5996 ft. | 30     | 43  |
| Rich County       |          |        |     |
| Woodruff          | 6315 ft. | 40     | 57  |
| Salt Lake County  |          |        |     |
| Murray            | 4325 ft. | 30     | 43  |
| Salt Lake City    | 4300 ft. | 30     | 43  |
| Sandy             | 4500 ft. | 30     | 43  |
| West Jordan       | 4375 ft. | 30     | 43  |
| West Valley       | 4250 ft. | 30     | 43  |
| San Juan County   |          |        |     |
| Blanding          | 6200 ft. | 30     | 43  |
| Monticello        | 6820 ft. | 35     | 50  |
| Sanpete County    |          |        |     |
| Fairview          | 6750 ft. | 35     | 50  |
| Mt. Pleasant      | 5900 ft. | 30     | 43  |
| Manti             | 5740 ft. | 30     | 43  |
| Ephraim           | 5540 ft. | 30     | 43  |
| Gunnison          | 5145 ft. | 30     | 43  |
| Sevier County     |          |        |     |
| Salina            | 5130 ft. | 30     | 43  |
| Richfield         | 5270 ft. | 30     | 43  |
| Summit County     |          |        |     |
| Coalville         | 5600 ft. | 60     | 86  |
| Kamas             | 6500 ft. | 70     | 100 |
| Park City         | 6800 ft. | 100    | 142 |
| Park City         | 8400 ft. | 162    | 231 |
| Summit Park       | 7200 ft. | 90     | 128 |
| Tooele County     |          |        |     |
| Tooele            | 5100 ft. | 30     | 43  |
| Uintah County     |          |        |     |
| Vernal            | 5280 ft. | 30     | 43  |
| Utah County       |          |        |     |
| American Fork     | 4500 ft. | 30     | 43  |
| Orem              | 4650 ft. | 30     | 43  |
| Pleasant Grove    | 5000 ft. | 30     | 43  |
| Provo             | 5000 ft. | 30     | 43  |
| Spanish Fork      | 4720 ft. | 30     | 43  |
| Wasatch County    |          |        |     |
| Heber             | 5630 ft. | 60     | 86  |
| Washington County |          |        |     |
| Central           | 5209 ft. | 25     | 36  |
| Dameron           | 4550 ft. | 25     | 36  |
| Leeds             | 3460 ft. | 20     | 29  |
| Rockville         | 3700 ft. | 25     | 36  |
| Santa Clara       | 2850 ft. | 15 (1) | 21  |
| St. George        | 2750 ft. | 15 (1) | 21  |
| Wayne County      |          |        |     |
| Loa               | 7080 ft. | 30     | 43  |
| Hanksville        | 4308 ft. | 25     | 36  |
| Weber County      |          |        |     |
| North Ogden       | 4500 ft. | 40     | 57  |
| Ogden             | 4350 ft. | 30     | 43  |

NOTES

- (1) The IBC requires a minimum live load - See 1607.11.2.
- (2) This table is informational only in that actual site elevations may vary. Table is only valid if site elevation is within 100 feet of the listed elevation.

(45) Section 1608.1.3 is added as follows:  
 1608.1.3 Thermal Factor. The value for the thermal factor,  $C_t$ , used in calculation of  $p_f$ , shall be determined from Table 7.3 in ASCE 7.

Exception: Except for unheated structures, the value of  $C_t$  need not exceed 1.0 when ground snow load,  $P_g$  is calculated using Section 1608.1.2 as amended.

(46) Section 1608.2 is deleted and replaced with the following:

1608.2 Ground Snow Loads. The ground snow loads to be used in determining the design snow loads for roofs in states other than Utah are given in Figure 1608.2 for the contiguous United States and Table 1608.2 for Alaska. Site-specific case studies shall be made in areas designated CS in figure 1608.2. Ground snow loads for sites at elevations above the limits indicated in Figure 1608.2 and for all sites within the CS areas shall be approved. Ground snow load determination for such sites shall be based on an extreme value statistical analysis of data available in the vicinity of the site using a value with a 2-percent annual probability of being exceeded (50-year mean

recurrence interval). Snow loads are zero for Hawaii, except in mountainous regions as approved by the building official.

(47) In Section 1609.1.1 a new exception number 5 is added as follows:

5. The wind design procedure as found in Section 1616 through 1624 of the 1997 Uniform Building Code may be used as an alternative wind design procedure for:

(a) items 1 through 3 listed in Table 16-H of the 1997 Uniform Building Code provided that the building or component being designed meets the limits for the Simplified Method as defined in ASCE 6.4.1.1 and 6.4.1.2 of ASCE 7; or

(b) items 4 through 7 listed in Table 16-H of the 1997 Uniform Building Code.

The Importance Factor, I, shall be determined in accordance with Table 6-1 of ASCE 7.

(48) Section 1613.7 is added as follows:

1613.7 ASCE 12.7.2 and 12.14.18.1 of Section 12 of ASCE 7 referenced in Section 1613.1, Definition of W, Item 4 is deleted and replaced with the following:

4. Where the flat roof snow load,  $P_f$ , exceeds 30 psf, the snow load included in seismic design shall be calculated, in accordance with the following formula:  $W_s = (0.20 + 0.025(A - 5))P_f$  is greater than or equal to  $0.20 P_f$

WHERE:

$W_s$  = Weight of snow to be included in seismic calculations;

A = Elevation above sea level at the location of the structure (ft/1000)

$P_f$  = Design roof snow load, psf

For the purposes of this section, snow load shall be assumed uniform on the roof footprint without including the effects of drift or sliding. The Importance Factor, I, used in calculating  $P_f$  may be considered 1.0 for use in the formula for  $W_s$ .

(49) A new Section 1613.8 is added as follows:

1613.8 ASCE 7, Section 13.5.6.2.2 paragraph (e) is modified to read as follows:

(e) Penetrations shall have a sleeve or adapter through the ceiling tile to allow for free movement of at least 1 inch (25 mm) in all horizontal directions.

Exceptions:

1. Where rigid braces are used to limit lateral deflections.

2. At fire sprinkler heads in frangible surfaces per NFPA

13.

(50) Section 1805.5 is deleted and replaced with the following:

1805.5 Foundation walls. Concrete and masonry foundation walls shall be designed in accordance with Chapter 19 or 21, respectively. Foundation walls that are laterally supported at the top and bottom and within the parameters of Tables 1805.5(1) through 1805.5(5) are permitted to be designed and constructed in accordance with Sections 1805.5.1 through 1805.5.5. Concrete foundation walls may also be constructed in accordance with Section 1805.5.8.

(51) A new section 1805.5.8 is added as follows:

1805.5.8 Empirical foundation design. Group R, Division 3 Occupancies three stories or less in height, and Group U Occupancies, which are constructed in accordance with Section 2308, or with other methods employing repetitive wood-frame construction or repetitive cold-formed steel structural member construction, shall be permitted to have concrete foundations constructed in accordance with Table 1805.5(6).

(52) Table 1805.5(6) is added as follows:

Table 1805.5(6), entitled "Empirical Foundation Walls, dated January 1, 2007, published by the Department of Commerce, Division of Occupational and Professional Licensing is hereby adopted and incorporated by reference. Table 1805.5(6) identifies foundation requirements for empirical walls.

(53) A new section 2306.1.5 is added as follows:  
 2306.1.5 Load duration factors. The allowable stress increase of 1.15 for snow load, shown in Table 2.3.2, Frequently Used Load Duration Factors,  $C_d$ , of the National Design Specifications, shall not be utilized at elevations above 5,000 feet (1524 M).

(54) In Section 2308.6 the following exception is added:  
 Exception: Where foundation plates or sills are bolted or anchored to the foundation with not less than 1/2 inch (12.7 mm) diameter steel bolts or approved anchors, embedded at least 7 inches (178 mm) into concrete or masonry and spaced not more than 32 inches (816 mm) apart, there shall be a minimum of two bolts or anchor straps per piece located not less than 4 inches (102 mm) from each end of each piece. A properly sized nut and washer shall be tightened on each bolt to the plate.

(55) Section 2506.2.1 is deleted and replaced with the following:

2506.2.1 Other materials. Metal suspension systems for acoustical and lay-in panel ceilings shall conform with ASTM C635 listed in Chapter 35 and Section 13.5.6 of ASCE 7-05, as amended in Section 1613.8, for installation in high seismic areas.

(56) In Section 2902.1, the title for Table 2902.1 is deleted and replaced with the following and footnote e is added as follows: Table 2902.1, Minimum Number of Required Plumbing Facilities<sup>a, e</sup>.

FOOTNOTE: e. When provided, in public toilet facilities there shall be an equal number of diaper changing facilities in male toilet rooms and female toilet rooms.

(57) Section 3006.5 Shunt Trip, the following exception is added:

Exception: Hydraulic elevators and roped hydraulic elevators with a rise of 50 feet or less.

(58) A new section 3403.2.4 is added as follows:  
 3403.2.4 Parapet bracing, wall anchors, and other appendages. Buildings constructed prior to 1975 shall have parapet bracing, wall anchors, and appendages such as cornices, spires, towers, tanks, signs, statuary, etc. evaluated by a licensed engineer when said building is undergoing reroofing, or alteration of or repair to said feature. Such parapet bracing, wall anchors, and appendages shall be evaluated in accordance with 75% of the seismic forces as specified in Section 1613. When allowed by the local building official, alternate methods of equivalent strength as referenced in Subsection R156-56-701(2) will be considered when accompanied by engineer sealed drawings, details and calculations. When found to be deficient because of design or deteriorated condition, the engineer's recommendations to anchor, brace, reinforce, or remove the deficient feature shall be implemented.

**EXCEPTIONS:**

1. Group R-3 and U occupancies.
2. Unreinforced masonry parapets need not be braced according to the above stated provisions provided that the maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F.

(59) Section 3406.4 is deleted and replaced with the following:

3406.4 Change in Occupancy. When a change in occupancy results in a structure being reclassified to a higher Occupancy Category (as defined in Table 1604.5), or when such change of occupancy results in a design occupant load increase of 100% or more, the structure shall conform to the seismic requirements for a new structure.

**Exceptions:**

1. Specific seismic detailing requirements of this code or

ASCE 7 for a new structure shall not be required to be met where it can be shown that the level of performance and seismic safety is equivalent to that of a new structure. Such analysis shall consider the regularity, overstrength, redundancy and ductility of the structure within the context of the existing and retrofit (if any) detailing providing. Alternatively, the building official may allow the structure to be upgraded in accordance with referenced sections as found in Subsection R156-56-701(2).

2. When a change of use results in a structure being reclassified from Occupancy Category I or II to Occupancy Category III and the structure is located in a seismic map area where  $S_{DS}$  is less than 0.33, compliance with the seismic requirements of this code and ASCE 7 are not required.

3. Where design occupant load increase is less than 25 occupants and the Occupancy Category does not change.

(60) The exception in 3409.1 is deleted and replaced with the following:

Exception: Type B dwelling or sleeping units required by section 1107 are not required to be provided in existing buildings and facilities, except when an existing occupancy is changed to R-2.

(61) In Section 3409.4, number 7 is added as follows:

7. When a change of occupancy in a building or portion of a building results in a Group R-2 occupancy as determined in section 1107.6.2, not less than 20 percent of the dwelling or sleeping units shall be Type B dwelling or sleeping units. These dwelling or sleeping units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one, of the dwelling or sleeping units shall be Type A dwelling units.

(62) The following referenced standard is added under NFPA in chapter 35:

| TABLE  |   |                                   |
|--------|---|-----------------------------------|
| Number | Title   | Referenced in code Section number |
| 720-05 | Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment | 907.2.10, 907.2.10.5              |

**R156-56-802. Statewide Amendments to the IRC.**

The following are adopted as amendments to the IRC to be applicable statewide:

(1) All statewide amendments to the IBC under Section R156-56-801, the NEC under Section R156-56-806, the IPC under Section R156-56-803, the IMC under Section R156-56-804, the IFGC under Section R156-56-805 and the IECC under Section R156-56-807 which may be applied to detached one and two family dwellings and multiple single family dwellings shall be applicable to the corresponding provisions of the IRC. All references to the ICC Electrical Code are deleted and replaced with the National Electrical Code adopted under Section R156-56-701(1)(b).

(2) Section 106.3.2 is deleted and replaced with the following:

106.3.2 Previous approval. If a lawful permit has been issued and the construction of which has been pursued in good faith within 180 days after the effective date of the code and has not been abandoned, then the construction may be completed under the code in effect at the time of the issuance of the permit.

(3) In Section 109, a new section is added as follows:

R109.1.5 Weather-resistive barrier and flashing inspections. An inspection shall be made of the weather-resistive barrier as required by Section R703.1 and flashings as required by Section R703.8 to prevent water from entering the weather-resistant exterior wall envelope.

The remaining sections are renumbered as follows:

- R109.1.6 Other inspections
- R109.1.6.1 Fire-resistance-rated construction inspection
- R109.1.6.2 Reinforced masonry, insulating concrete form

(ICF) and conventionally formed concrete wall inspection  
 R109.1.7 Final inspection.

(4) Section R114.1 is deleted and replaced with the following:

R114.1 Notice to owner. Upon notice from the building official that work on any building or structure is being prosecuted contrary to the provisions of this code or other pertinent laws or ordinances or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work; and shall state the conditions under which work will be permitted to resume.

(5) In Section R202, the definition of "Backsiphonage" is deleted and replaced with the following:

**BACKSIPHONAGE:** The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

(6) In Section R202 the following definition is added:  
**CERTIFIED BACKFLOW PREVENTER ASSEMBLY TESTER:** A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

(7) In Section R202 the definition of "Cross Connection" is deleted and replaced with the following:

**CROSS CONNECTION.** Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems(see "Backflow, Water Distribution").

(8) In Section R202 the following definition is added:  
**HEAT exchanger (Potable Water).** A device to transfer heat between two physically separated fluids (liquid or steam), one of which is potable water.

(9) In Section R202 the definition of "Potable Water" is deleted and replaced with the following:

**POTABLE WATER.** Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Titles 19-4 and 19-5, Utah Code Ann. (1953), as amended and the regulations of the public health authority having jurisdiction.

(10) In Section R202, the following definition is added:  
**S-Trap.** A trap having it's weir installed above the inlet of the vent connection.

(11) In Section R202 the definition of "Water Heater" is deleted and replaced with the following:

**WATER HEATER.** A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use externally to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

(12) Figure R301.2(5) is deleted and replaced with Table R301.2(5a) and Table R301.2(5b) as follows:

|            |    |    |     |
|------------|----|----|-----|
| Carbon     | 43 | 63 | 5.2 |
| Daggett    | 43 | 63 | 6.5 |
| Davis      | 43 | 63 | 4.5 |
| Duchesne   | 43 | 63 | 6.5 |
| Emery      | 43 | 63 | 6.0 |
| Garfield   | 43 | 63 | 6.0 |
| Grand      | 36 | 63 | 6.5 |
| Iron       | 43 | 63 | 5.8 |
| Juab       | 43 | 63 | 5.2 |
| Kane       | 36 | 63 | 5.7 |
| Millard    | 43 | 63 | 5.3 |
| Morgan     | 57 | 63 | 4.5 |
| Piute      | 43 | 63 | 6.2 |
| Rich       | 57 | 63 | 4.1 |
| Salt Lake  | 43 | 63 | 4.5 |
| San Juan   | 43 | 63 | 6.5 |
| Sanpete    | 43 | 63 | 5.2 |
| Sevier     | 43 | 63 | 6.0 |
| Summit     | 86 | 63 | 5.0 |
| Tooele     | 43 | 63 | 4.5 |
| Uintah     | 43 | 63 | 7.0 |
| Utah       | 43 | 63 | 4.5 |
| Wasatch    | 86 | 63 | 5.0 |
| Washington | 29 | 63 | 6.0 |
| Wayne      | 36 | 63 | 6.5 |
| Weber      | 43 | 63 | 4.5 |

TABLE NO. R301.2(5b)  
 RECOMMENDED SNOW LOADS FOR SELECTED UTAH CITIES AND TOWNS(2)

|                  |          | Roof Snow Load (PSF) | Ground Snow Load (PSF) |
|------------------|----------|----------------------|------------------------|
| Beaver County    |          |                      |                        |
| Beaver           | 5920 ft. | 43                   | 62                     |
| Box Elder County |          |                      |                        |
| Brigham City     | 4300 ft. | 30                   | 43                     |
| Tremonton        | 4290 ft. | 30                   | 43                     |
| Cache County     |          |                      |                        |
| Logan            | 4530 ft. | 35                   | 50                     |
| Smithfield       | 4595 ft. | 35                   | 50                     |
| Carbon County    |          |                      |                        |
| Price            | 5550 ft. | 30                   | 43                     |
| Daggett County   |          |                      |                        |
| Manila           | 5377 ft. | 30                   | 43                     |
| Davis County     |          |                      |                        |
| Bountiful        | 4300 ft. | 30                   | 43                     |
| Farmington       | 4270 ft. | 30                   | 43                     |
| Layton           | 4400 ft. | 30                   | 43                     |
| Fruit Heights    | 4500 ft. | 40                   | 57                     |
| Duchesne County  |          |                      |                        |
| Duchesne         | 5510 ft. | 30                   | 43                     |
| Roosevelt        | 5104 ft. | 30                   | 43                     |
| Emery County     |          |                      |                        |
| Castledale       | 5660 ft. | 30                   | 43                     |
| Green River      | 4070 ft. | 25                   | 36                     |
| Garfield County  |          |                      |                        |
| Panguitch        | 6600 ft. | 30                   | 43                     |
| Grand County     |          |                      |                        |
| Moab             | 3965 ft. | 25                   | 36                     |
| Iron County      |          |                      |                        |
| Cedar City       | 5831 ft. | 30                   | 43                     |
| Juab County      |          |                      |                        |
| Nephi            | 5130 ft. | 30                   | 43                     |
| Kane County      |          |                      |                        |
| Kanab            | 5000 ft. | 25                   | 36                     |
| Millard County   |          |                      |                        |
| Millard          | 5000 ft. | 30                   | 43                     |
| Delta            | 4623 ft. | 30                   | 43                     |
| Morgan County    |          |                      |                        |
| Morgan           | 5064 ft. | 40                   | 57                     |
| Piute County     |          |                      |                        |
| Piute            | 5996 ft. | 30                   | 43                     |
| Rich County      |          |                      |                        |
| Woodruff         | 6315 ft. | 40                   | 57                     |
| Salt Lake County |          |                      |                        |
| Murray           | 4325 ft. | 30                   | 43                     |
| Salt Lake City   | 4300 ft. | 30                   | 43                     |
| Sandy            | 4500 ft. | 30                   | 43                     |
| West Jordan      | 4375 ft. | 30                   | 43                     |
| West Valley      | 4250 ft. | 30                   | 43                     |
| San Juan County  |          |                      |                        |
| Blanding         | 6200 ft. | 30                   | 43                     |
| Monticello       | 6820 ft. | 35                   | 50                     |
| Sanpete County   |          |                      |                        |
| Fairview         | 6750 ft. | 35                   | 50                     |
| Mt. Pleasant     | 5900 ft. | 30                   | 43                     |
| Manti            | 5740 ft. | 30                   | 43                     |

TABLE NO. R301.2(5a)  
 STATE OF UTAH - REGIONAL SNOW LOAD FACTORS

| COUNTY    | P <sub>0</sub> | S  | A <sub>0</sub> |
|-----------|----------------|----|----------------|
| Beaver    | 43             | 63 | 6.2            |
| Box Elder | 43             | 63 | 5.2            |
| Cache     | 50             | 63 | 4.5            |

|                   |          |        |     |
|-------------------|----------|--------|-----|
| Ephraim           | 5540 ft. | 30     | 43  |
| Gunnison          | 5145 ft. | 30     | 43  |
| Sevier County     |          |        |     |
| Salina            | 5130 ft. | 30     | 43  |
| Richfield         | 5270 ft. | 30     | 43  |
| Summit County     |          |        |     |
| Coalville         | 5600 ft. | 60     | 86  |
| Kamas             | 6500 ft. | 70     | 100 |
| Park City         | 6800 ft. | 100    | 142 |
| Park City         | 8400 ft. | 162    | 231 |
| Summit Park       | 7200 ft. | 90     | 128 |
| Tooele County     |          |        |     |
| Tooele            | 5100 ft. | 30     | 43  |
| Uintah County     |          |        |     |
| Vernal            | 5280 ft. | 30     | 43  |
| Utah County       |          |        |     |
| American Fork     | 4500 ft. | 30     | 43  |
| Orem              | 4650 ft. | 30     | 43  |
| Pleasant Grove    | 5000 ft. | 30     | 43  |
| Provo             | 5000 ft. | 30     | 43  |
| Spanish Fork      | 4720 ft. | 30     | 43  |
| Wasatch County    |          |        |     |
| Heber             | 5630 ft. | 60     | 86  |
| Washington County |          |        |     |
| Central           | 5209 ft. | 25     | 36  |
| Dameron           | 4550 ft. | 25     | 36  |
| Leeds             | 3460 ft. | 20     | 29  |
| Rockville         | 3700 ft. | 25     | 36  |
| Santa Clara       | 2850 ft. | 15 (1) | 21  |
| St. George        | 2750 ft. | 15 (1) | 21  |
| Wayne County      |          |        |     |
| Loa               | 7080 ft. | 30     | 43  |
| Hanksville        | 4308 ft. | 25     | 36  |
| Weber County      |          |        |     |
| North Ogden       | 4500 ft. | 40     | 57  |
| Ogden             | 4350 ft. | 30     | 43  |

NOTES

- (1) The IRC requires a minimum live load - See R301.6.
- (2) This table is informational only in that actual site elevations may vary. Table is only valid if site elevation is within 100 feet of the listed elevation.

(13) Section R301.6 is deleted and replaced with the following:

R301.6 Utah Snow Loads. The ground snow load,  $P_g$ , to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula:  $P_g = (P_o^2 + S^2(A-A_o)^2)^{0.5}$  for A greater than  $A_o$ , and  $P_g = P_o$  for A less than or equal to  $A_o$ .

WHERE

$P_g$  = Ground snow load at a given elevation (psf)

$P_o$  = Base ground snow load (psf) from Table No.

R301.2(5a)

S = Change in ground snow load with elevation (psf/100 ft.) From Table No. R301.2(5a)

A = Elevation above sea level at the site (ft./1000)

$A_o$  = Base ground snow elevation from Table R301.2(5a) (ft./1000)

The building official may round the roof snow load to the nearest 5 psf. The ground snow load,  $P_g$ , may be adjusted by the building official when a licensed engineer or architect submits data substantiating the adjustments. A record of such action together with the substantiating data shall be provided to the division for a permanent record.

The building official may also directly adopt roof snow loads in accordance with Table R301.2(5b), provided the site is no more than 100 ft. higher than the listed elevation.

Where the minimum roof live load in accordance with Table R301.6 is greater than the design roof snow load, such roof live load shall be used for design, however, it shall not be reduced to a load lower than the design roof snow load. Drifting need not be considered for roof snow loads less than 20 psf.

(14) Section R304.3 is deleted and replaced with the following:

R304.3 Minimum dimensions. Habitable rooms shall not be less than 7 feet (2134 mm) in any horizontal dimension.

Exception: Kitchens shall have a clear passageway of not less than 3 feet (914 mm) between counter fronts and appliances

or counter fronts and walls.

(15) Section R311.5.3 is deleted and replaced with the following:

R311.5.3 Stair treads and risers.

R311.5.3.1 Riser height. The maximum riser height shall be 8 inches (203 mm). The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

R311.5.3.2 Tread depth. The minimum tread depth shall be 9 inches (228 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Winder treads shall have a minimum tread depth of 10 inches (254 mm) measured as above at a point 12 inches (305 mm) from the side where the treads are narrower. Winder treads shall have a minimum tread depth of 6 inches (152 mm) at any point. Within any flight of stairs, the greatest winder tread depth at the 12 inch (305 mm) walk line shall not exceed the smallest by more than 3/8 inch (9.5 mm).

R311.5.3.3 Profile. The radius of curvature at the leading edge of the tread shall be no greater than 9/16 inch (14.3 mm). A nosing not less than 3/4 inch (19 mm) but not more than 1 1/4 inches (32 mm) shall be provided on stairways with solid risers. The greatest nosing projection shall not exceed the smallest nosing projection by more than 3/8 inches (9.5 mm) between two stories, including the nosing at the level of floors and landings. Beveling of nosing shall not exceed 1/2 inch (12.7 mm). Risers shall be vertical or sloped from the underside of the leading edge of the tread above at an angle not more than 30 degrees (0.51 rad) from the vertical. Open risers are permitted, provided that the opening between treads does not permit the passage of a 4-inch diameter (102 mm) sphere.

Exceptions.

1. A nosing is not required where the tread depth is a minimum of 10 inches (254 mm).

2. The opening between adjacent treads is not limited on stairs with a total rise of 30 inches (762 mm) or less.

(16) Section R313 is deleted and replaced with the following:

Section R313 SMOKE AND CARBON MONOXIDE ALARMS

R313.1 Single- and multiple-station smoke alarms. Single- and multiple-station smoke alarms shall be installed in the following locations:

1. In each sleeping room.

2. Outside of each separate sleeping area in the immediate vicinity of the bedrooms.

3. On each additional story of the dwelling, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

All smoke alarms shall be listed and installed in accordance with the provisions of this code and the household fire warning equipment provision of NFPA 72.

R313.2 Carbon monoxide alarms. In new residential structures regulated by this code that are equipped with fuel burning appliances, carbon monoxide alarms shall be installed on each habitable level. All carbon monoxide detectors shall be listed and comply with U.L. 2034 and shall be installed in accordance with provisions of this code and NFPA 720.

R313.3 Interconnection of alarms. When multiple alarms are required to be installed within an individual dwelling unit, the alarm devices shall be interconnected in such a manner that

the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Approved combination smoke- and carbon-monoxide detectors shall be permitted.

R313.4 Power source. In new construction, the required alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source, and when primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Alarms shall be permitted to be battery operated when installed in buildings without commercial power or in buildings that undergo alterations, repairs, or additions regulated by Section R313.5

R313.5 Alterations, repairs and additions. When interior alterations, repairs or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be provided with alarms located as required for new dwellings; the alarms shall be interconnected and hard wired.

Exceptions:

1. Alarms in existing areas shall not be required to be interconnected and hard wired where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space, or basement available which could provide access for hard wiring and interconnection without the removal of interior finishes.

2. Repairs to the exterior surfaces of dwellings are exempt from the requirements of this section.

(17) In Section R403.1.6 exception 4 is added as follows:

4. When anchor bolt spacing does not exceed 32 inches (813 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(18) In Section R403.1.6.1 the following exception is added at the end of Item 2 and Item 3:

Exception: When anchor bolt spacing does not exceed 32 inches (816 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(19) New Sections R404.0, R404.0.1 and R404.0.2 are added before Section 404.1 as follows:

R404.0 This section may be used as an alternative to complying with Sections R404.1 through R404.1.5.1.

R404.0.1 Concrete and masonry foundation walls. Concrete and masonry foundation walls may be designed in accordance with IBC Chapters 19 or 21 respectively. Foundation walls that are laterally supported at the top and bottom within the parameters of IBC Tables 1805.5(1) through 1805.5(5) are permitted to be designed and constructed in accordance with IBC Sections 1805.5.1 through 1805.5.5. Concrete foundation walls may also be constructed in accordance with Section R404.0.2.

R404.0.2 Empirical foundation design. Buildings constructed with repetitive wood frame construction or repetitive cold-formed steel structural member construction may be permitted to have concrete foundations constructed in accordance with IBC Table 1805.5(6). IBC Table 1805.5(6) entitled "Empirical Foundations Walls", dated January 1, 2007, published by the Department of Commerce, Division of Occupational and Professional Licensing, is hereby adopted and incorporated by reference. Table 1805.5(6) identifies foundation requirements for empirical walls.

(20) Section R703.6 is deleted and replaced with the following:

R703.6 Exterior plaster.

R703.6.1 Lath. All lath and lath attachments shall be of corrosion-resistant materials. Expanded metal or woven wire lath shall be attached with 1 1/2 inch-long (38 mm), 11 gage nails having 7/16 inch (11.1 mm) head, or 7/8-inch-long (22.2 mm), 16 gage staples, spaced at no more than 6 inches (152 mm), or as otherwise approved.

R703.6.2 Weather-resistant barriers. Weather-resistant barriers shall be installed as required in Section R703.2 and, where applied over wood-based sheathing, shall include a weather-resistive vapor permeable barrier with a performance at least equivalent to two layers of Grade D paper.

R703.6.3 Plaster. Plastering with portland cement plaster shall be not less than three coats when applied over metal lath or wire lath and shall be not less than two coats when applied over masonry, concrete or gypsum backing. If the plaster surface is completely covered by veneer or other facing material or is completely concealed, plaster application need be only two coats, provided the total thickness is as set forth in Table R702.1(1). On wood-frame construction with an on-grade floor slab system, exterior plaster shall be applied in such a manner as to cover, but not extend below, lath, paper and screed.

The proportion of aggregate to cementitious materials shall be as set forth in Table R702.1(3).

R703.6.3.1 Weep screeds. A minimum 0.019-inch (0.5 mm) (No. 26 galvanized sheet gage), corrosion-resistant weep screed or plastic weep screed, with a minimum vertical attachment flange of 3 1/2 inches (89 mm) shall be provided at or below the foundation plate line on exterior stud walls in accordance with ASTM C 926. The weep screed shall be placed a minimum of 4 inches (102 mm) above the earth or 2 inches (51 mm) above paved areas and shall be of a type that will allow trapped water to drain to the exterior of the building. The weather-resistant barrier shall lap the attachment flange. The exterior lath shall cover and terminate on the attachment flange of the weep screed.

(21) In Section R703.8, number 8 is added as follows:

8. At the intersection of foundation to stucco, masonry, siding, or brick veneer with an approved corrosion-resistance flashing with a 1/2" drip leg extending past exterior side of the foundation.

(22) A new Section G2401.2 is added as follows:

G2401.2 Meter Protection. Fuel gas services shall be in an approved location and/or provided with structures designed to protect the fuel gas meter and surrounding piping from physical damage, including falling, moving, or migrating ice and snow. If an added structure is used, it must provide access for service and comply with the IBC or the IRC.

(23) Section P2602.3 is added as follows:

P2602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1 and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction.

(24) Section P2602.4 is added as follows:

P2602.4 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann. (1953), as amended; or an approved private sewage disposal system in accordance with Rule R317, Chapter 4, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

(25) Section P2603.2.1 is deleted and replaced with the following:

P2603.2.1 Protection against physical damage. In



concealed locations where piping, other than cast-iron or galvanized steel, is installed through holes or notches in studs, joists, rafters, or similar members less than 1 1/2 inch (38 mm) from the nearest edge of the member, the pipe shall be protected by shield plates. Protective shield plates shall be a minimum of 1/16 inch-thick (1.6 mm) steel, shall cover the area of the pipe where the member is notched or bored, and shall be at least the thickness of the framing member penetrated.

(26) In Section P2801.7 the word townhouses is deleted.

(27) Section P2902.1.1 is added as follows:

P2902.1.1 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly.

(28) Table P2902.3 is deleted and replaced with the following:

TABLE P2902.3  
General Methods of Protection

| Assembly (applicable standard)  | Degree of Hazard | Application                                 | Installation Criteria   |
|---|------------------|---|---|
| Air Gap (ASME A112.1.2)   | High or Low      | Backsiphonage                               | See Table P2902.3.1   |
| Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR) | High or Low      | Backpressure or Backsiphonage<br>1/2" - 16" | a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor.<br>b. RP assemblies shall NOT be installed in a pit.<br>c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm drains, or vents.<br>d. The assembly shall be installed in a horizontal position only unless listed or approved for vertical installation. |
| Double Check Backflow Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)            | Low              | Backpressure or Backsiphonage<br>1/2" - 16" | a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance.<br>b. Shall be installed in a horizontal position unless listed or approved for vertical installation.   |
| Pressure Vacuum Breaker   | High or Low      | Backsiphonage<br>1/2" - 2"                  | a. Shall not be installed in an area that could be  |

Assembly (ASSE 1020, USC-FCCCHR)

- subjected to backpressure or back drainage conditions.
- b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use.
- c. Shall not be installed below ground or in a vault or pit.
- d. Shall be installed in a vertical position only.

Spill Resistant Vacuum Breaker (ASSE 1056, USC-FCCCHR)

High or Low

Backsiphonage  
1/4" - 2"

- a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.
- b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use.
- c. Shall not be installed below ground or in a vault or pit.
- d. Shall be installed in a vertical position only.

Atmospheric Vacuum Breaker (ASSE 1001, USC-FCCCHR, CSA CAN/CSA-B64.1.1)

High or Low

Backsiphonage

- a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.
- b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time.
- c. Shall be installed a minimum of six inches above all downstream piping and the highest point of use.
- d. Shall be installed on the discharge (downstream) side of any valves.
- e. The AVB shall be installed in a vertical position only.

General Installation Criteria

The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to insure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed.

The body of the assembly shall not be closer than 12 inches to any wall,

ceiling or incumbrance, and shall be accessible for testing, repair and/or maintenance. In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official.

Assemblies shall be maintained as an intact assembly.

(29) Table 2902.3a is added as follows:

TABLE 2902.3a  
Specialty Backflow Devices for low hazard use only

| Device  | Degree of Hazard       | Application                                  | Applicable Standard                  |
|---|------------------------|--|--------------------------------------|
| Antisiphon-type Water Closet Flush Tank Ball Cock   | Low                    | Backsiphonage                                | ASSE 1002<br>CSA CAN/<br>CSA-B125    |
| Dual check valve Backflow Preventer   | Low                    | Backsiphonage or Backpressure<br>1/4" - 1"   | ASSE 1024                            |
| Backflow Preventer with Intermediate Atmospheric Vent                                     | Low Residential Boiler | Backsiphonage or Backpressure<br>1/4" - 3/4" | ASSE 1012<br>CSA CAN/<br>CSA-B64.3   |
| Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type | Low                    | Backsiphonage or Backpressure<br>1/4" - 3/8" | ASSE 1022                            |
| Hose-connection Vacuum Breaker  | Low                    | Backsiphonage<br>1/2", 3/4", 1"              | ASSE 1011<br>CSA CAN/<br>CSA-B64.2   |
| Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type                    | Low                    | Backsiphonage<br>3/4", 1"                    | ASSE 1019<br>CSA CAN/<br>CSA-B64.2.2 |
| Laboratory Faucet Backflow Preventer  | Low                    | Backsiphonage                                | ASSE 1035<br>CSA CAN/<br>CSA-B64.7   |
| Hose Connection Backflow Preventer  | Low                    | Backsiphonage<br>1/2" - 1"                   | ASSE 1052                            |

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's instructions and the specific provisions of this chapter.

(30) Section P3003.2.1 is added as follows:

Section P3003.2.1 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

(31) In Section P3103.6, the following sentence is added at the end of the paragraph:

Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

(32) In Section P3104.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed below grade in accordance with Chapter 30, and Sections P3104.2 and P3104.3. A wall cleanout shall be provided in the vertical vent.

(33) Chapter 43, Referenced Standards, is amended as follows:

The following reference standard is added:

TABLE

|  |  |               |
|--|--|---------------|
| USC- FCCCHR 9th Edition Manual of Cross Connection Control | Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531 | Table P2902.3 |
|--|--|---------------|

(34) In Chapter 43, the following standard is added under NFPA as follows:

TABLE

|        |   |        |
|--------|---|--------|
| 720-05 | Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment | R313.2 |
|--------|---|--------|

**R156-56-803. Statewide Amendments to the IPC.**

The following are adopted as amendments to the IPC to be applicable statewide:

(1) In Section 202, the definition for "Backflow Backpressure, Low Head" is deleted in its entirety.

(2) In Section 202, the definition for "Backsiphonage" is deleted and replaced with the following:

Backsiphonage. The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

(3) In Section 202, the following definition is added:

Certified Backflow Preventer Assembly Tester. A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

(4) In Section 202, the definition for "Cross Connection" is deleted and replaced with the following:

Cross Connection. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems (see "Backflow").

(5) In Section 202, the following definition is added:

Heat Exchanger (Potable Water). A device to transfer heat between two physically separated fluids (liquid or steam), one of which is potable water.

(6) In Section 202, the definition for "Potable Water" is deleted and replaced with the following:

Potable Water. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Titles 19-4 and 19-5, Utah Code Ann. (1953), as amended and the regulations of the public health authority having jurisdiction.

(7) In Section 202, the following definition is added:

S-Trap. A trap having its weir installed above the inlet of the vent connection.

(8) In Section 202, the definition for "Water Heater" is deleted and replaced with the following:

Water Heater. A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use external to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

(9) Section 304.3 Meter Boxes is deleted.

(10) Section 305.5 is deleted and replaced with the

following:

305.5 Pipes through or under footings or foundation walls. Any pipe that passes under or through a footing or through a foundation wall shall be protected against structural settlement.

(11) Section 305.8 is deleted and replaced with the following:

305.8 Protection against physical damage. In concealed locations where piping, other than cast-iron or galvanized steel, is installed through holes or notches in studs, joists, rafters or similar members less than 1 1/2 inches (38 mm) from the nearest edge of the member, the pipe shall be protected by shield plates. Protective shield plates shall be minimum of 1/16 inch-thick (1.6 mm) steel, shall cover the area of the pipe where the member is notched or bored, and shall be at least the thickness of the framing member penetrated.

(12) Section 305.10 is added as follows:

Section 305.10 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

(13) Section 311.1 is deleted.

(14) Section 312.9 is deleted in its entirety and replaced with the following:

312.9 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly.

(15) In Section 403.1 footnote e is added as follows:

FOOTNOTE: e. When provided, in public toilet facilities there shall be an equal number of diaper changing facilities in male toilet rooms and female toilet rooms.

(16) In Section 406.3, an exception is added as follows:

Exception: Gravity discharge clothes washers, when properly trapped and vented, shall be allowed to be directly connected to the drainage system or indirectly discharge into a properly sized catch basin, trench drain, or other approved indirect waste receptor installed for the purpose of receiving such waste.

(17) A new section 406.4 is added as follows:

406.4 Automatic clothes washer metal safe pans. Metal safe pans, when installed under automatic clothes washers, shall only be allowed to receive the unintended discharge from a leaking appliance, valve, supply hose, or overflowing waste water from the clothes washer standpipe. Clothes washer metal safe pans shall not be used as indirect waste receptors to receive the discharge of waste water from any other equipment, appliance, appurtenance, drain pipe, etc. Each safe pan shall be provided with an approved trap seal primer, conforming to ASSE 1018 or 1044 or a deep seal trap. The sides of the safe pan shall be no less than 1 1/2" high and shall be soldered at the joints to provide a water tight seal.

406.4.1 Safe pan outlet. The safe pan outlet shall be no less than 1 1/2" in diameter and shall be located in a visible and accessible location to facilitate cleaning and maintenance. The outlet shall be flush with the surface of the pan so as not to allow water retention within the pan.

(18) Section 412.1 is deleted and replaced with the following:

412.1 Approval. Floor drains shall be made of ABS, PVC, cast-iron, stainless steel, brass, or other approved materials that are listed for the use.

(19) Section 412.5 is added as follows:

412.5 Public toilet rooms. All public toilet rooms shall be equipped with at least one floor drain.

(20) Section 418.1 is deleted and replaced with the following:

418.1 Approval. Sinks shall conform to ANSI Z124.6, ASME A112.19.1M, ASME A112.19.2M, ASME A112.19.3M, ASME A112.19.4M, ASME A112.19.9M, CSA B45.1, CSA B45.2, CSA B45.3, CSA B45.4 or NSF 2.

(21) Section 504.6.2 is deleted and replaced with the following:

504.6.2 Material. Relief valve discharge piping shall be of those materials listed in Tables 605.4 and 605.5 and meet the requirements for Sections 605.4 and 605.5 or shall be tested, rated and approved for such use in accordance with ASME A112.4.1. Piping from safety pan drains shall meet the requirements of Section 804.1 and be constructed of those materials listed in Section 702.

(22) Section 504.7.2 is deleted and replaced with the following:

504.7.2 Pan drain termination. The pan drain shall extend full-size and terminate over a suitably located indirect waste receptor, floor drain or extend to the exterior of the building and terminate not less than 6 inches (152 mm) and not more than 24 inches (610 mm) above the adjacent ground surface. When permitted by the administrative authority, the pan drain may be directly connected to a soil stack, waste stack, or branch drain. The pan drain shall be individually trapped and vented as required in Section 907.1. The pan drain shall not be directly or indirectly connected to any vent. The trap shall be provided with a trap primer conforming to ASSE 1018 or ASSE 1044.

(23) A new section 504.7.3 is added as follows:

504.7.3 Pan Designation. A water heater pan shall be considered an emergency receptor designated to receive the discharge of water from the water heater only and shall not receive the discharge from any other fixtures, devices or equipment.

(24) Section 602.3 is deleted and replaced with the following:

602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1, 73-3-3, and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction. The source shall supply sufficient quantity of water to comply with the requirements of this chapter.

(25) Sections 602.3.1, 602.3.2, 602.3.3, 602.3.4, 602.3.5 and 602.3.5.1 are deleted in their entirety.

(26) Section 604.4.1 is added as follows:

604.4.1 Metering faucets. Self closing or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(27) Section 606.5 is deleted and replaced with the following:

606.5 Water pressure booster systems. Water pressure booster systems shall be provided as required by Section 606.5.1 through 606.5.11.

(28) Section 606.5.11 is added as follows:

606.5.11 Prohibited installation. In no case shall a booster pump be allowed that will lower the pressure in the public main to less than 20 psi.

(29) In Section 608.1, the following sentence is added at the end of the paragraph:

Connection without an air gap between potable water piping and sewer-connected waste shall not exist under any condition.

(30) Table 608.1 is deleted and replaced with the

following:

TABLE 608.1  
General Methods of Protection

| Assembly (applicable of standard)   | Degree of Hazard | Application                              | Installation Criteria   | Device   | Degree of Hazard | Application   | Applicable Standard  |
|---|------------------|--|---|--|------------------|---------------|--|
| Air Gap (ASME A112.1.2)   | High or Low      | Backsiphonage                            | See Table 608.15.1  | Atmospheric Vacuum Breaker (ASSE 1001 USC-FCCCHR, CSA CAN/CSA-B64.1.1) | High or Low      | Backsiphonage |  |
| Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR) | High or Low      | Backpressure or Backsiphonage 1/2" - 16" | a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor.<br>b. RP assemblies shall NOT be installed in a pit.<br>c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm drains, or vents.<br>d. The assembly shall be installed in a horizontal position only unless listed or approved for vertical installation. |  |                  |               |  |
| Double Check Backflow Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)            | Low              | Backpressure or Backsiphonage 1/2" - 16" | a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance.<br>b. Shall be installed in a horizontal position unless listed or approved for vertical installation.   | General Installation Criteria  |                  |               | The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to insure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed.<br><br>The body of the assembly shall not be closer than 12 inches to any wall, ceiling or incumbrance, and shall be accessible for testing, repair and/or maintenance.<br><br>In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official.<br><br>Assemblies shall be maintained as an intact assembly. |
| Pressure Vacuum Breaker Assembly (ASSE 1020, USC-FCCCHR)  | High or Low      | Backsiphonage 1/2" - 2"                  | a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.<br>b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use.<br>c. Shall not be installed below ground or in a vault or pit.<br>d. Shall be installed in a vertical position only.   |  |                  |               |  |
| Spill Resistant Vacuum (ASSE 1056, USC-FCCCHR)  | High or Low      | Backsiphonage 1/4" - 2"                  | a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.<br>b. Shall be installed a minimum of 12 inches above all downstream piping and the highest   |  |                  |               |  |

(31) Table 608.1.1 is added as follows:

TABLE 608.1.1  
Specialty Backflow Devices for low hazard use only

| Device  | Degree of Hazard | Application   | Applicable Standard        |
|---|------------------|---------------|----------------------------|
| Antisiphon-type Water Closet Flush Tank Ball Cock | Low              | Backsiphonage | ASSE 1002 CSA CAN/CSA-B125 |
| Dual check valve                                  | Low              | Backsiphonage | ASSE 1024                  |

|   |                        |  |                                      |
|---|------------------------|--|--------------------------------------|
| Backflow Preventer  |                        | or Backpressure<br>1/4" - 1"                 |                                      |
| Backflow Preventer with Intermediate Atmospheric Vent                                     | Low Residential Boiler | Backsiphonage or Backpressure<br>1/4" - 3/4" | ASSE 1012<br>CSA CAN/<br>CSA-B64.3   |
| Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type | Low                    | Backsiphonage or Backpressure<br>1/4" - 3/8" | ASSE 1022                            |
| Hose-connection Vacuum Breaker  | Low                    | Backsiphonage<br>1/2", 3/4", 1"              | ASSE 1011<br>CSA CAN/<br>CSA-B64.2   |
| Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type                    | Low                    | Backsiphonage<br>3/4", 1"                    | ASSE 1019<br>CSA CAN/<br>CSA-B64.2.2 |
| Laboratory Faucet Backflow Preventer  | Low                    | Backsiphonage                                | ASSE 1035<br>CSA CAN/<br>CSA-B64.7   |
| Hose Connection Backflow Preventer  | Low                    | Backsiphonage<br>1/2" - 1"                   | ASSE 1052                            |

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's instructions and the specific provisions of this chapter.

(32) In Section 608.3.1, the following sentence is added at the end of the paragraph:

All piping and hoses shall be installed below the atmospheric vacuum breaker.

(33) Section 608.7 is deleted in its entirety.

(34) In Section 608.8, the following sentence is added at the end of the paragraph:

In addition each nonpotable water outlet shall be labeled with the words "CAUTION: UNSAFE WATER, DO NOT DRINK".

(35) In Section 608.11, the following sentence is added at the end of the paragraph:

The coating shall conform to NSF Standard 61 and application of the coating shall comply with the manufacturers instructions.

(36) Section 608.13.3 is deleted and replaced with the following:

608.13.3 Backflow preventer with intermediate atmospheric vent. Backflow preventers with intermediate atmospheric vents shall conform to ASSE 1012 or CAS CAN/CAS-B64.3. These devices shall be permitted to be installed on residential boilers only where subject to continuous pressure conditions. The relief opening shall discharge by air gap and shall be prevented from being submerged.

(37) Section 608.13.4 is deleted in its entirety.

(38) Section 608.13.9 is deleted in its entirety.

(39) Section 608.15.3 is deleted and replaced with the following:

608.15.3 Protection by a backflow preventer with intermediate atmospheric vent. Opening and outlets to residential boilers only shall be protected by a backflow preventer with an intermediate atmospheric vent.

(40) Section 608.15.4 is deleted and replaced with the following:

608.15.4 Protection by a vacuum breaker. Openings and outlets shall be protected by atmospheric-type or pressure-type vacuum breakers. The critical level of the atmospheric vacuum breaker shall be set a minimum of 6 inches (152 mm) above the flood level rim of the fixture or device. The critical level of the pressure vacuum breaker shall be set a minimum of 12 inches (304 mm) above the flood level rim of the fixture or device. Ball cocks shall be set in accordance with Section 425.3.1. Vacuum breakers shall not be installed under exhaust hoods or similar

locations that will contain toxic fumes or vapors. Pipe-applied vacuum breakers shall be installed not less than 6 inches (152 mm) above the flood level rim of the fixture, receptor or device served. No valves shall be installed downstream of the atmospheric vacuum breaker.

(41) Section 608.15.4.2 is deleted and replaced with the following:

608.15.4.2 Hose connections. Sillcocks, hose bibbs, wall hydrants and other openings with a hose connection shall be protected by an atmospheric-type or pressure-type vacuum breaker or a permanently attached hose connection vacuum breaker. Add-on-type backflow prevention devices shall be non-removable. In climates where freezing temperatures occur, a listed self-draining frost proof hose bibb with an integral backflow preventer shall be used.

(42) In Section 608.16.2, the first sentence of the paragraph is deleted and replaced as follows:

608.16.2 Connections to boilers. The potable water supply to the residential boiler shall be equipped with a backflow preventer with an intermediate atmospheric vent complying with ASSE 1012 or CSA CAN/CSA B64.3.

(43) Section 608.16.3 is deleted and replaced with the following:

608.16.3 Heat exchangers. Heat exchangers shall be separated from potable water by double-wall construction. An air gap open to the atmosphere shall be provided between the two walls.

Exceptions:

1. Single wall heat exchangers shall be permitted when all of the following conditions are met:

a. It utilizes a heat transfer medium of potable water or contains only substances which are recognized as safe by the United States Food and Drug Administration (FDA);

b. The pressure of the heat transfer medium is maintained less than the normal minimum operating pressure of the potable water system; and

c. The equipment is permanently labeled to indicate only additives recognized as safe by the FDA shall be used.

2. Steam systems that comply with paragraph 1 above.

3. Approved listed electrical drinking water coolers.

(44) In Section 608.16.4.1, add the following exception:  
Exception: All class 1 and 2 systems containing chemical additives consisting of strictly glycerine (C.P. or U.S.P. 96.5 percent grade) or propylene glycol shall be protected against backflow with a double check valve assembly. Such systems shall include written certification of the chemical additives at the time of original installation and service or maintenance.

(45) Section 608.16.7 is deleted and replaced with the following:

608.16.7 Chemical dispensers. Where chemical dispensers connect to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

(46) Section 608.16.8 is deleted and replaced with the following:

608.16.8 Portable cleaning equipment. Where the portable cleaning equipment connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2 or Section 608.13.8.

(47) Section 608.16.9 is deleted and replaced with the following:

608.16.9 Dental pump equipment or water syringe. Where dental pumping equipment or water syringes connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

(48) Section 608.16.11 is added as follows:  
 608.16.11 Automatic and coin operated car washes. The water supply to an automatic or coin operated car wash shall be protected in accordance with Section 608.13.1 or Section 608.13.2.

(49) Section 608.17 is deleted in its entirety.

(50) Section 701.2 is deleted and replaced with the following:

701.2 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann., (1953), as amended; or an approved private sewage disposal system in accordance with Rule R317-4, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

(51) Section 802.3.2 is deleted in its entirety and replaced with the following:

802.3.2 Open hub waste receptors. Waste receptors for clear water waste shall be permitted in the form of a hub or pipe extending not more than 1/2 inch above a water impervious floor and are not required to have a strainer.

(52) Section 901.3 is deleted and replaced with the following:

901.3 Chemical waste vent system. The vent system for a chemical waste system shall be independent of the sanitary vent system and shall terminate separately through the roof to the open air or to an air admittance valve provided at least one chemical waste vent in the system terminates separately through the roof to the open air.

(53) Section 904.1 is deleted and replaced with the following:

904.1 Roof extensions. All open vent pipes that extend through a roof shall be terminated at least 12 inches (304.8 mm) above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extension shall be run at least 7 feet (2134 mm) above the roof.

(54) In Section 904.6, the following sentence is added at the end of the paragraph:

Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

(55) In Section 905.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed in accordance with Sections 702.2, 905.2 and 905.3 and provided with a wall clean out.

(56) In Section 917.8 the following exception is added:

Exception: Air admittance valves shall be permitted in non-neutralized special waste systems provided that they conform to the requirements in Sections 901.3 and 702.5, are tested to ASTM F1412, and are certified by ANSI/ASSE.

(57) Section 1104.2 is deleted and replaced with the following:

1104.2 Combining storm and sanitary drainage prohibited. The combining of sanitary and storm drainage systems is prohibited.

(58) Section 1108 is deleted in its entirety.

(59) The Referenced Standard NFPA 99c-02 in Chapter 13 is deleted and replaced with NFPA 99c-05.

(60) The Referenced Standard NSF-2003e in Chapter 13 is amended to add Section 608.11 to the list of Referenced in code section number.

(61) In Chapter 13, Referenced Standards, the following referenced standard is added:

9th Edition Manual of Cross Connection Control  
 University of Southern California  
 Kaprielian Hall 300  
 Los Angeles CA 90089-2531

(62) Appendix C of the IPC, Gray Water Recycling Systems as amended herein shall not be adopted by any local jurisdiction until such jurisdiction has requested Appendix C as amended to be adopted as a local amendment and such local amendment has been approved as a local amendment under these rules.

(63) In jurisdictions which have adopted Appendix C as amended as a local amendment as provided herein, Section 301.3 of the IPC is deleted and replaced with the following:

301.3 Connection to the drainage system. All plumbing fixtures, drains, appurtenances and appliances used to receive or discharge liquid wastes or sewage shall be directly connected to the drainage system of the building or premises, in accordance with the requirements of this Code. This section shall not be construed to prevent indirect waste systems provided for in Chapter 8.

Exception: Bathtubs, showers, lavatories, clothes washers and laundry sinks shall not be required to discharge to the sanitary drainage system where such fixtures discharge to a gray water recycling system meeting all the requirements as specified in Appendix C as amended by these rules.

(64) Appendix C is deleted and replaced with the following, to be effective only in jurisdictions which have adopted Appendix C as amended as a local amendment under these rules:

Appendix C, Gray Water Recycling Systems, C101 Gray Water Recycling Systems

C101.1 General, recycling gray water within a building. In R1, R2 and R4 occupancies and one- and two-family dwellings, gray water recycling systems are prohibited.

In commercial occupancies, recycled gray water shall only be utilized for the flushing of water closets and urinals that are located in the same building as the gray water recycling system, provided the following conditions are met:

1. Such systems comply with Sections C101.1 through C101.14 as amended by these rules.

2. The commercial establishment demonstrates that it has and will have qualified staff to oversee the gray water recycling systems. Qualified staff is defined as level 3 waste water treatment plan operator as specified by the Department of Environmental Quality.

3. Gray water recycling systems shall only receive non hazardous waste discharge of bathtubs, showers, lavatories, clothes washers and laundry sinks such as chemicals having a pH of 6.0 to 9.0, or non flammable or non combustible liquids, liquids without objectionable odors, non-highly pigmented liquids, or other liquids that will not interfere with the operation of the sewer treatment facilities.

C101.2 Permit required. A permit for any gray water recycling system shall not be issued until complete plans prepared by a licensed engineer, with appropriate data satisfactory to the Code Official, have been submitted and approved. No changes or connections shall be made to either the gray water recycling system or the potable water system within any site containing a gray water recycling system, without prior approved by the Code Official. A permit may also be required by the local health department to monitor compliance with this appendix for system operator standards and record keeping.

C101.3 Definition. The following term shall have the meaning shown herein.

GRAY WATER. Waste water discharged from lavatories, bathtubs, showers, clothes washers and laundry sinks.

C101.4 Installation. All drain, waste and vent piping

TABLE

associated with gray water recycling systems shall be installed in full compliance with this code.

**C101.5 Gray Water Reservoir.** Gray water shall be collected in an approved reservoir construction of durable, nonabsorbent and corrosion-resistant materials. The reservoir shall be a closed and gas-tight vessel. Gas tight access openings shall be provided to allow inspection and cleaning of the reservoir interior. The holding capacity of the reservoir shall be a minimum of twice the volume of water required to meet the daily flushing requirements of the fixtures supplied by the gray water, but not less than 50 gallons (189 L). The reservoir shall be sized to limit the retention time of gray water to 72 hours maximum.

**C101.6 Filtration.** Gray water entering the reservoir shall pass through an approved cartridge filter or other method approved by the Code Official.

**C101.7 Disinfection.** Gray water shall be disinfected by an approved method that employs one or more disinfectants such as chlorine, iodine or ozone. A minimum of 1 ppm free residual chlorine shall be maintained in the gray water recycling system reservoir. Such disinfectant shall be automatically dispensed. An alarm shall be provided to shut down the gray water recycling system if disinfectant levels are not maintained at the required levels.

**C101.8 Makeup water.** Potable water shall be supplied as a source of makeup water for the gray water recycling system. The potable water supply to any building with a gray water recycling system shall be protected against backflow by an RP backflow assembly installed in accordance with this code. There shall be full-open valve on the makeup water supply to the reservoir. The potable water supply to the gray water reservoir shall be protected by an air gap installed in accordance with this code.

**C101.9 Overflow.** The reservoir shall be equipped with an overflow pipe of the same diameter as the influent pipe for the gray water. The overflow shall be directly connected to the sanitary drainage system.

**C101.10 Drain.** A drain shall be located at the lowest point of the reservoir and shall be directly connected to the sanitary drainage system. The drain shall be the same diameter as the overflow pipe required by Section C101.9 and shall be provided with a full-open valve.

**C101.11 Vent required.** The reservoir shall be provided with a vent sized in accordance with Chapter 9 based on the size of the reservoir influent pipe.

**C101.12 Coloring.** The gray water shall be automatically dyed blue or green with a food grade vegetable dye before such water is supplied to the fixtures.

**C101.13 Identification.** All gray water distribution piping and reservoirs shall be identified as containing non-potable water. Gray water recycling system piping shall be permanently colored purple or continuously wrapped with purple-colored Mylar tape. The tape or permanently colored piping shall be imprinted in black, upper case letters with the words "CAUTION: GRAY WATER, DO NOT DRINK."

All equipment areas and rooms for gray water recycling system equipment shall have a sign posted in a conspicuous place with the following text: TO CONSERVE WATER, THIS BUILDING USES GRAY WATER TO FLUSH TOILETS AND URINALS, DO NOT CONNECT TO THE POTABLE WATER SYSTEM. The location of the signage shall be determined by the Code Official.

**C101.14 Removal from service.** All gray water recycling systems that are removed from service shall have all connections to the reservoir capped and routed back to the building sewer. All gray water distribution lines shall be replaced with new materials.

**C201.1 Outside the building.** Gray water reused outside the building shall comply with the requirements of the Department

of Environmental Quality Rule R317.

**R156-56-804. Statewide Amendments to the IMC.**

The following are adopted as amendments to the IMC to be applicable statewide:

**R156-56-805. Statewide Amendments to the IFGC.**

The following are adopted as amendments to the IFGC to be applicable statewide:

(1) The following paragraph is added at the end of Section 305.1

305.1 General. After natural gas, space and water heating appliances have been adjusted for altitude and the Btu content of the natural gas, the installer shall apply a sticker in a visible location indicating that the proper adjustments to such appliances have been made. The adjustments for altitude and the Btu content of the natural gas shall be done in accordance with the manufacturer's installation instructions and the gas utility's approved practices.

(2) Chapter 4, Section 401 General, a new section 401.9 is added as follows:

401.9 Meter protection. Fuel gas services shall be in an approved location and/or provided with structures designed to protect the fuel gas meter and surrounding piping from physical damage, including falling, moving, or migrating ice and snow. If an added structure is used, it must still provide access for service and comply with the IBC or the IRC.

**R156-56-806. Statewide Amendments to the NEC.**

The following are adopted as amendments to the NEC to be applicable statewide:

**R156-56-807. Statewide Amendments to the IECC.**

The following are adopted as amendments to the IECC to be applicable statewide:

(1) In Section 504.4, the following exception is added:

Exception: Heat traps, other than the arrangement of piping and fittings, shall be prohibited unless a means of controlling thermal expansion can be ensured as required in the IPC Section 607.3.

**R156-56-808. Installation and Safety Requirements for Mobile Homes Built Prior to June 15, 1976.**

(1) Mobile homes built prior to June 15, 1976 which are subject to relocation, building alteration, remodeling or rehabilitation shall comply with the following:

(a) Exits and egress windows

(i) Egress windows. The home has at least one egress window in each bedroom, or a window that meets the minimum specifications of the U.S. Department of Housing and Urban Development's (HUD) Manufactured Homes Construction and Safety Standards (MHCSS) program as set forth in 24 C.F.R. Parts 3280, 3283 and 3283, MHCSS 3280.106 and 3280.404 for manufactured homes. These standards require the window to be at least 22 inches in the horizontal or vertical position in its least dimension and at least five square feet in area. The bottom of the window opening shall be no more than 36 inches above the floor, and the locks and latches and any window screen or storm window devices that need to be operated to permit exiting shall not be located more than 54 inches above the finished floor.

(ii) Exits. The home is required to have two exterior exit doors, located remotely from each other, as required in MHCSS 3280.105. This standard requires that single-section homes have the doors no less than 12 feet, center-to-center, from each other, and multisection home doors no less than 20 feet center-to-center from each other when measured in a straight line, regardless of the length of the path of travel between the doors. One of the required exit doors must be accessible from the

doorway of each bedroom and no more than 35 feet away from any bedroom doorway. An exterior swing door shall have a 28-inch-wide by 74-inch-high clear opening and sliding glass doors shall have a 28-inch-wide by 72-inch-high clear opening. Each exterior door other than screen/storm doors shall have a key-operated lock that has a passage latch; locks shall not require the use of a key or special tool for operation from the inside of the home.

(b) Flame spread

(i) Walls, ceilings and doors. Walls and ceilings adjacent to or enclosing a furnace or water heater shall have an interior finish with a flame-spread rating not exceeding 25. Sealants and other trim materials two inches or less in width used to finish adjacent surfaces within these spaces are exempt from this provision, provided all joints are supported by framing members or materials with a flame spread rating of 25 or less. Combustible doors providing interior or exterior access to furnace and water heater spaces shall be covered with materials of limited combustibility (i.e. 5/16-inch gypsum board, etc.), with the surface allowed to be interrupted for louvers ventilating the space. However, the louvers shall not be of materials of greater combustibility than the door itself (i.e., plastic louvers on a wooden door). Reference MHCSS 3280.203.

(ii) Exposed interior finishes. Exposed interior finishes adjacent to the cooking range (surfaces include vertical surfaces between the range top and overhead cabinets, the ceiling, or both) shall have a flame-spread rating not exceeding 50, as required by MHCSS 3280.203. Backsplashes not exceeding six inches in height are exempted. Ranges shall have a vertical clearance above the cooking top of not less than 24 inches to the bottom of combustible cabinets, as required by MHCSS 3280.204(e).

(c) Smoke detectors

(i) Location. A smoke detector shall be installed on any ceiling or wall in the hallway or space communicating with each bedroom area between the living area and the first bedroom door, unless a door separates the living area from that bedroom area, in which case the detector shall be installed on the living-area side, as close to the door as practicable, as required by MHCSS 3280.208. Homes with bedroom areas separated by anyone or combination of common-use areas such as a kitchen, dining room, living room, or family room (but not a bathroom or utility room) shall be required to have one detector for each bedroom area. When located in the hallways, the detector shall be between the return air intake and the living areas.

(ii) Switches and electrical connections. Smoke detectors shall have no switches in the circuit to the detector between the over-current protection device protecting the branch circuit and the detector. The detector shall be attached to an electrical outlet box and connected by a permanent wiring method to a general electrical circuit. The detector shall not be placed on the same branch circuit or any circuit protected by a ground-fault circuit interrupter.

(d) Solid-fuel-burning stoves/fireplaces

(i) Solid-fuel-burning fireplaces and fireplace stoves. Solid-fuel-burning, factory-built fireplaces and fireplace stoves may be used in manufactured homes, provided that they are listed for use in manufactured homes and installed according to their listing/manufacturer's instructions and the minimum requirements of MHCSS 3280.709(g).

(ii) Equipment. A solid-fuel-burning fireplace or fireplace stove shall be equipped with an integral door or shutters designed to close the fire chamber opening and shall include complete means for venting through the roof, a combustion air inlet, a hearth extension, and means to securely attach the unit to the manufactured home structure.

(A) Chimney. A listed, factory-built chimney designed to be attached directly to the fireplace/fireplace stove and equipped with, in accordance with the listing, a termination device and

spark arrester, shall be required. The chimney shall extend at least three feet above the part of the roof through which it passes and at least two feet above the highest elevation of any part of the manufactured home that is within 10 feet of the chimney.

(B) Air-intake assembly and combustion-air inlet. An air-intake assembly shall be installed in accordance with the terms of listings and the manufacturer's instruction. A combustion air inlet shall conduct the air directly into the fire chamber and shall be designed to prevent material from the hearth from dropping on the area beneath the manufactured home.

(C) Hearth. The hearth extension shall be of noncombustible material that is a minimum of 3/8-inch thick and shall extend a minimum of 16 inches in front and eight inches beyond each side of the fireplace/fireplace stove opening. The hearth shall also extend over the entire surface beneath a fireplace stove and beneath an elevated and overhanging fireplace.

(e) Electrical wiring systems

(i) Testing. All electrical systems shall be tested for continuity in accordance with MHCSS 3280.810, to ensure that metallic parts are properly bonded; tested for operation, to demonstrate that all equipment is connected and in working order; and given a polarity check, to determine that connections are proper.

(ii) 5.2 Protection. The electrical system shall be properly protected for the required amperage load. If the unit wiring employs aluminum conductors, all receptacles and switches rated at 20 amperes or less that are directly connected to the aluminum conductors shall be marked CO/ALA. Exterior receptacles, other than heat tape receptacles, shall be of the ground-fault circuit interrupter (GFI) type. Conductors of dissimilar metals (copper/aluminum or copper-clad aluminum) must be connected in accordance with National Electrical Code (NEC) Section 110-14.

(f) Replacement furnaces and water heaters

(i) Listing. Replacement furnaces or water heaters shall be listed for use in a manufactured home. Vents, roof jacks, and chimneys necessary for the installation shall be listed for use with the furnace or water heater.

(ii) Securement and accessibility. The furnace and water heater shall be secured in place to avoid displacement. Every furnace and water heater shall be accessible for servicing, for replacement, or both as required by MHCSS 3280.709(a).

(iii) Installation. Furnaces and water heaters shall be installed to provide complete separation of the combustion system from the interior atmosphere of the manufactured home, as required by MHCSS.

(A) Separation. The required separation may be achieved by the installation of a direct-vent system (sealed combustion system) furnace or water heater or the installation of a furnace and water heater venting and combustion systems from the interior atmosphere of the home. There shall be no doors, grills, removable access panels, or other openings into the enclosure from the inside of the manufactured home. All openings for ducts, piping, wiring, etc., shall be sealed.

(B) Water heater. The floor area in the area of the water heater shall be free from damage from moisture to ensure that the floor will support the weight of the water heater.

**R156-56-820. Statewide Amendments to the IEBC.**

The following are adopted as amendments to the IEBC to be applicable statewide:

(1) In Section 101.5 the exception is deleted.

(2) Section R106.3.2 is deleted and replaced with the following:

R106.3.2 Previous approval. If a lawful permit has been issued and the construction of which has been pursued in good faith within 180 days after the effective date of the code and has not been abandoned, then the construction may be completed



under the code in effect at the time of the issuance of the permit.

(3) In Section 202 the definition for existing buildings is deleted and replaced with the following:

**EXISTING BUILDING.** A building lawfully erected prior to January 1, 2002, or one which is deemed a legal non-conforming building by the code official, and one which is not a dangerous building.

(4) Section 606.2.2 is deleted and replaced with the following:

602.2.2 Parapet bracing, wall anchors, and other appendages. Buildings constructed prior to 1975 shall have parapet bracing, wall anchors, and appendages such as cornices, spires, towers, tanks, signs, statuary, etc. evaluated by a licensed engineer when said building is undergoing reroofing, or alteration of or repair to said feature. Such parapet bracing, wall anchors, and appendages shall be evaluated in accordance with the reduced International Building Code level seismic forces as specified in IEBC Section 506.1.1.3 and design procedures of Section 506.1.1.1. When found to be deficient because of design or deteriorated condition, the engineer's recommendations to anchor, brace, reinforce, or remove the deficient feature shall be implemented.

**EXCEPTIONS:**

1. Group R-3 and U occupancies.

2. Unreinforced masonry parapets need not be braced according to the above stated provisions provided that the maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F.

(5) Section 705.3.1.2 is deleted and replaced with the following:

705.3.1.2 Fire escapes required. When more than one exit is required, an existing fire escape complying with Section 705.3.1.2.1 shall be accepted as providing one of the required means of egress.

705.3.1.2.1 Fire escape access and details. Fire escapes shall comply with all of the following requirements:

1. Occupants shall have unobstructed access to the fire escapes without having to pass through a room subject to locking.

2. Access to an existing fire escape shall be through a door, except that windows shall be permitted to provide access from single dwelling units or sleeping units in Group R-1, R-2, and I-1 occupancies or to provide access from spaces having a maximum occupant load of 10 in other occupancy classifications.

3. Existing fire escapes shall be permitted only where exterior stairs cannot be utilized because of lot lines limiting the stair size or because of the sidewalks, alleys, or roads at grade level.

4. Openings within 10 feet (3048 mm) of fire escape stairs shall be protected by fire assemblies having minimum 3/4-hour fire-resistance ratings.

Exception: Opening protection shall not be required in buildings equipped throughout with an approved automatic sprinkler system.

5. In all buildings of Group E occupancy, up to and including the 12th grade, buildings of Group I occupancy, rooming houses, and childcare centers, ladders of any type are prohibited on fire escapes used as a required means of egress.

(6) Section 906.1 is deleted and replaced with the following:

906.1 General. Accessibility in portions of buildings undergoing a change of occupancy classification shall comply with Section 605 and 912.8.

(7) Section 907.3.1 is deleted and replaced with the

following:

907.3.1 Compliance with the International Building Code. When a building or portion thereof is subject to a change of occupancy such that a change in the nature of the occupancy results in a higher seismic occupancy based on Table 1604.5 of the International Building Code; or where such change of occupancy results in a reclassification of a building to a higher hazard category as shown in Table 912.4; or where a change of a Group M occupancy to a Group A, ETM R-1, R-2, or R-4 occupancy with two-thirds or more of the floors involved in Level 3 alteration work; or when such change of occupancy results in a design occupant load increase of 100% or more, the building shall conform to the seismic requirements of the International Building Code for the new seismic use group.

Exceptions 1-4 remain unchanged.

5. Where the design occupant load increase is less than 25 occupants and the occupancy category does not change.

(8) In Section 912.7.3 exception 2 is deleted.

(9) In Section 912.8 number 7 is added as follows:

7. When a change of occupancy in a building or portion of a building results in a Group R-2 occupancy, not less than 20 percent of the dwelling or sleeping units shall be Type B dwelling or sleeping units. These dwelling or sleeping units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one unit, of the dwelling or sleeping units shall be Type A dwelling units.

**RI56-56-901. Local Amendments to the IBC.**

The following are adopted as amendments to the IBC to be applicable to the following jurisdictions:

(1) City of Farmington:

(a) A new Section (F)903.2.14 is added as follows:

(F)903.2.14 Group R, Division 3 Occupancies. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when any of the following conditions are present:

1. The structure is over two stories high, as defined by the building code;

2. The nearest point of structure is more than 150 feet from the public way;

3. The total floor area of all stories is over 5,000 square feet (excluding from the calculation the area of the basement and/or garage); or

4. The structure is located on a street constructed after March 1, 2000 that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).

Such sprinkler system shall be installed in basements, but need not be installed in garages, under eaves or in enclosed attic spaces, unless required by the Chief.

(b) A new Section 907.20 is added as follows:

907.20 Alarm Circuit Supervision. Alarm circuits in alarm systems provided for commercial uses (defined as other than one- and two-family dwellings and townhouses) shall have Class "A" type of supervision. Specifically, Type "B" or End-of-line resistor and horn supervised systems are not allowed.

(c) NFPA 13-02 is amended to add the following new sections:

6.8.6 FDC Security Locks Required. All Fire Department connections installed for fire sprinkler and standpipe systems shall have approved security locks.

6.10 Fire Pump Disconnect Signs. When installing a fire pump, red plastic laminate signs shall be installed in the electrical service panel, if the pump is wired separately from the main disconnect. These signs shall state: "Fire Pump Disconnect ONLY" and "Main Breaker DOES NOT Shut Off Fire Pump".

14.1.1.5 Plan Preparation Identification. All plans for fire sprinkler systems, except for manufacturer's cut sheets of equipment shall include the full name of the person who prepared the drawings. When the drawings are prepared by a registered professional engineer, the engineer's signature shall also be included.

15.1.2.5 Verification of Water Supply:

15.1.2.5.1 Fire Flow Tests. Fire flow tests for verification of water supply shall be conducted and witnessed for all applications other than residential unless directed otherwise by the Chief. For residential water supply, verification shall be determined by administrative procedure.

15.1.2.5.2 Accurate and Verifiable Criteria. The design calculations and criteria shall include an accurate and verifiable water supply.

17.8.4 Testing and Inspection of Systems. Testing and inspection of sprinkler systems shall include, but are not limited to:

Commercial:

- FLUSH-Witness Underground Supply Flush;
- ROUGH Inspection-Installation of Riser, System Piping, Head Locations and all Components, Hydrostatic Pressure Test;
- FINAL Inspection-Head Installation and Escutcheons, Inspectors Test Location and Flow, Main Drain Flow, FDC Location and Escutcheon, Alarm Function, Spare Parts, Labeling of Components and Signage, System Completeness, Water Supply Pressure Verification, Evaluation of Any Unusual Parameter.

(2) City of North Salt Lake

A new Section (F)903.2.14 is added as follows:

(F)903.2.14 Group R, Division 3 Occupancies. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when the following condition is present:

- 1. The structure is over 6,200 square feet.

Such sprinkler system shall be installed in basements, but need not be installed in garages, under eaves, or in enclosed attic spaces, unless required by the fire chief.

(3) Park City Corporation and Park City Fire District:

(a) Section (F)903.2 is deleted and replaced with the following:

(F)903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the location described in this section.

All new construction having more than 6,000 square feet on any one floor, except R-3 occupancy.

All new construction having more than two (2) stories, except R-3 occupancy.

All new construction having three (3) or more dwelling units, including units rented or leased, and including condominiums or other separate ownership.

All new construction in the Historic Commercial Business zone district, regardless of occupancy.

All new construction and buildings in the General Commercial zone district where there are side yard setbacks or where one or more side yard setbacks is less than two and one half (2.5) feet per story of height.

All existing building within the Historic District Commercial Business zone.

(b) In Table 1505.1, the following is added as footnotes d and e:

d. Wood roof covering assemblies are prohibited in R-3 occupancies in areas with a combined rating of more than 11 using Tables 1505.1.1 and 1505.1.2 with a score of 9 for weather factors.

e. Wood roof covering assemblies shall have a Class A rating in occupancies other than R-3 in areas with a combined rating of more than 11 using Tables 1505.1.1 and 1505.1.2 with a score of 9 for weather factors. The owner of the building shall

enter into a written and recorded agreement that the Class A rating of the roof covering assembly will not be altered through any type of maintenance process.

TABLE 1505.1.1  
WILDFIRE HAZARD SEVERITY SCALE

| RATING | SLOPE                     | VEGETATION                  |
|--------|---------------------------|-----------------------------|
| 1      | less than or equal to 10% | Pinion-juniper              |
| 2      | 10.1 - 20%                | Grass-sagebrush             |
| 3      | greater than 20%          | Mountain brush or softwoods |

TABLE 1505.1.2  
PROHIBITION/ALLOWANCE OF WOOD ROOFING

| Rating                      | R-3 Occupancy  | All Other Occupancies   |
|-----------------------------|--|---|
| less than or equal to 11    | wood roof covering assemblies per Table 1505.1 are allowed | wood roof covering assemblies per Table 1505.1 are allowed      |
| greater than or equal to 12 | wood roof covering is prohibited                           | wood roof covering assemblies with a Class A rating are allowed |

(c) Appendix C is adopted.

(4) Sandy City

(a) Section (F)903.2.14 is added as follows:

(F)903.2.14 An automatic sprinkler system shall be installed in accordance with NFPA 13 throughout buildings containing all occupancies where fire flow exceeds 2,000 gallons per minute, based on Table B105.1 of the 2006 International Fire Code. Exempt locations as indicated in Section 903.3.1.1.1 are allowed.

Exception: Automatic fire sprinklers are not required in buildings used solely for worship, Group R Division 3, Group U occupancies and buildings complying with the International Residential Code unless otherwise required by the International Fire Code.

(b) Appendix L is added to the IBC and adopted as follows:

Appendix L BUILDINGS AND STRUCTURES CONSTRUCTED IN AREAS DESIGNATED AS WILDLAND-URBAN INTERFACE AREAS

AL 101.1 General. Buildings and structures constructed in areas designated as Wildland-Urban Interface Areas by Sandy City shall be constructed using ignition resistant construction as determined by the Fire Marshal. Section 502 of the 2006 International Wildland-Urban Interface Code (IWUIC), as promulgated by the International Code Council, shall be used to determine Fire Hazard Severity. The provisions listed in Chapter 5 of the 2006 International Wildland-Urban Interface Code, as modified herein, shall be used to determine the requirements for Ignition Resistant Construction.

(i) In Section 504 of the IWUIC Class I IGNITION-RESISTANT CONSTRUCTION a new Section 504.1.1 is added as follows:

504.1.1 General. Subsections 504.5, 504.6, and 504.7 shall only be required on the exposure side of the structure, as determined by the Fire Marshal, where defensible space is less than 50 feet as defined in Section 603 of the 2006 International Wildland-Urban Interface Code.

(ii) In Section 505 of the IWUIC Class 2 IGNITION-RESISTANT CONSTRUCTION Subsections 505.5 and 505.7 are deleted.

**R156-56-902. Local Amendments to the IRC.**

The following are adopted as amendments to the IRC to be applicable to the following jurisdictions:

- (1) All local amendments to the IBC under Section R156-

56-901, the NEC under Section R156-56-906, the IPC under Section R156-56-903, the IMC under Section R156-56-904, the IFGC under Section R156-56-905 and the IECC under Section R156-56-907 which may be applied to detached one and two family dwellings and multiple single family dwellings shall be applicable to the corresponding provisions of the IRC for the local jurisdiction to which the local amendment has been made. All references to the ICC Electrical Code are deleted and replaced with the National Electrical Code adopted under Section R156-56-701(1)(b).

(2) City of Farmington:

R325 Automatic Sprinkler Systems.

(a) Sections R325.1 and R325.2 are added as follows:

R325.1 When required. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when any of the following conditions are present:

1. the structure is over two stories high, as defined by the building code;
2. the nearest point of structure is more than 150 feet from the public way;
3. the total floor area of all stories is over 5,000 square feet (excluding from the calculation the area of the basement and/or garage); or
4. the structure is located on a street constructed after March 1, 2000 that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).

R325.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eaves or in enclosed attic spaces, unless required by the Chief. Such system shall be installed in accordance with NFPA 13-D.

(b) In Chapter 43, Referenced Standards, the following NFPA referenced standards are added as follows:

| TABLE  |  |
|--------|--|
| ADD    |  |
| 13D-02 | Installation of Sprinkler Systems in One- and Two-family Dwellings and Manufactured Homes, as amended by these rules |
| 13R-02 | Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height              |
| 101-03 | Life Safety Code   |

(c) NFPA 13D-02 is amended to add the following new sections:

1.15 Reference to NFPA 13-D. All references to NFPA 13-D in the codes, ordinances, rules or regulations governing NFPA 13-D systems shall be read to refer to "modified NFPA 13-D" to reference the NFPA 13-D as amended by additional regulations adopted by Farmington City.

4.6 Testing and Inspection of Systems. Testing and inspection of sprinkler systems shall include, but are not limited to:

Residential:

ROUGH Inspection-Verify Water Supply Piping Size and Materials, Installation of Riser, System Piping, Head Locations and all Components, Hydrostatic Pressure Test.

FINAL Inspection-Inspectors Test Flow, System Completeness, Spare Parts, Labeling of Components and Signage, Alarm Function, Water Supply Pressure Verification.

5.2.2.3 Exposed Piping of Metal. Exposed Sprinkler Piping material in rooms of dwellings shall be of Metal.

EXCEPTIONS:

a. CPVC Piping is allowed in unfinished mechanical and storage rooms only when specifically listed for the application as installed.

b. CPVC Piping is allowed in finished, occupied rooms

used for sports courts or similar uses only when the ceiling/floor framing above is constructed entirely of non-combustible materials, such as a concrete garage floor on metal decking.

5.2.2.4 Water Supply Piping Material. Water Supply Piping from where the water line enters the dwelling adjacent to and inside the foundation to the fire sprinkler contractor point-of-connection shall be metal, suitable for potable plumbing systems. See Section 7.1.4 for valve prohibition in such piping. Piping down stream from the point-of-connection used in the fire sprinkler system, including the riser, shall conform to NFPA 13-D standards.

5.4 Fire Pump Disconnect Signs. When installing a Fire Pump, Red Plastic Laminate Signs shall be installed in the electrical service panel, if the pump is wired separately from the main disconnect. These signs shall state: "Fire Pump Disconnect ONLY" and "Main Breaker DOES NOT Shut Off Fire Pump".

7.1.4 Valve Prohibition. NFPA 13-d, Section 7.1 is hereby modified such that NO VALVE is permitted from the City Water Meter to the Fire Sprinkler Riser Control.

7.6.1 Mandatory Exterior Alarm. Every dwelling that has a fire sprinkler system shall have an exterior alarm, installed in an approved location. The alarm shall be of the combination horn/strobe or electric bell/strobe type, approved for outdoor use.

8.1.05 Plan Preparation Identification. All plans for fire sprinkler systems, except for manufacturer's cut sheets of equipment, shall include the full name of the person who prepared the drawings. When the drawings are prepared by a registered professional engineer, the engineer's signature shall also be included.

8.7 Verification of Water Supply:

8.7.1 Fire Flow Tests: Fire Flow Tests for verification of Water Supply shall be conducted and witnesses for all applications other than residential, unless directed otherwise by the Chief. For residential Water Supply, verification shall be determined by administrative procedure.

8.7.2 Accurate and Verifiable Criteria. The design calculations and criteria shall include an accurate and verifiable Water Supply.

(3) Morgan City Corp:

In Section R105.2 Work Exempt From Permit, the following is added:

10. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria is met:

a. The parcel of property involved is zoned for the keeping of farm animals or has grand fathered animal rights.

b. The structure is setback not less than 50 feet from the rear or side of dwellings, and not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a site plan is submitted to, and approved by the building official.

Electrical, plumbing, and mechanical permits shall be required when that work is included in the structure.

(4) Morgan County:

In Section R105.2 Work Exempt From Permit, the following is added:

10. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria is met:

a. The parcel of property involved is zoned for the keeping of farm animals or has grand fathered animal rights.

b. The structure is set back not less than required by the Morgan County Zoning Ordinance for such structures, but not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a Land Use Permit must be applied for, and approved, by the Morgan County Planning and Zoning Department.

Electrical, plumbing, and mechanical permits shall be required when that work is included in the structure.

(5) City of North Salt Lake:

Sections R325.1 and R325.2 are added as follows:

R325.1 When Required. An automatic sprinkler system shall be installed throughout every dwelling when the following condition is present:

1. The structure is over 6,200 square feet.

R325.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eaves, or in enclosed attic spaces, unless required by the fire chief. Such system shall be installed in accordance with NFPA 13-D.

(6) Park City Corporation:

Appendix P is adopted.

(7) Park City Corporation and Park City Fire District:

(a) Section R905.7 is deleted and replaced with the following:

R905.7 Wood shingles. The installation of wood shingles shall comply with the provisions of this section.

Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE  
WILDFIRE HAZARD SEVERITY SCALE

| RATING | SLOPE                     | VEGETATION                  |
|--------|---------------------------|-----------------------------|
| 1      | less than or equal to 10% | Pinion-juniper              |
| 2      | 10.1 - 20%                | Grass-sagebrush             |
| 3      | greater than 20%          | Mountain brush or softwoods |

PROHIBITION/EXEMPTION TABLE

| RATING                      | WOOD ROOF PROHIBITION     |
|-----------------------------|---------------------------|
| less than or equal to 11    | wood roofs are allowed    |
| greater than or equal to 12 | wood roofs are prohibited |

(b) Section R905.8 is deleted and replaced with the following:

R905.8 Wood Shakes. The installation of wood shakes shall comply with the provisions of this section. Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE  
WILDFIRE HAZARD SEVERITY SCALE

| RATING | SLOPE                     | VEGETATION                  |
|--------|---------------------------|-----------------------------|
| 1      | less than or equal to 10% | Pinion-juniper              |
| 2      | 10.1 - 20%                | Grass-sagebrush             |
| 3      | greater than 20%          | Mountain brush or softwoods |

PROHIBITION/EXEMPTION TABLE

| RATING                      | WOOD ROOF PROHIBITION     |
|-----------------------------|---------------------------|
| less than or equal to 11    | wood roofs are allowed    |
| greater than or equal to 12 | wood roofs are prohibited |

(c) Appendix K is adopted.

(8) Sandy City

A new Section R325 is added to the IRC as follows:

Section R325 IGNITION RESISTANT CONSTRUCTION

R325.1 General. Buildings and structures constructed in areas designated as Wildland-Urban Interface Areas by Sandy

City shall be constructed using ignition resistant construction as determined by the Fire Marshal. Section 502 of the 2006 International Wildland-Urban Interface Code (IWUIC), as promulgated by the International Code Council, shall be used to determine Fire Hazard Severity. The provisions listed in Chapter 5 of the 2006 IWUIC, as modified herein, shall be used to determine the requirements for Ignition Resistant Construction.

(i) In Section 504 of the IWUIC Class I IGNITION-RESISTANT CONSTRUCTION a new Section 504.1.1 is added as follows:

504.1.1 General. Subsections 504.5, 504.6, and 504.7 shall only be required on the exposure side of the structure, as determined by the Fire Marshal, where defensible space is less than 50 feet as defined in Section 603 of the 2006 IWUIC.

(ii) In Section 505 of the IWUIC Class 2 IGNITION-RESISTANT CONSTRUCTION Subsections 505.5 and 505.7 are deleted.

**R156-56-903. Local Amendments to the IPC.**

The following are adopted as amendments to the IPC to be applicable to the following jurisdictions:

(1) Salt Lake City

Appendix C of the IPC as specified and amended in R156-56-803(62), (63) and (64).

(2) South Jordan

(a) Section 312.9.2 is deleted and replaced with the following:

312.9.2 Testing. Reduced pressure principle backflow preventer assemblies, double check-valve assemblies, pressure vacuum breaker assemblies, reduced pressure detector fire protection backflow prevention assemblies, double check detector fire protection backflow prevention assemblies, hose connection backflow preventers, and spill-proof vacuum breakers shall be tested at the time of installation, immediately after repairs or relocation and at least annually. The testing procedure shall be performed in accordance with one of the following standards: ASSE 5013, ASSE 5015, ASSE 5020, ASSE 5047, ASSE 5048, ASSE 5052, ASSE 5056, CSA B64.10 or CSA B64.10.1. Assemblies, other than the reduced pressure principle assembly, protecting lawn irrigation systems that fail the annual test shall be replaced with a reduced pressure principle assembly.

(b) Section 608.16.5 is deleted and replaced with the following:

608.16.5 Connections to lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by a reduced pressure principle backflow preventer.

**R156-56-904. Local Amendment to the IMC.**

The following are adopted as amendments to the IMC to be applicable to the following jurisdictions:

**R156-56-905. Local Amendment to the IFGC.**

The following are adopted as amendments to the IFGC to be applicable to the following jurisdictions:

**R156-56-906. Local Amendment to the NEC.**

The following are adopted as amendments to the NEC to be applicable to the following jurisdictions:

**R156-56-907. Local Amendment to the IECC.**

The following are adopted as amendments to the IECC to be applicable to the following jurisdictions:

**R156-56-920. Local Amendment to the IEBC.**

The following are adopted as amendments to the IEBC to be applicable to the following jurisdictions:

**KEY:** contractors, building codes, building inspections,  
licensing

August 24, 2009

58-1-106(1)(a)

Notice of Continuation March 29, 2007

58-1-202(1)(a)

58-56-1

58-56-6(2)(a)

58-56-18

58-56-19

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-60a. Social Worker Licensing Act Rules.**  
**R156-60a-101. Title.**

These rules are known as the "Social Worker Licensing Act Rules".

**R156-60a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

- (1) "ASWB" means the Association of Social Work Boards.
- (2) "CSW" means a licensed certified social worker.
- (3) "Clinical social work concentration and practicum", "clinical concentration and practicum" "case work", "group work", or "family treatment course sequence with a clinical practicum", "clinical practicum" or "practicum", as used in Subsections 58-60-205(1)(g) and (2)(d)(ii), means a track of professional education which is specifically established to prepare an individual to practice or engage in mental health therapy.
- (4) "LCSW" means a licensed clinical social worker.
- (5) "SSW" means a licensed social service worker.
- (6) "Supervised practice of mental health therapy by a clinical social worker", as used in Subsection 58-60-202(3)(a), means that the CSW is supervised by a LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601.

**R156-60a-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 60.

**R156-60a-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.

**R156-60a-302a. Education Requirements for Licensure as a SSW.**

In accordance with Subsection 58-60-205(3)(d)(ii), a master's degree qualifying an applicant for licensure as a SSW shall be in a field of social work, psychology, marriage and family therapy, or professional counseling.

**R156-60a-302b. Experience Requirements for Licensure as a SSW.**

In accordance with Subsection 58-60-205(3)(d)(iii) and (iv), the 2000 hours of supervised social work activity or the one year of qualifying experience for licensure as a SSW shall:

- (1) be performed as an employee of an agency providing social work services and activities; and
- (2) be performed according to a written social work job description approved by the LCSW or CSW supervisor.

**R156-60a-302c. Training Requirements for Licensure as a LCSW.**

In accordance with Subsections 58-60-205(1)(d),(e),(f) and (g), and 58-60-202(3)(a), the 4000 hours of clinical social work and mental health therapy training qualifying an applicant for licensure as a LCSW shall:

- (1) be obtained after completion of the education requirement set forth in Subsections 58-60-205(d) and (g) and shall not include any clinical practicum hours obtained as part of the education program;
- (2) be completed over a duration of not less than two years;
- (3) be completed while the CSW is an employee of a public or private agency engaged in mental health therapy;
- (4) be completed under a program of supervision by a LCSW meeting the requirements of Sections R156-60a-302e

and R156-60a-601; and

- (5) include the following training requirements:
  - (a) individual, family, and group therapy;
  - (b) crisis intervention;
  - (c) intermediate treatment; and
  - (d) long term treatment.

**R156-60a-302d. Examination Requirements.**

(1) In accordance with Subsection 58-60-205(1)(h), the examination requirements for licensure as a LCSW include passing the Clinical Examination of the ASWB or the Clinical Social Workers Examination of the State of California.

(2) In accordance with Subsection 58-60-205(2)(e), the examination requirements for licensure as a SSW shall include passing the Masters, Advanced Generalist, or Clinical Examination of the ASWB.

(3) In accordance with Subsection 58-60-205(3)(e), the examination requirements for licensure as a SSW shall include passing the Bachelors Examination of the ASWB.

**R156-60a-302e. Requirements to Become a LCSW Supervisor.**

In accordance with Subsections 58-60-202(2)(c), 58-60-202(3)(a) and 58-60-205(1)(e) and (f), in order for an LCSW to supervise a CSW, the LCSW shall:

- (1) be currently licensed in good standing as a LCSW; and
- (2) have engaged in active practice as a LCSW, including mental health therapy, for a period of not less than two years prior to supervising a CSW.

**R156-60a-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308.

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

**R156-60a-304. Continuing Education Requirements for LCSW.**

In accordance with Subsection 58-60-105(1), the continuing education requirements for LCSWs are defined, clarified and established as follows:

(1) During each two year period commencing January 1st of each even numbered year, a LCSW shall be required to complete not less than 40 hours of continuing education.

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

(3) Continuing education under this section shall:
 

- (a) be relevant to the licensee's professional practice;
- (b) be prepared and presented by individuals who are qualified by education, training, and experience to provide social work continuing education; and
- (c) have a method of verification of attendance.

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

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences, or training sessions which meet the criteria listed in Subsection (3) above, and which are approved by, conducted by or under sponsorship of:

- (i) the National Association of Social Workers;
- (ii) community mental health agencies or entities providing mental health services under the auspices of the State of Utah;

(iii) recognized universities and colleges; and  
 (iv) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of social work; and

(b) a maximum of ten hours per two year period may be recognized for teaching continuing education relevant to clinical social work or mental health therapy; and

(c) a maximum of ten hours per two year period may be recognized for continuing education that is provided via Internet or through home study which meets the criteria listed in Subsection (3) above.

(5) A licensee is responsible to complete relevant continuing education, to document completion of the continuing education, and to maintain the records of the continuing education completed for a period of four years after close of the two year period to which the records pertain.

(6) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements established under this section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

(7) If more than 40 hours of continuing education is completed during the two year period specified in Subsection (1), up to ten hours of the excess over 40 hours may be carried over to the next two year period. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

#### **R156-60a-308. Reinstatement of a LCSW License which has Expired Beyond Two Years.**

In accordance with Subsection 58-1-308(6) and Section R156-1-308e, an applicant for reinstatement for licensure as a LCSW, whose license expired after two years following the expiration of that license, shall:

(1) upon request, meet with the board to evaluate the applicant's ability to safely and competently practice clinical social work and mental health therapy;

(2) upon recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4000 hours of clinical social work and mental health therapy training as a CSW before qualifying for reinstatement of the LCSW license;

(3) pass the Clinical Examination of the ASWB if it is determined by the board that examination or reexamination is necessary to demonstrate the applicant's ability to safely and competently practice clinical social work and mental health therapy; and

(4) complete a minimum of 40 hours of continuing education in subjects determined by the board as necessary to ensure the applicant's ability to safely and competently practice clinical social work and mental health therapy.

#### **R156-60a-309. Exemption from Licensure Clarified.**

The exemption specified in Subsection 58-60-107(5) does not permit an individual to engage in the 4000 hours of clinical social work and mental health therapy training without first becoming licensed as a CSW.

#### **R156-60a-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) using the abbreviated title of LCSW unless licensed as a LCSW;

(2) using the abbreviated title of CSW unless licensed as a CSW;

(3) using the abbreviated title of SSW unless licensed as a SSW;

(4) acting as a supervisor or accepting supervision of a

supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60a-302d and R156-60a-601.

(5) engaging in the supervised practice of mental health therapy as a licensed CSW unless:

(a) the licensee has completed a clinical practicum as part of the Council on Social Work Education (CSWE) accredited master's degree program; and

(b) the scope of practice is otherwise within the licensee's competency, abilities and education;

(6) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60a-302c(4) and R156-60a-601(7);

(7) engaging in or aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(8) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(9) failing to establish and maintain professional boundaries with a client or former client;

(10) engaging in dual or multiple relationships with a client or former client in which there is a risk of or potential harm to the client;

(11) engaging in sexual activities or sexual contact with a client with or without client consent;

(12) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services when there is no risk of exploitation or potential harm to the client;

(13) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a personal relationship when there is a risk of exploitation or potential harm to the client;

(14) embracing, massaging, cuddling, caressing, or performing any other act of physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(15) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(16) failing to exercise professional discretion and impartial judgement required for the performance of professional activities, duties and functions;

(17) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(18) exploiting a client or former client for personal gain;

(19) exploiting a person who has a personal relationship with a client for personal gain;

(20) failing to maintain client records including records of assessment, treatment, progress notes and billing information for a period of not less than ten years from the documented termination of services to the client;

(21) failing to provide client records in a reasonable time upon written request of the client, or legal guardian;

(22) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client activities or records;

(23) failing to protect the confidences of other persons named or contained in the client records; and

(24) failing to abide by the provisions of the Code of Ethics of the National Association of Social Workers (NASW) as approved by the NASW 1996 Delegate Assembly and revised by the 1999 NASW Delegate Assembly, which is adopted and incorporated by reference.

#### **R156-60a-601. Duties and Responsibilities of a LCSW**

**Supervisor.**

The duties and responsibilities of a LCSW supervisor, are further defined, clarified or established as follows:

- (1) be professionally responsible for the acts and practices of the supervisee;
- (2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee or is not compromised;
- (3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession;
- (4) provide periodic review of the client records assigned to the supervisee;
- (5) comply with the confidentiality requirements of Section 58-60-114;
- (6) monitor the performance of the supervisee for compliance with laws, rules, standards and ethics applicable to the practice of social work;
- (7) supervise only a supervisee who is an employee of a public or private mental health agency;
- (8) supervise not more than three individuals who are lawfully engaged in mental health therapy training, unless otherwise approved by the board;
- (9) not begin supervision of a CSW until having met the requirements of Section R156-60a-302e; and
- (10) in accordance with Subsections 58-60-205(1)(e) and (f), submit to the division on forms made available by the division:
  - (a) documentation of the training hours completed by the CSW; and
  - (b) an evaluation of the CSW, with respect to the quality of the work performed and the competency of the CSW to practice clinical social work and mental health therapy.

**R156-60a-602. Supervision - Scope of Practice - SSW.**

In accordance with Subsections 58-60-202(4) and (5), supervision and scope of practice of a SSW is further defined, clarified and established as follows:

- (1) supervision of an SSW by a licensed mental health therapist is only required where mental health therapy services are provided; and
- (2) the scope of practice of the SSW shall be in accordance with a written social work job description approved by the licensed mental health therapy supervisor, except that the SSW may not engage in the supervised or unsupervised practice of mental health therapy.

**KEY: licensing, social workers****September 1, 2004****Notice of Continuation August 31, 2009****58-60-201****58-1-106(1)(a)****58-1-202(1)(a)**



**R156. Commerce, Occupational and Professional Licensing.  
R156-60b. Marriage and Family Therapist Licensing Act Rule.**

**R156-60b-101. Title.**

This rule is known as the "Marriage and Family Therapist Licensing Act Rule".

**R156-60b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "Face to face supervision" as described in Subsection R156-60b-302a(1)(b)(vii) includes both individual and group supervision.

(3) "Group supervision" means supervision between the supervisor and no more than three supervisees, unless preapproved by the Board.

(4) "Individual supervision" means supervision between the supervisor and one or two supervisees in accordance with standards set forth in Subsection R156-60b-302b(1)(d).

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60b-502.

**R156-60b-103. Authority - Purpose.**

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 60, Part 3.

**R156-60b-104. Organization - Relationship to R156-1.**

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

**R156-60b-302a. Qualifications for Licensure - Education Requirements.**

(1) Pursuant to Subsection 58-60-305(1)(d), an applicant applying for licensure as a marriage and family therapist after July 1, 2002 shall:

(a) produce certified transcripts evidencing completion of a master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy at the time the applicant obtained the education; or

(b) produce certified transcripts evidencing completion of a master's degree in marriage and family therapy from a program accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education which includes courses in the following areas:

(i) six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;

(ii) nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy, including Diagnostic Statistical Manual (DSM);

(iii) six semester hours/nine quarter hours of course work in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(iv) three semester hours/four and one-half quarter hours in professional ethics;

(v) three semester hours/four and one-half quarter hours in research methodology and data analysis;

(vi) three semester hours/four and one-half quarter hours in electives in marriage and family therapy; and

(vii) a clinical practicum of not less than 600 hours which includes not less than 100 hours of face to face supervision and not less than 500 hours of supervised clinical practice of which not less than 250 hours shall be with couples or families who are

physically present in the therapy room.

(2) Pursuant to Subsection 58-60-305.5(2), an applicant applying for licensure as a marriage and family therapist before July 1, 2002 shall meet the following requirements:

(a) produce certified transcripts evidencing completion of a master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy; or

(b) produce certified transcripts evidencing an earned doctorate or master's degree in a field of education emphasizing human behavioral studies and skill in therapy or counseling which shall:

(i) be from an institution which is accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education; and

(ii) include successful completion of the following graduate level course work and a clinical practicum:

(A) six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;

(B) nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy, including DSM;

(C) six semester hours/nine quarter hours of course work in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(D) three semester hours/four and one-half quarter hours in professional ethics;

(E) three semester hours/four and one-half quarter hours in research methodology and data analysis;

(F) three semester hours/four and one-half quarter hours in electives in marriage and family therapy; and

(G) a clinical practicum of not less than 600 hours which includes not less than 100 hours of face to face supervision and not less than 500 hours of supervised clinical practice of which not less than 250 hours shall be with couples or families who are physically present in the therapy room; or

(c) produce certified transcripts evidencing an earned doctorate or master's degree in a field of religious study with a documented emphasis in marriage and family therapy and which meets the requirements set forth under Subsections (2)(b)(ii)(A) through (G).

**R156-60b-302b. Qualifications for Licensure - Experience Requirements.**

(1) Pursuant to Subsections 58-60-305(1)(e) and (f), an applicant shall complete marriage and family therapy and mental health therapy training consisting of a minimum of 4,000 hours of supervised training which shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy;

(c) be completed under the supervision of a marriage and family therapist supervisor meeting the requirements under Section 58-60-307;

(d) include at least 100 hours of clinical face to face supervision spread uniformly throughout the training period;

(e) in accordance with Subsection 58-60-305(1)(f), include a minimum of 1000 hours of mental health therapy of which at least 500 hours are in couple or family therapy with two or more clients present; and

(f) hours completed in a group therapy session may count only if the supervisee functions as the primary therapist.

(2) An applicant for licensure as a marriage and family therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the marriage and family therapy training requirements outside the state, may receive credit for that training completed

outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-305(1)(e) and (f), and Subsection R156-60b-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this subsection.

**R156-60b-302c. Qualifications for Licensure - Examination Requirements.**

Pursuant to the provisions of Subsection 58-60-305(1)(g), an applicant for licensure as a marriage and family therapist must pass the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards.

**R156-60b-302d. Qualifications to be a Marriage and Family Therapist Training Supervisor.**

Pursuant to the provisions of Subsection 58-60-307(1), to be qualified as a marriage and family therapist supervisor for training required under Subsections 58-60-305(1)(e) and (f), an individual shall:

- (1) be licensed as a marriage and family therapist in good standing for not less than two years;
- (2) be currently licensed as a marriage and family therapist in the state in which the training is being performed; and
- (3) on or after January 1, 2009, meet one of the following three options:
  - (a) be currently approved by AAMFT as a marriage and family therapist supervisor;
  - (b) have successfully completed a supervision course in a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited marriage and family therapy (MFT) program at an accredited university; or
  - (c) have successfully completed 20 clock hours of instruction sponsored by AAMFT or the Utah Association for Marriage and Family Therapists (UAMFT) as follows:
    - (A) four hours of review of models of MFT and supervision;
    - (B) eight hours of MFT supervision processes and practice;
    - (C) four hours of research on effective outcomes and processes of supervision; and
    - (D) four hours of AAMFT Code of Ethics, state rules and case studies related to MFT supervision.

**R156-60b-302e. Duties and Responsibilities of a Supervisor of Marriage and Family Therapist and Mental Health Therapy Training.**

The duties and responsibilities of a marriage and family therapist supervisor are further defined, clarified or established to provide the supervisor shall:

- (1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;
- (2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;
- (3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;
- (4) provide periodic review of the client records assigned to the supervisee;
- (5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of marriage and family therapy and report violations to the division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised marriage and family therapist training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of marriage and family therapy and mental health therapy;

(9) complete four hours of the required 40 hours of continuing professional education directly related to marriage and family therapy supervisor training in each two year continuing professional education period established;

(10) supervise not more than three supervisees at any given time unless approved by the board and division;

(11) provide at least one hour of face to face supervision for each ten hours of client contact by the supervisee.

**R156-60b-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308.

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

**R156-60b-304. Continuing Education.**

(1) In accordance with Section 58-60-105, there is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 3, as a marriage and family therapist.

(2) During each two year period commencing September 30th of each even numbered year, a marriage and family therapist shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice with at least 15 hours thereof being directly related to marriage and family therapy.

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

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a mental health therapist;

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

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

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

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

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

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

(b) a maximum of 14 hours per two year period may be recognized for teaching in a college or university, teaching

qualified continuing professional education courses in the field of mental health therapy, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification;

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist;

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years; however, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

#### **R156-60b-306. License Reinstatement - Requirements.**

An applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) upon request, meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a marriage and family therapist and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4000 hours of marriage and family therapy and mental health therapy training as a marriage and family therapist-temporary;

(3) pass the Examination of Marital and Family Therapy of the American Association for Marriage and Family Therapists if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a marriage and family therapist; and

(4) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a marriage and family therapist.

#### **R156-60b-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60b-302d and R156-60b-302e;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60b-302b;

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a

former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and that individual;

(11) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failure to cooperate with the Division during an investigation; and

(19) failure to abide by provisions 1 to 8.8 of the Code of Ethics of the American Association for Marriage and Family Therapy (AAMFT) as adopted by the AAMFT effective July 1, 2001, which is adopted and incorporated by reference.

#### **KEY: licensing, therapists, marriage and family therapist**

**December 24, 2007**

**Notice of Continuation August 31, 2009**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**58-60-301**

**R156. Commerce, Occupational and Professional Licensing.  
R156-60c. Professional Counselor Licensing Act Rule.  
R156-60c-101. Title.**

This rule is known as the "Professional Counselor Licensing Act Rule".

**R156-60c-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

- (1) "Internship" means:
  - (a) 900 clock hours of supervised counseling experience of which 360 hours must be in the provision of mental health therapy:
    - (i) in a public or private agency engaged in the clinical practice of mental health therapy as defined in Subsection 58-60-102(7); and
    - (ii) from a supervisor licensed as a mental health therapist as defined in Section R156-60c-401.
  - (2) "Practicum" means a supervised counseling experience in an appropriate setting of at least three semester or four and 1/2 quarter hours duration for academic credit.
  - (3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60c-502.

**R156-60c-103. Authority - Purpose.**

This rule is adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 60, Part 4.

**R156-60c-104. Organization - Relationship to Rule R156-1.**

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

**R156-60c-302a. Qualifications for Licensure - Education Requirements.**

(1) Pursuant to Subsection 58-60-405(1)(d)(i), the degree and educational program which prepares one to competently engage in mental health therapy is established and clarified to be a masters or doctorate degree in Mental Health Counseling or an equivalent degree from an institution accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or the Council for Higher Education Accreditation of the American Council on Education (CHEA), at the time the applicant obtained the education, which includes a minimum of 60 semester (90 quarter) hours of graduate studies and includes the specific course requirements as specified in Subsection (2).

(2) The core curriculum in Subsection 58-60-405(1)(d) shall consist of the following courses:

- (a) a minimum of two semester or three quarter hours shall be in ethical standards, issues, behavior and decision-making based on the standards of the American Counseling Association (ACA), American Mental Health Counselors Association (AMHCA), or National Board of Certified Counselors (NBCC);
- (b) a minimum of two semester or three quarter hours shall be in professional roles and functions of a mental health counselor, trends and history, professional preparation standards and credentialing;
- (c) a minimum of two semester or three quarter hours shall be in individual theory and shall include several of the predominant theories, which may include humanistic, behavioral or cognitive theories of individual therapy;
- (d) a minimum of two semester or three quarter hours shall be in group theory and shall include understanding of group development and multiple theories regarding group therapy;
- (e) a minimum of three semester or four and 1/2 quarter hours shall be in human growth and development across the life span, which may include:

- (i) physical, social and psychosocial development;
  - (ii) personality development;
  - (iii) learning theory and cognitive development;
  - (iv) emotional development;
  - (f) a minimum of three semester or four and 1/2 quarter hours shall be in career development;
  - (g) a minimum of three semester or four and 1/2 quarter hours shall be in cultural foundations. Examples are:
    - (i) human diversity;
    - (ii) multicultural issues and trends;
    - (iii) gender issues;
    - (iv) exceptionality;
    - (v) disabilities; and
    - (vi) aging;
  - (h) a minimum of six semester or nine quarter hours shall be in the application of individual and group therapy and other therapeutic methods and interventions. Examples are:
    - (i) building, maintaining and terminating relationships;
    - (ii) solution-focused and brief therapy;
    - (iii) crisis intervention;
    - (iv) prevention of mental illness;
    - (v) treatment of specific syndromes;
    - (vi) case conceptualization; and
    - (vii) referral, supportive and follow-up services;
  - (i) a minimum of two semester or three quarter hours shall be in psychopathology and multi-axial diagnosis DSM classification;
  - (j) a minimum of two semester or three quarter hours shall be in dysfunctional behaviors. Examples are:
    - (i) addictions;
    - (ii) substance abuse;
    - (iii) cognitive dysfunction;
    - (iv) sexual dysfunction; and
    - (v) abuse and violence;
  - (k) a minimum of two semester or three quarter hours shall be in a foundation course in test and measurement theory including the theory of test development, variety of test types and introduction to several tests used in mental health assessment;
  - (l) a minimum of two semester or three quarter hours shall be in an advanced course in assessment of mental status including the assessment of DSM personality diagnosis;
  - (m) a minimum of three semester or four and 1/2 quarter hours shall be in research and evaluation. This shall not include a thesis, dissertation, or project, but may include:
    - (i) statistics;
    - (ii) research methods, qualitative and quantitative;
    - (iii) use and interpretation of research data;
    - (iv) evaluation of client change; and
    - (v) program evaluation;
  - (n) a minimum of three semester or four and 1/2 quarter hours of practicum as defined in Subsection R156-60c-102(2);
  - (o) a minimum of six semester or nine quarter hours of internship as defined in Subsection R156-60c-102(1); and
  - (p) a minimum of 17 semester or 25.5 quarter hours of course work in the behavioral sciences. No more than six semester or nine quarter hours of credit for thesis, dissertation or project hours shall be counted toward the required core curriculum hours in this subsection.
- (3) The supplemental course work shall consist of formal graduate level work meeting the requirements of Subsections (1) and (2) in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the board.
- (4) The following degrees do not prepare a person to competently engage in mental health therapy: Career Counseling, College Counseling, Community Counseling, Gerontological Counseling, School Counseling, Student Affairs, Rehabilitation Counseling, Music Therapy, Art Therapy, or

Dance Therapy. Applicants who have one of these degrees or comparable degrees and who complete the classes which have been included in the Mental Health Counseling degree and as outlined in Subsection (1) and (2), may request the Division and the Board to consider their education as equivalent to the requirements for licensure. Upon completion of this substantially equivalent education requirement, the applicant may be granted a license as a certified professional counselor intern under Subsection 58-60-405(2).

(5) An applicant who has met the degree requirements under Subsection (1) or (4) which prepares one to competently engage in mental health therapy, but who is deficient in one or more, but no more than three of the courses provided in Subsection (2), may be granted a temporary professional counselor license as a certified professional counselor extern under Section 58-60-117. Furthermore, the deficient courses may not include ethics, psychopathology, advanced mental status, practicum, or internship.

**R156-60c-302b. Qualifications for Licensure - Experience Requirements.**

(1) The professional counselor and mental health therapy training qualifying an applicant for licensure as a professional counselor under Subsections 58-60-405(1)(e) and (f) shall:

- (a) be completed in not less than two years;
- (b) be completed while the applicant is an employee, as defined in Subsection R156-60-102(3), of a public or private agency engaged in mental health therapy under the supervision of a qualified professional counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist; and
- (c) be completed under a program of supervision by a mental health therapist meeting the requirements under Sections R156-60c-401 and R156-60c-402.

(2) An applicant for licensure as a professional counselor, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the professional counselor and mental health therapy training requirements under Subsection (1) outside the state may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-405(1)(e) and (f), and Subsections R156-60c-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this Subsection.

**R156-60c-302c. Qualifications for Licensure - Examination Requirements.**

(1) Under Subsection 58-60-405(1)(g), an applicant for licensure as a professional counselor must pass the following examinations:

- (a) the Utah Professional Counselor Law, Rules and Ethics Examination;
- (b) the National Counseling Examination of the National Board for Certified Counselors; and
- (c) the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors.

**R156-60c-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308a.

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

**R156-60c-304. Continuing Education.**

(1) There is hereby established a continuing education requirement for all individuals licensed under Title 58, Chapter 60, Part 4, as a professional counselor and certified professional counselor intern.

(2) During each two year period commencing September 30th of each even numbered year, a professional counselor or certified professional counselor intern shall be required to complete not less than 40 hours of continuing education directly related to the licensee's professional practice of which a minimum of six hours must be completed in ethics/law.

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

- (4) Continuing education under this section shall:
- (a) be relevant to the licensee's professional practice;
  - (b) be prepared and presented by individuals who are qualified by education, training and experience to provide continuing education regarding mental health therapy professional counseling; and
  - (c) have a method of verification of attendance and completion.

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

- (a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;
- (b) a maximum of 10 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing education courses in the field of mental health therapy professional counseling, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification; and
- (c) a maximum of six hours per two year period may be recognized for clinical readings or internet-based courses directly related to practice as a mental health therapist professional counselor.

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

(7) A licensee who documents he is engaged in full-time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements established under this Section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

**R156-60c-306. License Reinstatement - Requirements.**

In addition to the requirements established in Section R156-1-308e, an applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) if deemed necessary, meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a professional counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of professional counselor and mental

health therapy training as a professional counselor-temporary;

(3) pass the Utah Professional Counselor Law, Rules and Ethics Examination;

(4) pass the National Counseling Examination of the National Board for Certified Counselors if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor;

(5) pass the National Clinical Mental Health Counseling Examination if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor; and

(6) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a professional counselor.

**R156-60c-401. Requirements to be Qualified as a Professional Counselor Training Supervisor and Mental Health Therapist Training Supervisor.**

In accordance with Subsections 58-60-405(1)(e) and (f), in order for an individual to be qualified as a professional counselor training supervisor or mental health therapist trainer, the individual shall have the following qualifications:

(1) be currently licensed in good standing in a profession set forth for a supervisor under Subsection 58-60-405(1)(e) in the state in which the supervised training is being performed;

(2) have engaged in lawful practice of mental health therapy as a professional counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist for not less than 4,000 hours in a period of not less than two years prior to beginning supervision activities; and

(3) be employed by or have a contract with the mental health agency that employs the supervisee, but not be employed by the supervisee, nor be employed by an agency owned in total or in part by the supervisee, or in which the supervisee has any controlling interest.

**R156-60c-402. Duties and Responsibilities of a Supervisor of Professional Counselor and Mental Health Therapy Training.**

The duties and responsibilities of a licensee providing supervision to an individual completing supervised professional counselor and mental health therapy training requirements for licensure as a professional counselor are to:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of professional counseling and report violations to the division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised professional counselor and mental health therapy training, including the supervisor's evaluation of the supervisee's competence in the practice of professional counseling and mental health therapy;

(9) supervise not more than three supervisees at any given time unless approved by the board and division; and

(10) assure each supervisee is licensed as a certified professional counselor intern prior to beginning the supervised training of the supervisee as required under Subsection 58-60-405(1)(e) and (f).

**R156-60c-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision duties of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60c-401 and R156-60c-402;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60c-302b(3) and R156-60c-402(7);

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and that individual;

(11) engaging in physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) using a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failing to cooperate with the Division during an investigation; and

(19) failing to abide by the provisions of the American Counseling Association's Code of Ethics, 2005, which is adopted and incorporated by reference.

**KEY: licensing, counselors, mental health, professional counselors**

**August 11, 2009**

**58-60-401**

**Notice of Continuation March 14, 2005**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-60d. Substance Abuse Counselor Act Rule.**  
**R156-60d-101. Title.**

This rule is known as the "Substance Abuse Counselor Act Rule."

**R156-60d-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60 or this rule:

(1) "Accredited institution", as used in Subsections 58-60-506(2)(a)(i), (2)(b)(i), (2)(c)(i), (2)(d)(i), (3)(a)(i), (3)(b)(i), (3)(c) and (3)(d), means an educational institution identified in the "Accredited Institution of Postsecondary Education", published for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education at the same time the applicant obtained the education.

(2) "ASAM" means the American Society of Addiction Medicine Patient Placement Criteria.

(3) "DSM-IV" means the Diagnostic Statistical Manual of Mental Health Disorders published by the American Psychiatric Association.

(4) "Formal classroom education", as used in Subsection R156-60d-302a, means college or university coursework through an accredited institution.

(5) "General supervision" means that the supervisor provides consultation with the supervisee by personal face to face contact, or direct voice contact by telephone or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.

(6) "ICRC/AODA, Inc." means the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc.

(7) "Initial Assessment" means the procedure of gathering psycho-social information, which may include the application of the Addiction Severity Index, in order to recommend a level of treatment and to assist the mental health therapist supervisor in the information collection process and may include a referral to an appropriate treatment program.

(8) "NAADAC" means the National Association of Alcohol and Drug Abuse Counselors.

(9) "Qualified continuing education" means continuing education that meets the standards set forth in Section R156-60d-304.

(10) "SASSI" means Substance Abuse Subtle Screening Inventory.

(11) "Screening", as used in Subsection 58-60-502(6)(a), means a brief interview conducted in person or by telephone to determine if there is a potential substance abuse problem. If a potential problem is identified, the screening may include a referral for an Initial Assessment or a Substance Abuse Treatment Evaluation. The screening may also include a preliminary ASAM level recommendation in order to expedite the subsequent assessment and evaluation process. Screening instruments such as the SASSI may be included in the screening process.

(12) "Substance Abuse Treatment Evaluation" means the process used to interpret information gathered from an initial assessment, other instruments as needed, and a face to face interview by a licensed mental health therapist in order to determine if an individual meets the DSM-IV criteria for substance abuse or dependence and is in need of treatment. If the need for treatment is determined, the Substance Abuse Treatment Evaluation process includes the determination of a DSM-IV diagnosis and the determination of an individualized treatment plan.

(13) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60d-502.

**R156-60d-103. Authority - Purpose.**

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 60, Part 5.

**R156-60d-104. Organization - Relationship to Rule R156-1.**

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

**R156-60d-302a. Qualifications for Licensure - Education Requirements.**

The 300 hours of addiction counseling specific education set forth in Subsection 58-60-502(9) is defined as formal classroom education emphasizing alcohol and other drug addictions related to the practice of substance abuse counseling consisting of:

(1) a minimum of 18 hours in professional ethics and responsibilities; and

(2) a minimum of ten clock hours of training in each of the areas of practice as defined in Subsection 58-60-502(7).

**R156-60d-302b. Qualifications for Licensure - Experience Requirements.**

(1) In accordance with Subsections 58-60-506(2)(a)(iii)(A), (2)(b)(iii)(A), (2)(c)(ii)(A), (2)(d)(ii)(A), the supervised qualifying experience shall:

(a) be supervised experience providing substance abuse counseling services as defined in Subsection 58-60-502(7);

(b) be completed in an approved agency as defined in Subsection 58-60-502(1);

(c) be supervised at a ratio of one hour of face-to-face direct supervision for every 40 hours of substance abuse counseling services provided by a supervisor who shall:

(i) be licensed as a substance abuse counselor with at least one year of experience as a licensed substance abuse counselor; or

(ii) be a licensed mental health therapist qualified by education and experience to treat substance abuse.

(d) be completed only when a licensed substance abuse counselor or mental health therapist is at the site where the supervised experience is occurring.

(2) In accordance with Subsection 58-60-511(1), hours of experience required by Section 58-60-506 that are earned after January 1, 2008 shall be earned while the person earning the hours is licensed as a certified substance abuse counselor, certified substance abuse counselor intern or certified substance abuse counselor extern.

**R156-60d-302c. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsection 58-60-506(1)(e), the examination required for licensure is one of the following:

(1) the written NAADAC National Certification Exam Levels I, II, or MAC with a minimum criterion score set by NAADAC; or

(2) before January 1, 2010, the written International Certification Examination for Alcohol and Drug Counselors of the ICRC/AODA, Inc., with a minimum criterion score as set by ICRC/AODA, Inc.

**R156-60d-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 60, Part 5 is established by rule in Section R156-1-308a.

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

**R156-60d-304. Continuing Education for Licensed**



### **Substance Abuse Counselors and Certified Substance Abuse Counselors.**

(1) In accordance with Section 58-60-105, there is created a continuing education requirement as a condition for renewal or reinstatement of licensed substance abuse counselors and certified substance abuse counselors licenses issued under Title 58, Chapter 60, Part 5.

(2) Continuing education shall consist of 40 hours of qualified continuing professional education directly related to the licensee's professional practice in each preceding two year period of licensure or expiration of licensure. At least six of the 40 required hours must be in the area of professional ethics and responsibilities.

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

(4) The standards for qualified continuing professional education shall include:

(a) a clear statement of purpose and defined objective for the educational program directly related to the practice of a substance abuse counselor;

(b) documented relevance to the licensee's professional practice;

(c) a competent, well-organized, and sequential presentation consistent with the stated purpose and objective of the program;

(d) preparation and presentation by individuals who are qualified by education, training, and experience; and

(e) a competent method of registration of individuals who actually completed the professional education program and records of that registration completion available for review.

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

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, conferences, workshops, institutes, or in services;

(b) a maximum of ten hours per two year period may be recognized for teaching in a college or university, or teaching qualified continuing professional education courses in the field of substance abuse; and

(c) a maximum of six hours per two year period may be recognized for clinical readings or internet-based courses directly related to practice as a substance abuse counselor.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to five years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

### **R156-60d-307. License Reinstatement - Requirements.**

In accordance with Subsection R156-1-308g, an applicant for reinstatement of a license after two years following expiration of that license shall demonstrate competency by:

(1) meeting with the board upon request for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a substance abuse counselor and to make a determination of any additional education, experience or

examination requirements which will be required before reinstatement;

(2) passing the written International Certification Examination for Alcohol and Drug Counselors of the ICRC/AODA, Inc. if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a substance abuse counselor; and

(3) completing at least 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a substance abuse counselor.

### **R156-60d-502. Unprofessional Conduct.**

"Unprofessional conduct" includes any violation of any provision of the "Ethical Standards of Alcoholism and Drug Abuse Counselors" established by the NAADAC, December 8, 2004 edition, which is hereby incorporated by reference.

### **R156-60d-601. Scope of Practice.**

The scope of practice of a licensed substance abuse counselor, certified substance abuse counselor, certified substance abuse counselor intern and certified substance counselor extern as used in Subsection 58-60-502(7) and the duties of the supervisor of a licensed substance abuse counselor, certified substance abuse counselor, certified substance abuse counselor intern and certified substance abuse counselor extern as used in Section 58-60-508 are further defined and clarified as follows:

(1) A licensed substance abuse counselor, certified substance abuse counselor, certified substance abuse counselor intern and certified substance abuse counselor extern may perform a Screening as defined in R156-60d-102(11), may perform an Initial Assessment as defined in R156-60d-102(7), and may assist in the evaluation process by meeting with the client to gather parts of the psycho-social information as directed by the supervising licensed mental health therapist. However, the licensed mental health therapist supervisor must see the individual face to face to conduct the Substance Abuse Treatment Evaluation as defined in R156-60d-102(12).

(2) A licensed substance abuse counselor, certified substance abuse counselor, certified substance abuse counselor intern and certified abuse counselor extern may also participate as part of the multi-disciplinary team in the development of the treatment plan, but may not independently diagnose and develop treatment plans, which are the responsibility of the licensed mental health therapist supervisor.

### **KEY: licensing, substance abuse counselors**

**August 24, 2009**

**Notice of Continuation April 10, 2006**

**58-60-501**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.  
R156-67. Utah Medical Practice Act Rule.**

**R156-67-101. Title.**

This rule shall be known as the "Utah Medical Practice Act Rule".

**R156-67-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 67, as used in Title 58, Chapters 1 and 67 or this rule:

(1) "ACCME" means the Accreditation Council for Continuing Medical Education.

(2) "Alternate medical practices", as used in Section R156-67-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety, or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(3) "AMA" means the American Medical Association.

(4) "FLEX" means the Federation of State Medical Boards Licensing Examination.

(5) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(6) "FSMB" means the Federation of State Medical Boards.

(7) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(8) "LMCC" means the Licentiate of the Medical Council of Canada.

(9) "NBME" means the National Board of Medical Examiners.

(10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 67 is further defined in accordance with Subsection 58-1-203(1)(e), in Section R156-67-502.

(11) "USMLE" means the United States Medical Licensing Examination.

**R156-67-103. 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 67.

**R156-67-104. Organization - Relationship to Rule R156-1.**

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

**R156-67-302a. Qualifications for Licensure - Practitioner Data Banks.**

In accordance with Subsections 58-67-302(1)(a)(i) and 58-1-401(2), applicants applying for licensure under Subsections 58-67-302(1) and (2) shall submit the Federation Credentials Verification Service (FCVS) form.

**R156-67-302d. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsection 58-67-302(1)(g), the

required licensing examination sequence is the following:

(a) the FLEX components I and II on which the applicant shall have achieved a score of not less than 75 on each component part;

(b) the NBME examination parts I, II, and III on which the applicant shall achieve a passing score of not less than 75 on each part;

(c) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(d) the LMCC examination, Parts 1 and 2;

(e) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(f) the FLEX component 1 and the USMLE step 3; or

(g) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(h) In accordance with Subsection 58-67-302.5(1)(g), all applicants who are foreign medical graduates shall pass the FMGEMS unless they pass the USMLE steps 1 and 2.

(2) In accordance with Subsections 58-67-302(1)(g) and (2)(e), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years; or

(c) has had a substance abuse disorder or physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

**R156-67-302e. Qualifications for Licensure - Requirements for Admission to the Examinations.**

(1) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME.

(2) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsections 58-67-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component 1, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years if enrolled in a medical doctorate program and ten years if enrolled in a medical doctorate/doctorate of philosophy program; and

(d) have not failed a combination of USMLE step 3, FLEX component 2 and NBME part III, three times.

(3) Candidates who fail a combination of USMLE step 3, FLEX component 2 and NBME part III three times must successfully complete additional education as required by the board before being allowed to sit for USMLE step 3.

**R156-67-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 67 is established by rule in Section R156-1-308a.

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

**R156-67-304. Qualified Continuing Professional Education.**

(1) The qualified continuing professional education set forth in Subsection 58-67-304(1) shall consist of 40 hours in each preceding two year licensure cycle.

(a) A minimum of 34 hours shall be in category 1 offerings as established by the ACCME.

(b) A maximum of six hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Participation in an ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

(2) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;  
 (b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

#### **R156-67-306. Exemptions from Licensure.**

In accordance with Subsection 58-1-307(1), exemptions from licensure as a physician and surgeon include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any physician appointed to a graduate medical education or training program which is not accredited by the ACGME, for which exemption from licensure is requested under the provisions of Subsection 58-1-307(1)(c) shall apply for registration with and receive approval of the division and board as a condition precedent to that individual engaging in any activity included in the practice of medicine;

(3) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent an approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test; and

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health;

(4) non-licensed public safety individuals not having emergency medical technician (EMT) certification who are designated by appropriate city, county, or state officials as responders may be issued and allowed to carry the Mark I automatic injector antidote kits and may administer the antidote to himself or his designated first response "buddy". Prior to

being issued the kits, the designated responders must successfully complete a course on the use of auto-injectors. The kits may be issued to the responder only by his employing agency and procured through the Utah Department of Health.

#### **R156-67-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the

licensee's education or training as a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) failing to keep the division informed of a current address and telephone number;

(14) engaging in alternate medical practice except as provided in Section R156-67-603; and

(15) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

**R156-67-602. Medical Records.**

In accordance with Subsection 58-67-803(1), medical records shall be maintained to be consistent with the following:

- (1) all applicable laws, regulations, and rules; and
- (2) the "AMA Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

**R156-67-603. Alternate Medical Practice.**

(1) A licensed physician and surgeon may engage in alternate medical practices as defined in Subsection R156-67-102(2) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed physician and surgeon:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

**KEY: physicians, licensing**

**August 11, 2009**

**Notice of Continuation June 26, 2006**

**58-67-101**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.  
R156-68. Utah Osteopathic Medical Practice Act Rule.  
R156-68-101. Title.**

This rule shall be known as the "Utah Osteopathic Medical Practice Act Rule."

**R156-68-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 68, as used in Title 58, Chapters 1 and 68 or this rule:

- (1) "AAPS" means American Association of Physician Specialists.
- (2) "ABMS" means American Board of Medical Specialties.
- (3) "ACCME" means Accreditation Council for Continuing Medical Education.
- (4) "Alternate medical practices" as used in Section R156-68-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:
  - (a) not generally recognized as standard in the practice of medicine;
  - (b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and
  - (c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.
- (5) "AMA" means the American Medical Association.
- (6) "AOA" means American Osteopathic Association.
- (7) "COMLEX" means the Comprehensive Osteopathic Medical Licensing Examination.
- (8) "FLEX" means the Federation of State Medical Boards Licensure Examination.
- (9) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.
- (10) "FSMB" means the Federation of State Medical Boards.
- (11) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.
- (12) "LMCC" means the Licentiate of the Medical Council of Canada.
- (13) "NBME" means the National Board of Medical Examiners.
- (14) "NBOME" means the National Board of Osteopathic Medical Examiners.
- (15) "NPDB" means the National Practitioner Data Bank.
- (16) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 68, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-68-502.
- (17) "USMLE" means the United States Medical Licensing Examination.

**R156-68-103. 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 68.

**R156-68-104. 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.

**R156-68-302a. Qualifications for Licensure - Application Requirements.**

In accordance with Subsections 58-68-301(1)(a)(i), submissions by the applicant of information maintained by practitioner data banks shall include the following:

- (1) American Osteopathic Association Profile or American Medical Association Profile;
- (2) Federation of State Medical Boards Disciplinary Inquiry form; and
- (3) National Practitioner Data Bank Report of Action.

**R156-68-302b. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsection 58-68-302(1)(g), the required licensing examination sequence is the following:

- (a) the NBOME parts I, II and III;
  - (b) the NBOME parts I, II and the NBOME COMPLEX Level III;
  - (c) the NBOME part I and the NBOME COMPLEX Level II and III;
  - (d) the NBOME COMPLEX Level I, II and III;
  - (e) the FLEX components I and II on which the applicant shall achieve a score of not less than 75 on each component;
  - (f) the NBME examination parts I, II and III on which the applicant shall achieve a score of not less than 75 on each part;
  - (g) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;
  - (h) the LMCC examination, Parts 1 and 2;
  - (i) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;
  - (j) the FLEX component 1 and the USMLE step 3; or
  - (k) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.
- (2) In accordance with Subsections 58-68-302(1)(g), (2)(c) and (3)(d), an applicant may be required to take the SPEX examination if the applicant:
- (a) has not practiced in the past five years;
  - (b) has had disciplinary action within the past five years;
- or
- (c) has had a substance use disorder, physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.
- (3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.
- (4) In accordance with Subsection 58-68-302(2)(c), the medical specialty certification shall be current certification in an AOA, ABMS, or AAPS member specialty board.

**R156-68-302c. Qualifications for Licensure - Requirements for Admission to the Examinations.**

- (1) Admission to the NBOME examination shall be in accordance with policies and procedures of the NBOME. The division and the board have no responsibility for or ability to facilitate an individual's admission to the NBOME examination.
- (2) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME. The division and the board have no responsibility for or ability to facilitate an individual's admission to steps 1 and 2 of the USMLE.
- (3) Requirements for admission to the USMLE step 3 are:
  - (a) completion of the education requirements as set forth in Subsection 58-68-302(1)(d) and (e);
  - (b) passing scores on USMLE steps 1 and 2, or the FLEX component I, or the NBME parts I and II;
  - (c) have passed the first USMLE step taken, either 1 or 2, within seven years; and
  - (d) have not failed a combination of USMLE step 3, FLEX component II and NBME part III, three times.

(4) Candidates who fail a combination of USMLE step 3, FLEX component II and NBME part III three times must successfully complete additional education as required by the board before being allowed to retake the USMLE step 3.

**R156-68-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 68, is established by rule in Section R156-1-308a.

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

**R156-68-304. Qualified Continuing Professional Education.**

(1) The qualified continuing professional education set forth in Subsection 58-68-304(1) shall consist of 40 hours in each preceding two year licensure cycle.

(a) A minimum of 34 hours shall be in category 1 offerings as established by the AOA or ACCME.

(b) A maximum of 6 hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Participation in an AOA or ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

(2) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

**R156-68-306. Exemptions From Licensure.**

In accordance with Subsection 58-1-307(1), exemptions from licensure as an osteopathic physician include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any physician appointed to a graduate medical education or training program which is not accredited by the AOA or ACGME, for which exemption from licensure is requested under the provisions of Subsection 58-1-307(1)(c), shall apply for registration with and receive approval of the division and board as a condition precedent to that individual engaging in any activity included in the practice of osteopathic medicine;

(3) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of osteopathic medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S.

Department of Health, to the extent approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test; and

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health.

(4) non-licensed public officials not having emergency medical technician (EMT) certification who are designated by appropriate county officials as first responders may be issued and allowed to carry the Mark I automatic antidote injector kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the certified first responders would successfully complete the Army/FEMA course on the "Use of Auto-Injectors by Civilian Emergency Medical Personnel". The kits would be issued to the responder only by his employing government agency and procured through the Utah Division of Comprehensive Emergency Management. No other individuals, whether licensed or not, shall prescribe or issue these antidote kits.

**R156-68-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) the prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing, or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly, prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(14) unless permitted by law and when it is prescribed, dispensed, or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations, or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by osteopathic physicians licensed under the Utah Osteopathic

**Medical Practice Act;**

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon or osteopathic physician who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Osteopathic Board of Radiology or the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician qualified under this subsection and a timely written report is prepared by the interpreting physician in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 68, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as an osteopathic physician;

(11) failing of a licensee under Title 58, Chapter 68, without just cause to comply with the terms of any written agreement in which the licensee's education or training as an osteopathic physician is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) engaging in alternative medical practice except as provided in Section R156-68-603; and

(14) violation of any provision of the American Medical Association's (AMA) "Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

**R156-68-602. Medical Records.**

In accordance with Subsection 58-68-803(1), medical records shall be maintained to be consistent with the following:

- (1) all applicable laws, regulations, and rules; and
- (2) the AMA "Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

**R156-68-603. Alternate Medical Practice.**

(1) A licensed osteopathic physician may engage in alternate medical practices as defined in Subsection R156-68-102(4) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed osteopathic physician:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

**KEY: osteopaths, licensing, osteopathic physician****August 11, 2009****58-1-106(1)(a)****Notice of Continuation March 27, 2008****58-1-202(1)(a)****58-68-101**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-73. Chiropractic Physician Practice Act Rule.**  
**R156-73-101. Title.**

This rule is known as the "Chiropractic Physician Practice Act Rule".

**R156-73-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 73, as used in Title 58, Chapters 1 and 73, or this rule:

(1) "Clinical acupuncture" means the application of mechanical, thermal, manual, and/or electrical stimulation of acupuncture points and meridians, including the insertion of needles, by a chiropractic physician that has demonstrated competency and training by completing a recognized course that is sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b.

(2) "Distance learning" means the acquisition of knowledge and skills through information and instruction encompassing all technologies and other forms of learning at a distance, including internet, audio/visual recordings, mail or other correspondence.

(3) "FCLB" means the Federation of Chiropractic Licensing Boards.

(4) "Indirect supervision" means the supervising licensed chiropractic physician shall be available for immediate voice contact by telephone, radio, or other means and shall provide daily face to face consultation and review of cases at the chiropractic facility for the chiropractic intern, temporarily licensed or unlicensed person being supervised.

(5) "Joint mobilization", as used in Subsection 58-73-601(2)(c)(ii)(B) means passive movements done by another person, applied as a series of stretches or repetitive movements to individual or combinations of joints, not to exceed the end range of motion and stopping short of the articular elastic barrier.

(6) "NBCE" means the National Board of Chiropractic Examiners.

(7) "PACE" means Providers of Approved Continuing Education sponsored by the Federation of Chiropractic Licensing Boards.

(8) "Preceptor" means a licensed chiropractic physician who is a supervisor of interns and externs in the professional practice of chiropractic.

(9) "Preceptorship" means a supervised training program established by a written contract between a chiropractic college or university whose program or institution is accredited by the Council on Chiropractic Education, Inc., and a licensee for the purpose of providing chiropractic training to a student enrolled in the chiropractic college or university while under the supervision of a licensee.

(10) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 73, is further defined in accordance with Subsection 58-1-203(5), in Section R156-73-501.

**R156-73-103. 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 73.

**R156-73-104. 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.

**R156-73-302. Good Moral Character - Disqualifying Convictions.**

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Section 58-73-302 and whether the applicant has been involved in unprofessional

conduct as set forth in Subsection 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Parts 12 and 13, shall disqualify an applicant from becoming licensed; or

(b) a criminal conviction for the following crimes may disqualify an applicant from becoming licensed:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

**R156-73-302a. Qualifications for Licensure - Education Requirements.**

In accordance with Subsection 58-73-302(1)(d), graduation from a chiropractic college or university whose program or institution is accredited by the Council on Chiropractic Education, Inc., is evidence of having satisfactorily completed at least two years of general study in a college or university.

**R156-73-302b. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsection 58-73-302(1)(f)(i), the approved written clinical competency examination is the National Chiropractic Board Part 3 or the Special Purposes Examination for Chiropractic (SPEC) administered by the National Board of Chiropractic Examiners. The passing score shall be established by the National Board of Chiropractic Examiners.

(2) In accordance with Subsection 58-73-302(1)(f)(iii), the approved practical examination is the National Chiropractic Board Part 4 (practical examination) administered by the National Board of Chiropractic Examiners. The passing score shall be established by the National Board of Chiropractic Examiners.

**R156-73-303. Temporary License.**

In accordance with Subsections 58-1-303(1)(a) and 58-73-302(2), an endorsement applicant may be issued a temporary license for a period of not more than six months under the following conditions:

(1) The licensee shall work under the indirect supervision of a chiropractic physician approved by the division.

(2) The supervising chiropractic physician shall:

(a) be available at all times to provide advice, instruction



and consultation;

(b) assume responsibility for all chiropractic activities and services performed by the temporary licensee; and

(c) supervise no more than two persons at any given time.

(3) The temporary license may not be renewed or extended for any purpose.

(4) Any change in supervising chiropractic physician shall be preapproved by the division.

**R156-73-303a. Continuing Education - Renewal Requirement.**

(1) In accordance with Subsection 58-73-303(2), each licensee shall complete 40 hours of continuing education in each preceding two year period of licensure.

(2) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be prorated to the part of that two year period during which the person is licensed.

**R156-73-303b. Continuing Education - Standards.**

(1) The standards for continuing education are as follows:

(a) the content must be relevant to chiropractic practice and consistent with the laws and rules of this state;

(b) the course must be under the sponsorship of or approved by:

(i) a chiropractic college or university whose doctor of chiropractic program is accredited by the Council on Chiropractic Education, Inc.;

(ii) a professional or nonprofit organization or association representing a licensed profession that has open membership and election of officers whose program objectives relate to the practice of chiropractic;

(iii) the licensing agency of Utah or another state; or

(iv) PACE;

(c) learning objectives must be reasonably and clearly stated;

(d) teaching methods must be clearly stated and appropriate;

(e) faculty must be qualified, both in experience and in teaching expertise;

(f) documentation of attendance must be provided;

(g) there shall be no more than four clock hours related to chiropractic practice marketing or practice building;

(h) no more than 10 hours of continuing education, in each two year period of licensure, may be by distance learning.

(2) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of two years after close of the two year period to which the records pertain.

(3) The board may, after review, waive the continuing education requirements for a licensee presenting sufficient evidence of hardship or illness or other reason making it impossible or highly impractical for the licensee to attend or have attended a sufficient number of continuing education classes.

(4) As part of the 40 continuing education hours required every two years, a chiropractic physician, who provides acupuncture services as a part of their practice, shall complete 10 hours of acupuncture related continuing education.

**R156-73-304. Preceptorship - Approved Form of Supervision.**

In accordance with Subsection 58-73-304(2), the approved form of supervision is defined, clarified or established as follows:

(1) The supervising preceptor shall:

(a) be licensed in good standing in Utah and have practiced as a licensed chiropractic physician for the past five years;

(b) have entered into a written contract with an approved college or university to provide chiropractic training to a preceptee; and

(c) provide direct supervision on the premises, either personally or by delegating to another chiropractic physician who is licensed in good standing in Utah and who has practiced as a licensed chiropractic physician for the past five years.

(2) The preceptor or his designee must remain on the premises at all times while the preceptee is performing the following procedures:

(a) adjusting of the articulation of the spinal column;

(b) diagnosis of the articulation of the spinal column;

(c) manipulation of the articulation of the spinal column; and

(d) therapeutic positioning of the articulation of the spinal column.

**R156-73-308. 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 73, is established by rule in Section R156-1-308a.

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

**R156-73-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) keeping the office, instruments, laboratory, equipment, appliances or supplies in an unsafe or unsanitary condition;

(2) engaging in advertising which is misleading because of omission of necessary material information, which contains false or misleading statements, or which otherwise operates to deceive;

(3) engaging in or abetting deceptive or fraudulent billing practices;

(4) engaging in sexual contact with a patient, with or without patient consent, within 12 months of last treatment;

(5) engaging in sexual activities or contact with a former patient, with or without consent, after 12 months of last treatment if there is a risk of exploitation or potential harm to the former patient;

(6) engaging in behaviors in a patient/doctor relationship, including verbal, intended to sexually arouse any person or encourage sexual activity;

(7) failing to keep the division informed of a current address and telephone number;

(8) advertising acupuncture services or practicing clinical acupuncture techniques beyond the scope of the certification held;

(9) advertising as an "acupuncturist" either verbally or in print;

(10) failing to maintain responsibility for care, billing and documentation in a group practice, multidisciplinary practice or third-party ownership practice;

(11) engaging in any act or practice in a professional capacity which the licensee is not competent to perform through education or training;

(12) administering injections through the skin, limited to subcutaneous or intramuscular administration, of any substances other than non-prescription drugs as defined in Subsections 58-17b-102(39) or non-controlled substances as defined in Subsection 58-37-2(f)(ii);

(13) administering injections of non-prescription drugs or non-controlled substances without sufficient competency and training as demonstrated by the following:

(a) completion of a recognized course on injectables and their administration, under the sponsorship of or approved by an institution, organization or association meeting the continuing education standards as defined in Section R156-73-303b; and

- (b) receiving a passing score on a certifying examination; and  
 (14) delegating the administration of injections to a chiropractic assistant.

**R156-73-502. Chiropractic Assistant.**

In accordance with Subsection 58-73-102(3), a chiropractic assistant may perform activities related to the practice of chiropractic in accordance with the following:

- (1) The supervising chiropractic physician shall:  
 (a) be currently licensed in Utah;  
 (b) be responsible for the chiropractic activities and services performed by the assistant; and  
 (c) always be available to provide advice, instruction and consultation.  
 (2) The supervising chiropractic physician shall never delegate the following to a chiropractic assistant:  
 (a) adjustment of the articulation of the spinal column;  
 (b) diagnosis of the articulation of the spinal column;  
 (c) manipulation of the articulation of the spinal column;  
 (d) therapeutic positioning of the articulation of the spinal column; and  
 (e) administration of injections per Subsection R156-73-501(14).

**R156-73-601. Competency Requirements to Perform Acupuncture.**

The requirements to demonstrate competency and training to perform clinical acupuncture include:

- (1) Licensees who provided acupuncture services as a part of their practice prior to January 1, 2002 are not required to meet the requirements of Subsections (2) or (3), but are required to complete a recognized clinical acupuncture course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction and passing a certifying examination in order to continue to provide clinical acupuncture as a part of their practice after January 1, 2002.  
 (2) Licensees who begin providing clinical acupuncture as a part of their practice on or after January 1, 2002 and prior to January 1, 2005 shall:  
 (a) complete a recognized clinical acupuncture course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 200 classroom hours of instruction and passing a certifying examination; or  
 (b) complete a recognized clinical acupuncture course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction, passing a certifying examination, and completing 100 hours of clinical experience under the indirect supervision of a licensed health care provider who has met the requirements in Subsection (1) or (2)(a), and has practiced clinical acupuncture for at least two years.  
 (3) Licensees who begin providing clinical acupuncture as a part of their practice on or after January 1, 2005 shall:  
 (a) meet the requirements to take and receive a passing score on the NBCE Acupuncture Examination; or  
 (b) meet the requirements to take and receive a passing score on the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) Examination.

**R156-73-602. Advisory Peer Committee Created - Membership - Duties.**

In accordance with Subsection 58-73-602(3), there is created the Quality and Standards Committee as an advisory peer committee to the Chiropractic Physician Licensing Board consisting of five chiropractic physicians licensed and in good

standing in Utah who are qualified by education, training and experience to competently act in quality care review.

**R156-73-603. Standards for Practice of Animal Chiropractic.**

In accordance with Subsection 58-28-8(12)(a), a chiropractic physician practicing animal chiropractic shall have completed an animal chiropractic course approved by the American Chiropractic Veterinary Association (ACVA) or another course that is substantially equivalent to the ACVA course.

**R156-73-605. Review of Applicant's Qualification for Licensure.**

All new licensees may be requested to attend a regularly scheduled Board meeting within six months of license activation at which time their qualifications may be reviewed.

**KEY: chiropractors, licensing, chiropractic physician****August 24, 2009****58-73-101****Notice of Continuation June 19, 2006****58-1-106(1)(a)****58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.****R156-80. Medical Language Interpreter Act Rule.****R156-80-101. Title.**

This rule is known as the "Medical Language Interpreter Act Rule".

**R156-80-103. 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 80.

**R156-80-104. Organization - Relationship to Rule R156-1.**

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

**R156-80-203a. Qualifications for Certification - Examination Requirements.**

(1) In accordance with Subsections 58-1-203(1)(b), 58-1-301(3) and 58-80-203(2), an applicant for certification under Section 58-80-201 shall:

(a) complete and pass the Bridging the Gap (BTG) Interpreter Training Program with a minimum passing score established by CCHCP;

(b) complete and pass pre and post test examinations administered by trainers and organizations approved pursuant to Subsection (1); and

(c) submit to the Division a certificate of completion documenting that the applicant has met the requirements in Subsections (2)(a) and (b).

(2) Trainers and organizations that administer pre and post examinations to medical language interpreter applicants shall be approved by the Cross Cultural Health Care Program (CCHCP).

**KEY: licensing, medical language interpreter, certified medical language interpreter**

**August 24, 2009**

**58-80-101  
58-1-106(1)(a)  
58-1-202(1)(a)**

**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 shall 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 a principal broker license on an inactive status, a principal broker must provide written notice to each licensee affiliated with the principal broker 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 the principal broker's license will be suspended or revoked, the principal broker must, prior to the effective date of the suspension or revocation, provide written notice to each licensee

affiliated with the principal broker 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. The 12 hours of continuing education required to activate a license shall be made up of at least 6 hours of "core" courses in subjects specified in Subsection R162-9.2.1. The balance of the 12 hours of continuing education may be "elective" courses in the subjects listed in Subsection R162-9.2.2.

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 within 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, 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 before January 1, 2010, an applicant must submit to the division proof of having completed, during the previous license period and by the 15th day of the month of expiration, 12 hours of continuing education from courses certified by the division. To renew a license on active status after January 1, 2010, an applicant must submit to the division proof of having completed, during the previous license period and by the 15th day of the month of expiration, 18 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. Licensees in their first license period who renew their

licenses before January 1, 2010 will satisfy their continuing education requirement ("core" and "elective") by taking the 12-hour "New Sales Agent Course." Licensees in their first license period who renew their licenses after January 1, 2010 will need to complete 6 additional hours of continuing education (either "core" or "elective") as defined in R162.9.2.1 - 9.2.10.

3.6.2.1.2 During subsequent license periods before January 1, 2010 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. During subsequent license periods after January 1, 2010, a licensee must take at least 9 hours of continuing education from courses certified by the division as "core" as defined in 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 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.

**KEY: real estate business**

**August 21, 2009**

**61-2-5.5**

**Notice of Continuation April 18, 2007**

**R162. Commerce, Real Estate.****R162-4. Office Procedures - Real Estate Principal Brokerage.****R162-4-1. Records and Copies of Documents.**

4.1. The principal broker must maintain in his office and make available for inspection and copying by the Division all records pertaining to a real estate transaction for a period of at least three calendar years following the year in which an offer was rejected or the transaction either closed or failed.

4.1.1. Location of Records. Unless otherwise authorized by the Division in writing, the business records of the principal broker shall be maintained at his principal business location or, where applicable, at the branch office. If a brokerage closes its operation the principal broker must, within ten days after the closure, notify the Division in writing of where the records will be maintained in order to comply with R162-4.1 above. If a brokerage files for bankruptcy, the principal broker must, upon filing, notify the Division in writing of the filing and the current location of brokerage records.

4.1.2. Transaction Identification. All transactions, whether pending, closed or failed, must be numbered consecutively and identifiable in a manner that, in the opinion of the representative of the Division, the transaction can be readily followed in all pertinent documents. A sequential transaction number is to be assigned to every offer, and a separate transaction file is to be maintained for every offer, including rejected offers involving funds deposited to the brokerage trust account. A sequential transaction number need not be assigned to rejected offers which do not involve funds deposited to trust. The principal broker may, at his option, maintain a separate transaction file for each rejected offer which does not involve funds deposited to trust or keep such rejected offers in a single file.

4.1.3. Statement of Account. At the expiration of 30 days after an offer has been made by a buyer and accepted by a seller, either party may demand, and the principal broker must furnish, a detailed statement showing the current status of the transaction. On demand by either party, the principal broker must furnish an updated statement at 30-day intervals thereafter until the transaction is closed.

4.1.4. Closing Statements. A principal broker charged with closing a sale shall cause to be prepared and delivered to the buyer and seller, upon completion of a transaction, a detailed closing statement of all their respective accounts showing receipts and disbursement.

4.1.4.1. Closing statements for all real estate transactions in which a real estate principal broker participates must show the following: the date of closing; the total purchase price of the property; an itemization of all adjustments, money, or things of value received or paid, and to whom each item is credited or debited. The dates of the adjustments must be shown if they are not the same as the date of the closing. Also shown must be the balances due from the respective parties to the transaction, and the names of the payees, makers, and assignees of all notes paid, made, or assumed. The statements furnished to each party to the transaction must contain an itemization of credits and debits as pertain to each party.

4.1.4.2. The principal broker or his authorized representative must attend all closings. The principal broker is responsible for the content and accuracy of all closing statements regardless of who closes the transaction.

4.1.4.3. The principal broker closing the transaction must show proof of delivery of the closing statement to the buyer and seller. Signatures of the buyer and seller on the file copy of the closing statement or a copy of a transmittal letter sent by certified mail, return receipt requested, when signatures are not attainable, will satisfy this requirement.

4.1.5. Death or Disability of Principal Broker: Upon the death or inability of a principal broker to act as a principal broker the following procedures shall apply:

4.1.5.1. In the case of a corporation, partnership, Limited Liability Company, association, or other legal entity the provisions of R162-2-2.3.2. shall apply.

4.1.5.2. In the case of a sole proprietor all brokerage activity must cease and a family attorney or representative shall: (1) notify the Division and all licensees affiliated with the principal broker in writing of the date of death or disability; (2) advise the Division as to the location where records will be stored; (3) notify each listing and management client in writing to the effect that the principal broker is no longer in business and that the client may enter a new listing or management agreement with the firm of his choice; (4) notify each party and cooperating broker to any existing contracts; and (5) retain trust account monies under the control of the administrator, executor or co-signer on the account until all parties to each transaction agree in writing to disposition or until a court of competent jurisdiction issues an order relative to disposition.

**R162-4-2. Trust Accounts.**

4.2 All monies received in a real estate transaction regulated under Section 61-2-1, et seq., must be deposited in a "Real Estate Trust Account," in a Utah bank, credit union, or other approved escrow depository in this state. Such "Real Estate Trust Account" shall be non-interest-bearing except as provided in Section 4.2.4 below. The principal broker will be held personally responsible for deposits at all times. The principal broker must notify the Division in writing of the location and account numbers of all real estate trust accounts which he maintains. All "Real Estate Trust Accounts" shall be used exclusively for real estate transactions regulated under Section 61-2-1, et seq. Funds received in connection with rental of tourist accommodations for any period of less than 30 consecutive days shall not be deposited in a "Real Estate Trust Account".

4.2.1. Deposits. All monies received by a licensee in a real estate transaction, whether it be cash or check, must be delivered to the principal broker and deposited within three banking days after receipt of the funds by the licensee. This rule does not apply when:

4.2.1.1. The Real Estate Purchase Contract or other agreement states that the earnest money or other funds are to be held for a specific length of time or are to be deposited upon acceptance by the seller; or

4.2.1.2. The Real Estate Purchase Contract or other agreement states that the earnest money or other funds are to be made out and paid to the seller, or to the person or company named as the escrow closing agent; or

4.2.1.3. A promissory note is given as the earnest money deposit or otherwise credited to the transaction. The promissory note must name the seller as payee and be retained in the principal broker's file until closing. If a promissory note is used in a real estate transaction, the Real Estate Purchase Contract or other agreement must disclose that the consideration is in the form of a promissory note.

4.2.2. Commingling. Not more than \$500 of the principal broker's own funds can remain in the "Real Estate Trust Account" or the "Property Management Trust Account," or the Division will consider the account to be commingled.

4.2.3. Builder Deposits. If a principal broker, who is also a builder or developer, receives deposit money under a Real Estate Purchase Contract, construction contract, or other agreement which provides for the construction of a dwelling, the deposit money must be placed in the "Real Estate Trust Account" or if the broker and the parties to the transaction agree in writing, the "Interest Bearing Real Estate Trust Account" and not be used for construction purposes unless specifically provided in the document or by separate written consent of the purchaser.

4.2.4. Interest Bearing Trust Accounts. Real Estate Trust

Accounts may be interest-bearing only as provided in Section 4.2.4.1 or 4.2.4.2 below:

4.2.4.1 If an earnest money deposit or other trust funds are received and the parties to the transaction believe that it would be uneconomical to place the money in a non-interest-bearing trust account, the principal broker shall place the money in a separate interest-bearing "Real Estate Trust Account" upon written request of the parties. The written request must designate to whom the interest will be paid upon completion or failure of the sale; or

4.2.4.2 Except as provided in Section 4.2.4.1, a principal broker may elect to maintain an interest-bearing "Real Estate Trust Account" only if the interest earned on the account is paid to a non-profit organization that has qualified, and remains qualified at the time of the payment, under Section 501(c)(3) of the Internal Revenue Code. Such non-profit organization must have as its exclusive purpose the providing of grants to affordable housing programs in the State of Utah. The affordable housing program that is the recipient of the grant must also be qualified, at the time of the grant, as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. If a principal broker makes this election, the Division must be notified in writing of the location and account number of the interest-bearing "Real Estate Trust Account" at the time the account is opened.

4.2.5. Liability for Receipt. All consideration represented as received by a licensee on a Real Estate Purchase Contract or other document must have, in fact, been received by the licensee. A licensee must not rely on a buyer's or a lessee's promise to deliver the consideration at a future date.

4.2.6 Property Management Trust Account. Each principal broker engaged in property management shall establish a separate "Property Management Trust Account." A principal broker who collects rents for others only occasionally or who does so as a convenience for his clients, and manages no more than six accounts, may use the "Real Estate Trust Account" for this purpose and need not maintain a "Property Management Trust Account".

4.2.7. Disbursements. All cash and like payments in lieu of cash received by a principal broker in a real estate transaction are to be disbursed only in accordance with specific language in the Real Estate Purchase Contract authorizing such disbursement, other proper written authorization of the parties having an interest in the payments, or by court order.

4.2.7.1. The withdrawal of any portion of the principal broker's sales commission must not take place without written authorization from the seller and buyer or until the closing statements have been delivered to the buyer and seller and the buyer or seller has been paid for the amount due as determined by the closing statement.

4.2.7.2. Commissions due the principal broker, other licensees associated with the principal broker, or other principal brokers may be paid directly from the trust account only after the transaction is closed or otherwise terminated. If commissions are so disbursed, a record of each disbursement is to be recorded on the trust account ledger sheet for the transaction.

4.2.7.3. When it becomes apparent to the principal broker that a transaction has failed, or if a party to the failed transaction requests disbursement of the earnest money or other trust funds, the principal broker is required to determine whether any of the conditions in the Real Estate Purchase Contract authorizing disbursement have occurred or whether there is other written authorization of the parties to disburse the trust funds.

4.2.7.4. Disputes over funds. For the purposes of this section and section 4.2.7.5, a "dispute over funds" is defined as any situation in which both parties to a contract have submitted a written claim of entitlement to earnest money or other trust funds to the broker holding the funds.

4.2.7.4.1 If there is written authorization to disburse in the Real Estate Purchase Contract signed by both parties or in another writing signed by the party who will not be receiving the funds, the principal broker may disburse the funds without further delay, whether or not there is a dispute between the parties over the funds.

4.2.7.4.2 The principal broker may, at the broker's option, interplead the funds into court in any transaction where the broker is unable to determine whether there is written authorization to disburse under the circumstances of the transaction. If the principal broker interpleads the funds, the funds shall only be disbursed by the principal broker: a) upon written authorization of the parties who will not receive the funds; b) pursuant to the order of a court of competent jurisdiction; or c) as provided in Section 4.2.7.6.

4.2.7.5 Mediation. In the event a dispute arises over the return or forfeiture of the earnest money or other trust funds and the principal broker has not already disbursed the funds in accordance with section 4.2.7.4.1, or interpleaded the funds in accordance with section 4.2.7.4.2, and if no party has filed a civil suit arising out of the transaction, the principal broker shall, within 15 days of receiving written notice of the fact that both parties claim the disputed funds, provide the parties written notice of the dispute and request them to meet to mediate the matter. If the parties have contractually agreed to submit disputes arising out of their contract to mediation, the principal broker shall notify the parties of their obligation to submit the dispute over funds to an independent mediator agreed upon by the parties. If the parties have not contractually agreed to independent mediation, the principal broker holding the earnest money or trust funds shall use good faith best efforts to mediate.

4.2.7.5.1. Unsuccessful mediation. In the event the dispute over funds is not resolved in either a broker or independent mediation attempt, the principal broker shall maintain the disputed funds in a non-interest bearing real estate trust account. If the parties authorize, or if they previously authorized, deposit into a separate interest bearing trust account as provided in R162-4.2.4, the disputed funds may be maintained in a separate interest bearing trust account for disputed funds. The funds shall only be disbursed by the principal broker: (1) upon written authorization of the parties who will not receive the funds; (2) pursuant to the order of a court of competent jurisdiction; or (3) as provided in Section 4.2.7.4.2.

4.2.7.6. If the principal broker has not received written notice of a claim to the funds, including interest if any, within five years after the failure of the transaction, the principal broker may remit the funds to the State Treasurer's Office as "abandoned" property according to the provisions of Utah Code Section 67-4a-101, et seq.

4.2.8. Records. A principal broker must maintain at his principal business location a complete record of all consideration received or escrowed for real estate transactions in the following manner:

4.2.8.1. A duplicate deposit slip must show the amount of money received, the transaction number, and the date and place of deposit.

4.2.8.2. A set of checks and deposit slips must be used denoting the principal broker's business name and address, stating "Real Estate Trust Account" or "Property Management Trust Account," with the checks numbered consecutively. Checks drawn on this account are to be identified to the specific transaction. Deposits to this account are to be identified to the specific transaction. Voided trust checks are to be marked "Void" and the original check retained in the principal broker's file. A principal broker may establish as many bank trust accounts as desired. However, each trust account must be identified with the type of activity for which the account is to be used and the Division must be notified in writing when each

account is established.

4.2.8.3. A check register or check stubs must be maintained which itemize deposits and disbursements in consecutive order showing the date, payee or payor, the transaction information, check number, amount of disbursement or deposit, and the current balance remaining in the account.

4.2.8.4. An individual trust ledger sheet must be established upon deposit of any consideration and assigned a sequential transaction number for each transaction--be it rental, sale, or other. The ledger sheet must show the names of the parties, location of the property, the date and amount of each deposit or disbursement, the name of the payee and payor, the current balance remaining, and any other relevant transaction information. Each ledger sheet, after the transaction is closed, must show the final disposition of the consideration and be retained in the principal broker's file for a minimum of three years following the year in which the transaction was closed.

4.2.8.5. The trust account is to be reconciled with the bank statement at least monthly. The trust liability, which is the total of ledger cards, and similar books, records, and accounts must be kept up to date.

#### **R162-4-3. Branch Office.**

4.3 A branch office must be registered with the Division prior to operation.

4.3.1. Exemptions. A branch office does not include a model home, a project sales office, or a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

4.3.2. Operation. A branch office must operate under the same business name as the principal brokerage.

4.3.3. Trust Account. The principal broker or branch broker must notify the Division in writing of the location and account number of all real estate trust accounts in which the funds received at each branch office will be deposited.

4.3.4. Branch Broker. Each branch office must have a branch broker who will actively manage the office. The branch broker must be an associate broker. The principal broker must actively supervise the branch broker.

4.3.5. Registration. To register a branch office, the principal broker must submit to the Division, on the forms required by the Division, the location of the branch, the name of the branch broker and the names of all associate brokers and sales agents assigned to the branch, accompanied by the applicable fee.

4.3.6. Change of Branch Broker. The principal broker must notify the Division in writing on the forms required by the Division at the time of a change of branch broker.

#### **R162-4-4. Written Instructions for Commission Distribution by Title Insurance Agent.**

(1) If a principal broker elects to assign a portion or all of the principal broker's compensation to an associate broker or sales agent in accordance with Utah Code Annotated Section 61-2-10, the principal broker shall provide written instructions to the title insurance agent that include the following:

(a) an identification of the property involved in the real estate transaction;

(b) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;

(c) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker; and

(d) a prohibition against alteration of the written instructions by anyone other than the principal broker.

(2) Items beyond those listed in Subsection (1) may be included in the written instructions at the discretion of the principal broker.

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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) 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) A 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;

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; and

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 continuing education courses as either "core" or "elective" based on the course's intellectual and practical content and whether the course increases the licensee's competency, knowledge, professionalism and ability to protect and serve the public. The approval of courses is determined at the discretion of the Division. Course providers who have a course denied by the Division may appeal that decision to the Real Estate Commission.

9.2.1 Courses in the following subjects may be certified as "core": state approved forms/contracts, other industry used forms or contracts, ethics, agency, short sales or bank owned property sales, environmental hazards, property management, prevention of real estate and mortgage fraud, federal and state real estate laws or administrative rules, and brokers' trust accounts.

9.2.1.1 If a course regarding an industry used form or contract is approved by the Division as a "core" course, the provider of the course must:

(a) have ownership or written authorization to use the form(s) or contract(s) taught in the course; and

(b) have authority and grant permission to licensees for use of the form(s) or contract(s) used in the course by all licensees.

9.2.1.2 The owner of the form(s) or contract(s) may charge a reasonable fee for use of these form(s) or contract(s) by licensees.

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; market analysis, the measurement of homes or buildings, 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;

9.2.2.4 Landlord/tenant relationships; property disclosure forms;

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 Courses that focus on real estate concepts, principles, or industry practices or procedures, if the courses enhance licensee professional skills and thereby advance public protection and safety;

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, technology courses with a principal focus on technology operation, software design or use, 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.

#### **R162-9-8. Marketing of Continuing Education Courses.**

9.8.1 A course sponsor may not advertise or market a continuing education course where Division continuing education course credit will be offered or provided to a licensed attendee unless the course:

(a) is approved and has been issued a current continuing education course certification number by the Division; and

(b) is advertised with the continuing education course certification number issued by the Division displayed in all advertising materials.

9.8.2 A course sponsor may not advertise, market, or promote a continuing education course with language which indicates Division continuing education course approval is "pending" or otherwise forthcoming.

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**R162. Commerce, Real Estate.****R162-150. Appraisal Management Companies.****R162-150-1. Qualification for Registration or Renewal of Registration.**

(1) The Division may not register or renew the registration of an appraisal management company that:

(a) fails to comply with any provision of Utah Code Title 61, Chapter 2e, "Appraisal Management Company Registration and Regulation Act";

(b) fails to comply with Sections R162-150-2 or R162-150-3; or

(c) fails to pay to the Division the fee required for registration.

(2) The Division shall schedule a hearing before the board for an appraisal management company that:

(a)(i) applies for registration or renewal of registration;

(ii) has a control person who discloses, or the Division finds through its own research, an issue that might affect the control person's moral character; and

(iii) the Division determines that the board should be aware of the issue; or

(b) fails to provide an adequate explanation for the appraisal management company's:

(i) plan to ensure the use of licensed appraisers in good standing;

(ii) plan to ensure the integrity of the appraisal review process; or

(iii) plan for record keeping.

**R162-150-2. Employee Qualifications.**

(1) An appraisal management company seeking registration shall demonstrate to the Division that each person who selects an appraiser or reviews an appraiser's work for the appraisal management company:

(a) is a licensed or certified appraiser in good standing; or

(b) has received, or will receive within 6 months after initial registration, the 15 hour national Uniform Standards of Professional Appraisal Practice (USPAP) course.

(2) An appraisal management company seeking renewal of the company's registration shall demonstrate to the Division that each person who selects an appraiser or reviews an appraiser's work for the appraisal management company:

(a) is a licensed or certified appraiser in good standing; or

(b) has received the seven hour national USPAP update course.

**R162-150-3. Unprofessional Conduct.**

(1) An appraisal management company commits unprofessional conduct if the appraisal management company:

(a) fails to disclose to the appraiser:

(i) the total compensation paid to the appraiser who performs the real estate appraisal activity, disclosed as a dollar amount; and

(ii) the total compensation retained by the appraisal management company in connection with the real estate appraisal activity, disclosed as a dollar amount;

(b) fails to require the appraiser to disclose in the body of the appraisal report:

(i) the total compensation paid to the appraiser who performs the real estate appraisal activity, disclosed as a dollar amount; and

(ii) the total compensation retained by the appraisal management company in connection with the real estate appraisal activity, disclosed as a dollar amount;

(c) requires an appraiser to modify any aspect of the appraisal report unless the modification complies with Utah Code Ann. Section 61-2e-307;

(d) requires an appraiser to prepare an appraisal report if the appraiser, in the appraiser's own professional judgment,

believes the appraiser does not have the necessary expertise for the specific geographic area;

(e) requires an appraiser to prepare an appraisal report under a time frame that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations;

(f) prohibits or inhibits communication between the appraiser and:

(i) the lender;

(ii) a real estate licensee; or

(iii) any other person from whom the appraiser, in the appraiser's own professional judgment, believes information would be relevant;

(g) requires the appraiser to do anything that does not comply with:

(i) USPAP; or

(ii) any assignment conditions and certifications required by the client; or

(h) makes any portion of the appraiser's fee contingent on a favorable outcome, including but not limited to:

(i) a loan closing; or

(ii) a specific dollar amount being achieved by the appraiser in the appraisal report.

(2) An appraisal management company commits unprofessional conduct and creates a violation by the appraiser of R162-107.1.6 if the appraisal management company requires the appraiser to:

(a) accept full payment; and

(b) remit a portion of the full payment back to the appraisal management company.

**KEY: appraisal management company regulations****August 7, 2009****61-2e-102****61-2e-103****61-2e-304****61-2e-305**

**R277. Education, Administration.****R277-108. Annual Assurance of Compliance by Local School Boards.****R277-108-1. Definitions.**

A. "Annual assurance letter" means a letter required annually from each local school board by the Board to be received no later than October 1 of each year that provides the required compliance information and documentation, if directed, for identified programs and funds.

B. "Board" means the Utah State Board of Education.

C. "USOE" means the Utah State Office of Education.

**R277-108-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board; Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with the law.

B. The purpose of this rule is to provide local school boards with a list of laws requiring local school board action and a means of assuring that local boards are in compliance.

**R277-108-3. Board/USOE Responsibilities.**

A. The Board shall provide to school district superintendents, the superintendent for the Utah School for the Deaf and the Blind and charter school governing boards a list of laws and a list of State Board of Education Administrative Rules which require action or compliance by June 30 of each year.

B. The list shall identify laws and rules along with required compliance dates and reporting forms, if different or necessary than or in addition to the annual assurance letter.

C. The Board shall consolidate all required reporting and compliance forms and provide for electronic reporting, to the extent possible.

**R277-108-4. Local Board and Identified School Responsibilities.**

A. Local Boards shall submit the required Annual Assurance Letter(s) and other compliance forms on or before dates identified by the Board.

B. In the event that a local school board is unable to provide required assurances, compliance information or forms by required dates, the local school board shall provide to the USOE a written explanation of the local school board's inability and provide a compliance date. The request for delay in providing the assurance shall be reviewed by the Board or its designee and accepted or rejected in a timely manner.

**R277-108-5. Assurances.**

A. Each local school board and charter school governing board shall provide, consistent with state law, written assurance of the following:

(1) the National motto is displayed in schools consistent with Section 53A-13-101.4(6);

(2) the Pledge of Allegiance is recited in public schools consistent with Section 53A-13-101.6;

(3) a policy has been developed, in consultation with school personnel, parents, and school community, to provide for effective implementation of student education plans/student education occupation plans (SEPs/SEOPs) consistent with Section 53A-1a-106(2)(b);

(4) a plan is in place for the expenditure of Interventions for Student Success Block Grant Program funds consistent with Section 53A-17a-123.5;

(5) a policy has been developed for Quality Teaching Block Grant Program consistent with Section 53A-17a-124;

(6) a policy has been developed on education association

leave consistent with Section 53A-3-425;

(7) each public school within the district has established a community council consistent with Section 53A-1a-108, and the community council members have been advised of their responsibilities consistent with Sections 53A-1a-108 and 53A-1a-108.5;

(8) the local school board has provided the USOE with required Utah Performance Assessment System for Students (U-PASS) test results in order for the USOE to fulfill the requirements of 53A-1-605;

(9) the district does not make payroll deductions from the wages of its employees for political purposes consistent with Section 34-32-1.1(2);

(10) the local school board has implemented a training program for school administrators consistent with Section 53A-3-402(1)(f);

(11) the local school board has an educator evaluation program developed by a joint committee including classroom teachers, parents and administrators consistent with Section 53A-10-103;

(12) the local school board or charter school governing board has presented and implemented an electronic device policy consistent with the timelines and provisions of R277-495;

(13) the school district or charter school has posted collective bargaining agreement(s) on the school district or charter school website within ten days of the ratification or modification of any collective bargaining agreement consistent with Section 53A-3-428; and

(14) by May 15, 2010, the school district or charter school has posted certain public financial information on the school district or charter school website consistent with Sections 63A-3-401 through 63A-3-404.

B. Letters from local school boards assuring compliance with the laws above are due to the State Superintendent of Public Instruction no later than October 1 of each year.

**R277-108-6. Penalties for Noncompliance.**

A. The Board shall request written explanation(s) from local school boards and identified schools that fail to meet reporting and compliance deadlines.

B. Following an opportunity to provide explanations and request delays, local school boards and identified schools shall be notified of penalties assessed by the Board against the local school boards.

C. Penalties may include:

(1) warning letters;

(2) letters of reprimand sent to the local school board with copies to appropriate Legislative committees;

(3) charter school review under R277-481; or

(4) interruption of monthly transfers of funds specified for administrative costs under Section 53A-17a-108, interruptions of disbursement of state aid under Section 53A-1-401(3) or withholding of specific program funds.

**R277-108-7. Record Retention.**

Letters of Assurance, as required by the Board, shall be kept on file at the USOE for five years, together with letters of explanation and documentation of penalties, as directed by the Board.

**KEY: local school boards, compliance  
August 7, 2009**

**Notice of Continuation October 5, 2007**

**Art X Sec 3  
53A-6-702  
53A-1-401(3)**

**R277. Education, Administration.****R277-116. Utah State Board of Education Internal Audit Procedure.****R277-116-1. Definitions.**

A. "Appointing authority" means the Board.

B. "Audit" means internal reviews or analyses or a combination of both of Utah State Board of Education programs, activities and functions that may address one or more of the following objectives:

(1) to verify the accuracy and reliability of USOE or Board records;

(2) to assess compliance with management policies, plans, procedures, and regulations;

(3) to assess compliance with applicable laws, rules and regulations;

(4) to evaluate the efficient and effective use and protection of Board, state, or federal resources; or

(5) to verify the appropriate protection of USOE assets;

(6) to review and evaluate internal controls over USOE accounting systems, administrative systems, electronic data processing systems, and all other major systems necessary to ensure the fiscal and administrative accountability of the USOE.

C. "Audit Committee" means a standing committee appointed by the Board which shall consist of all members of the Finance Committee. The Chair of the Audit Committee shall be either the Board Chair or Board Vice Chair.

D. "Board" means the Utah State Board of Education.

E. "Internal Auditor" means person or persons appointed by the Superintendent with the consent of the Audit Committee and the full Board to direct the internal audit function for the Board and USOE.

F. "LEA" means any local education agency under the supervision of the Board including any sub unit of school districts, Utah Schools for the Deaf and the Blind, Utah State Office of Rehabilitation, charter schools, regional service centers, area technology centers and vocational programs.

G. "Superintendent" means the State Superintendent of Public Instruction, who is the Agency Head within the meaning of the Utah Internal Audit Act.

H. "Survey work" means an internal review of Board rules, statutes, federal requirements and a limited sample of an LEA's programs, activities or documentation that may give rise to or refute the need for a more comprehensive audit. The preliminary or limited information derived from survey work is a part of the ongoing audit process and may be provided as a draft to the Audit Committee, to the Board or to the Superintendent upon request.

I. "USOE" means the Utah State Office of Education.

**R277-116-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-1-401(4) which directs the Board to adopt rules to promote quality, efficiency and productivity and to eliminate unnecessary duplication in the public education system, Section 53A-1-405 which makes the Board responsible for verifying audits of local school districts, Section 53A-1-402(1)(e) which directs the Board to develop rules and minimum standards regarding cost effectiveness measures, school budget formats and financial accounting requirements for the local school districts, Section 53A-17a-147(2) which directs the Board to assess the progress and effectiveness of local school districts and programs funded under the Minimum School Program and report its findings to the Legislature, and by Section 63I-5-101 through 401 which provides standards and procedures for the Board, as the appointing authority for the USOE, to establish an internal audit program.

B. The purpose of this rule is to outline the Board's criteria and procedures for internal audits of programs under its supervision.

**R277-116-3. Audit Committee Responsibilities.**

The Audit Committee shall:

A. determine the priority for survey work or audits to be performed based on recommendations from the Internal Auditor, Audit Committee requests or correspondence, other Board member requests, or USOE staff recommendations;

B. consent to the appointment or removal of the Internal Auditor.

C. review and approve the annual internal audit plan and budget;

D. review internal and external audit reports, survey work, follow-up reports, and quality assurance reviews of the Internal Auditor;

E. meet at each regularly scheduled Board meeting with the Internal Auditor to discuss ongoing audits, audit priorities and progress, and other issues;

F. distribute drafts or preliminary versions of audits only to Board members, as requested, or auditees. Internal audits that have not been reviewed in final form by the Audit Committee, the auditee, and the Board are drafts and, as such, are not public records;

G. determine the distribution of audit findings in any or all stages or reports to other Board members as well as to other interested parties;

H. review the findings and recommendations of the Internal Auditor and make recommendations for action on the findings to the Board; and

I. evaluate the Internal Auditor at least annually in a formal evaluation process.

**R277-116-4. Internal Auditor Authority and Responsibilities.**

A. The Internal Auditor shall work closely with and receive regular supervision from the Superintendent.

B. The Internal Auditor shall report initially to the Superintendent. Following the Superintendent's response, the Internal Auditor reports to the Audit Committee and ultimately to the Board.

C. The Internal Auditor's work shall be determined primarily by a risk assessment developed by the Internal Auditor and approved by the Audit Committee at least annually. The risk assessment shall:

(1) consider public education programs for which the Board has responsibility;

(2) consider and evaluate which public education programs, activities or responsibilities are most critical to:

(a) student safety;

(b) student achievement;

(c) efficient management of public education resources; and

(d) the priorities of public education as determined by the Board.

D. The Internal Auditor shall meet with the Audit Committee or the Board, at the direction of either, to inform both the Audit Committee and the Board of progress on assigned audits and any additional information or assignments requested by the Audit Committee or the Board.

E. The Internal Auditor shall conduct audits as recommended by the Audit Committee, and as directed by the Board, including economy and efficiency audits, program audits, and financial-related audits of any program, function, LEA, or division under the Board's supervision, or as otherwise directed by the Board.

F. The Internal Auditor shall immediately notify the Audit Committee and the Board of any irregularity or serious

deficiency discovered in the audit process or of any impediment or conflict to accomplishing an audit as directed by the Board.

G. The Internal Auditor shall submit a written report to the Audit Committee and the Board of each authorized audit within a reasonable time after completion of the audit.

H. The Internal Auditor shall maintain the classification of any public records consistent with Title 63G, Chapter 2, Government Records Access and Management Act.

I. Audit Committee members, Board members and USOE employees shall maintain information acquired in the audit process in the strictest confidence consistent with the Public Employees Ethics Act, Section 67-14-4.

J. The Internal Auditor shall have access to all records, personnel, and physical materials relevant and necessary to conduct audits of all programs and agencies supervised by the Board. All public education entities shall cooperate fully with Internal Auditor requests; The Internal Auditor is not required to issue subpoenas or make GRAMA requests under Section 63G-2-202 to receive requested information from public education entities.

August 7, 2009

Notice of Continuation September 6, 2007

Art X Sec 3  
53A-1-401(3)  
53A-1-401(4)  
53A-1-405  
53A-1-402(1)(e)  
53A-17a-147(2)  
63I-5-101 through 401

**R277-116-5. Audit Plans.**

A. An audit plan shall be prepared by the Internal Auditor and shall:

- (1) be reviewed regularly by both the Superintendent and the Audit Committee;
- (2) identify the individual audits to be conducted during each year;
- (3) determine the adequacy and efficiency of the USOE's internal monitoring and control of programs and personnel;
- (4) identify the related resources to be devoted to each of the respective audits; and
- (5) ensure that audits that evaluate the efficient and effective use of public education resources are adequately represented in the plan.

B. The Internal Auditor shall submit the audit plan first to the Superintendent for review, next to the Audit Committee for review, modification, update, and approval. Each audit plan shall expressly state an anticipated completion date.

C. The Internal Auditor shall:

- (1) ensure that audits are conducted in accordance with professional auditing standards such as those published by the Institute of Internal Auditors, Inc., the American Institute of Certified Public Accountants, and, when required by other law, regulation, agreement, contract, or policy, in accordance with Government Auditing Standards, issued by the Comptroller General of the United States;
  - (a) all reports of audit findings issued by internal audit staff shall include a statement that the audit was conducted according to the appropriate standards;
  - (b) public release of reports of audit findings shall comply with the conditions specified by state laws and rules governing the USOE.
- (2) report concerns to the Audit Committee or the Board that arise as the result of survey work or audits that necessitate a direct review of the Superintendent's activities or actions;
- (3) report significant audit matters that cannot be appropriately addressed by the Audit Committee and the Board to either the Office of Legislative Auditor General or the Office of the State Auditor;
- (4) report quarterly to the full Board those issues which have the potential of opening up the Board, Superintendent, or USOE to liability or litigation;
- (5) conduct at least annually a risk assessment of the entire public education system and report the findings to the Audit Committee; and
- (6) regularly attend all Board meetings.

**KEY: educational administration**

**R277. Education, Administration.****R277-402. Online Testing.****R277-402-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Formative assessment" means an activity, such as questioning, observation, interview and assessment, engaged in by teachers and students during instruction that provides feedback to adjust ongoing teaching and learning to improve students' achievement of intended instructional outcomes.

C. "Intent to implement a uniform online summative test system" as used in 53A-1-708(4) means the commitment by the USOE to provide a consistent statewide process for school districts/charter schools to administer 100 percent of CRT U-PASS-required assessments. This includes the willingness of school districts/charter schools to provide documentation of preparatory activities and of actual test-taking by students.

D. "Online formative assessment system" means a system coordinated by the USOE for the online delivery of formative assessments that can be created by teachers, school districts/charter schools, or the USOE. One part of the system is the Utah Test Item Pool Service (UTIPS).

E. "Summative tests" means tests administered near the end of a course to assess overall achievement of course goals.

F. "Uniform online summative test system" means a statewide process coordinated by the USOE for the online delivery of summative tests required under U-PASS.

G. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) systematic norm-referenced achievement testing of all students in grades 3 (administration in fall and spring), 5, and 8 required by this part in all schools within each school district and in charter schools by means of tests designated by the Board;

(2) criterion-referenced achievement testing of students in all grade levels in:

(a) language arts (grades 2-11);

(b) mathematics (grades 2-7) and pre-algebra, elementary Algebra 1, Algebra 2 and geometry;

(c) science (grades 4-8) and earth systems, biology, chemistry, and physics; and

(3) an online direct writing assessment in grades 5 and 8;

(4) a tenth grade basic skills competency test as detailed in Section 53A-1-611; and

(5) the use of student behavior indicators in assessing student performance.

H. "USOE" means Utah State Office of Education.

I. "USOE item pool" means all test items developed for or by USOE which are intended to support the instruction of the Utah curriculum for Utah K-12 teachers and students.

J. "Utah Test Item Pool Service (UTIPS)" means a system which includes the USOE item pool, all copyrights, logos, the UTIPS website and domain name, all copyrighted materials, and all other items and equipment used to provide and enhance the USOE item pool.

K. "UTIPS Steering Committee" means a committee formed to govern, support, develop and administer UTIPS. The committee is comprised of the elected co-chairs of the UTIPS User's Group and the UTIPS Operators' Group, the USOE Assessment Director, the USOE Computer Based Assessments Specialist, the USOE Curriculum Director, and one at-large member.

**R277-402-2. Authority and Purpose.**

A. This rule is authorized by Utah constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-708(5) which directs the Board to specify procedures and accountability for online summative testing by school districts/charter schools consistent with existing U-PASS requirements, 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 additional definitions and a timeline for expeditious implementation of an educational technology infrastructure for school districts/charter schools to use to satisfy U-PASS requirements through an online testing system.

C. The purpose of this rule is also to provide the requirements for school districts/charter schools' use of UTIPS.

**R277-402-3. Application and Award Procedures.**

A. Online testing funds shall be distributed to school districts/charter schools consistent with Section 53A-1-708.

B. The USOE shall provide non-competitive applications to school districts/charter schools for a twenty-five percent base and seventy-five percent per pupil distribution of funds. For the purpose of this funding, all charter schools are considered collectively for the twenty-five percent base.

(1) Applications shall express the intent of the school district/charter school to build educational technology infrastructure and capacity to participate in online testing consistent with Section 53A-1-708.

(2) Applications shall provide a plan for online CRT testing implementation including:

(a) names of participating schools within the school district and participating charter schools;

(b) which CRTs will be assessed online;

(c) number of students who will participate in the online administration of each CRT; and

(d) dates of tests and numbers of students who will participate in the online testing for each year of the school district's/charter school's online testing phase-in plan.

(3) Applications shall provide an evaluation or accountability process for determining and documenting the effectiveness of the online testing phase-in plan.

(4) Application budget shall be consistent with the school district/charter school Consolidated Utah Student Achievement Plan (CUSAP) and educational technology plan.

C. The USOE shall implement and maintain at least one online formative assessment system. School districts/charter schools may access the USOE item pool through regional servers and receive updates to the USOE item pool only consistent with the following conditions:

(1) use of the version of software supported by the UTIPS Steering Committee and available through the UTIPS Operator's Group;

(2) participating in both the UTIPS Operators' Group and User group;

(3) posting of the USOE item pool copyright on their login website;

(4) providing monthly and annual statistics, as determined by the UTIPS Steering Committee to the USOE; and

(5) providing feedback to the USOE regarding item quality and the schools' need for additional items.

D. Regional servers and school districts/charter schools that do not act consistent with conditions under R277-402-3C shall not receive access to the USOE item pool.

**R277-402-4. Distribution of Funds.**

A. Twenty-five percent of the funds shall be distributed equally to school districts/charter schools that provide applications required under R277-402-3. Seventy-five percent of the funds appropriated by the Legislature in Section 53A-1-708 shall be distributed to school districts/charter schools on a per pupil basis that provide applications required under R277-402-3.

B. Per pupil amounts shall be derived from October student counts of applicants.

C. The USOE shall work with applicants, to the extent of



resources available, to improve the applications for funding.

D. Each school district/charter school plan shall be approved by the USOE prior to the school district/charter school receiving funding under this rule.

E. School districts/charter schools accepting funding under this rule shall ensure compliance with the requirements of this rule.

**R277-402-5. Timelines.**

A. School districts/charter schools shall submit the plan required under R277-402-3B(2) to the USOE.

B. Applications shall be available from the USOE for funds under this rule.

C. School districts/charter schools shall provide an evaluation of planning or preparation for the use of online testing and an assessment of the actual online testing process as directed by the USOE.

D. Schools that do not provide timely, complete and accurate evaluations may not be considered for continued funding under this rule.

**KEY: online testing**

**August 7, 2009**

**Notice of Continuation July 16, 2009**

**Art X Sec 3**

**53A-1-708(5)**

**53A-1-401(3)**

**R277. Education, Administration.****R277-473. Testing Procedures.****R277-473-1. Definitions.**

A. "Advanced English Language Learner student" means the student understands and speaks conversational and academic English language. The student demonstrates reading comprehension and writing skills but may need continued support when engaged in complex academic tasks that require increasingly academic language. The student is identified at the A level on the UALPA but not proficiency on the English Language Arts (ELA) CRT.

B. "Basic skills course" means those courses specified in Utah law for which CRT testing is required.

C. "Board" means the Utah State Board of Education.

D. "Criterion Reference Test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

E. "CS" means the USOE Computer Services section.

F. "Days" for purposes of this rule means calendar days unless specifically designated otherwise in this rule.

G. "Direct Writing Assessment (DWA)" means a USOE-designated online test to measure writing performance for students in grades five and eight.

H. "Emergent English Language Learner student" means the student understands and responds to basic social conventions, simple questions, simple directions, and appropriate level text. In general, the student speaks, reads, and writes using single phrases or sentences with support. The student may begin to use minimal academic vocabulary with support and participates in classroom routines. The student is identified at the E level on the UALPA.

I. "Intermediate English Language Learner student" means the student understands and speaks conversational and academic English with decreasing hesitancy and difficulty. The student is developing reading comprehension and writing skills, with support. The student's English literacy skills allow for demonstration of academic knowledge. The student reads and writes independently for personal and academic purposes, with some persistent errors. The student is identified at the I level on the UALPA.

J. "Last day of school" means the last day classes are held in each school district/charter school.

K. "Norm-reference Test (NRT)" means a test where the scores are based on comparisons with a nationally representative group of students in the same grade. The meaning of the scores is tied specifically to student performance relative to the performance of the students in the norm group under very specific testing conditions.

L. "Pre-Emergent English Language Learner student" means the student has limited or no understanding of oral or written English, therefore will be participating by listening. The student may demonstrate comprehension by using a few isolated words or expressions of speech. The student typically draws, copies, or responds verbally in his native language to simple commands, statements and questions. The student may begin to understand language in the realm of basic communication. Reading and writing is significantly below grade level. The student is identified at the P level on the UALPA.

M. "Protected test materials" means consumable and nonconsumable test booklets, test questions (items), directions for administering the assessments and supplementary assessment materials (e.g., videotapes) designated as protected test materials by the USOE. Protected test materials shall be used for testing only and shall be secured where they can be accessed by authorized personnel only.

N. "Raw test results" means number correct out of number possible, without scores being equated and scaled.

O. "Standardized tests" means tests required, consistent with Sections 53A-1-601 through 53A-1-611, to be

administered to all students in identified subjects at the specified grade levels.

P. "Utah Academic Proficiency Assessment (UALPA)" means a USOE-designated test to determine the academic proficiency and progress of English Language Learner students.

Q. "Utah Alternative Assessment (UAA)" means a USOE-designated test to measure students with disabilities with severe cognitive disabilities.

R. "Utah Basic Skills Competency Test (UBSCT)" means a USOE-designated test to be administered to Utah students beginning in the tenth grade to include components in reading, writing, and mathematics. Utah students shall satisfy the requirements of the UBSCT, in addition to state and school district/charter school graduation requirements, prior to receiving a high school diploma that indicates a passing score on all UBSCT subtests unless exempted consistent with R277-705-11.

S. "USOE" means the Utah State Office of Education.

**R277-473-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-603(3) which directs the Board to adopt rules for the conduct and administration of the testing programs and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide specific standards and procedures by which school districts/charter schools shall handle and administer standardized tests.

**R277-473-3. Time Periods for Administering and Returning Materials.**

A. School districts/charter schools shall administer assessments required under Section 53A-1-603 unless exempted consistent with Section 53A-1-603(5) and R277-705-11 and consistent with the following schedule:

(1) All CRTs and UAAs (elementary and secondary, English language arts, math, science) shall be given in a six week window beginning six weeks before the last Monday of the end of the course.

(2) The Utah Basic Skills Competency Test shall be given Tuesday, Wednesday, and Thursday of the first week of February and Tuesday, Wednesday, and Thursday of the third week of October.

(3) The fifth and eighth grade Direct Writing Assessment shall be given in a three week window beginning at least 14 weeks prior to the last day of school.

(4) The UALPA shall be administered to all English Language Learner students identified as Pre-Emergent, Emergent, Intermediate and Advanced, or enrolled for the first time in the school district at any time during the school year. The test shall be administered once a year to show progress. The testing window is the school year.

B. School districts shall require that all schools within the school district or charter schools administer NRTs within the time period specified by the USOE and the publisher of the test.

C. School districts/charter schools shall submit all answer sheets for the CRT and NRT tests to the CS Section of the USOE for scanning and scoring as follows:

(1) School districts/charter schools shall return CRT, UAA and DWA answer sheets to the USOE no later than five working days after the last day of the testing window.

(2) School districts/charter schools shall return NRT answer sheets to the USOE no later than five working days after the last day of the testing time period specified by the publisher of the test.

(3) School districts/charter schools shall return UBSCT answer sheets to the USOE no later than three days after the final make-up day.

(4) School districts/charter schools shall return UALPA answer sheets to the USOE no later than May 15 for traditional schedule schools and June 15 for year-round schedule schools beginning with the 2007-08 school year.

D. When determining the date of testing, schools on trimester schedules shall schedule the testing at the point in the course where students have had approximately the same amount of instructional time as students on a regular schedule and provide the schedule to the USOE. Basic skills courses ending in the first trimester of the year shall be assessed with the previous year's form of the CRTs.

E. Makeup opportunities shall be provided to students for the Utah Basic Skills Competency Test according to the following:

(1) Students shall be allowed to participate in makeup tests if they did not participate to any degree in the Utah Basic Skills Competency Test or subtest(s) of the Utah Basic Skills Competency Test.

(2) School districts/charter schools shall determine acceptable reasons for student makeup eligibility which may include absence due to serious illness, absence due to family emergency, or absence due to death of family member or close friend.

(3) School districts/charter schools shall provide a makeup window not to exceed five days immediately following the last day of each administration of the Utah Basic Skills Competency Test.

(4) School districts/charter schools shall determine and notify parents in an appropriate and timely manner of dates, times, and sites of makeup opportunities for the Utah Basic Skills Competency Test.

#### **R277-473-4. Security of Testing Materials.**

A. All test questions and answers for all standardized tests required under Sections 53A-1-601 through 53A-1-611, shall be designated protected, consistent with Section 63G-2-305(5), until released by the USOE. A student's individual answer sheet shall be available to parents under the federal Family Educational Rights and Privacy Act (FERPA), 20 USC, Sec. 1232g; 34 CFR Part 99).

B. The USOE shall maintain a record of all of the protected test materials sent to the school districts/charter schools.

C. Each school district/charter school shall maintain a record of the number of booklets of all protected test materials sent to each school in the district and charter school, and shall submit the record to USOE upon request.

D. Each school district/charter school shall ensure that all test materials are secured in an area where only authorized personnel have access, or are returned to USOE following testing as required by the USOE. Individual educators shall not retain test materials, in either paper or electronic form beyond the time period allowed for test administration.

E. Individual schools within a school district and charter schools shall secure or return paper test materials within three working days of the completion of testing. Electronic testing materials shall be secured between administrations of the test, and shall be removed from teacher and student access immediately following the final administration of the test.

F. The USOE shall ensure that all test materials sent to a school district/charter school are returned as required by USOE, and may periodically audit school districts/charter schools to confirm that test materials are properly accounted for and secured.

G. School district/charter school employees and school personnel may not copy or in any way reproduce protected test materials without the express permission of the specific test publisher, including the USOE.

#### **R277-473-5. Format for Electronic Submission of Data.**

A. CS shall communicate regularly with school districts/charter schools regarding required formats for electronic submission of any required data.

B. School districts/charter schools shall ensure that any computer software for maintaining school district/charter school data is, or can be made, compatible with CS requirements and shall report data as required by the USOE.

#### **R277-473-6. Format for Submission of Answer Sheets and Other Materials.**

A. The USOE shall provide a checklist to each school district/charter school with directions detailing the format in which answer documents are to be collected, reviewed, and returned to the USOE.

B. Each school district/charter school shall verify that all the requirements of the testing checklist have been met.

C. CRT data may be submitted in batches in cooperation with the assigned CS data technician.

#### **R277-473-7. Timing for Return of Results to School Districts/Charter Schools.**

A. Scanning and scoring shall occur in the order data is received from the school districts/charter schools.

B. Consistent with Utah law, raw test results from all CRTs shall be returned to the school before the end of the school year.

C. Each school district/charter school shall check all test results for each school within the district and charter school and for the school district as a whole, verify their accuracy with CS, and certify that they are prepared for publication within two weeks of receipt of the data. Except in compelling circumstances, as determined by the USOE, no changes shall be made to school or school district data after this two week period. Compelling circumstances may include:

(1) a natural disaster or other catastrophic occurrence (e.g., school fire) that precludes timely review of data; and

(2) resolution of a professional practices issue that may impede reporting of the data.

D. School districts/charter schools shall not release data until authorized to do so by the USOE.

#### **R277-473-8. USOE and School Responsibilities for Crisis Indicators in State Assessments.**

A. Students participating in state assessments may reveal intentions to harm themselves or others, that the student is at risk of harm from others, or may reveal other indicators that the student is in a crisis situation.

B. The USOE shall notify the school principal, counselor or other school or school district personnel who the USOE determines have legitimate educational interests, whenever the USOE determines, in its sole discretion, that a student answer indicates the student may be in a crisis situation.

C. As soon as practicable, the school district superintendent/charter school director, or designee shall be given the name of the individual contacted at the school regarding a student's potential crisis situation.

D. The USOE shall provide the school and district with a copy of the relevant written text.

E. Using their best professional judgment, school personnel contacted by USOE shall notify the student's parent, guardian or law enforcement of the student's expressed intentions as soon as practical under the circumstances.

F. The text provided by USOE shall not be part of the student's record and the school shall destroy any copies of the text once the school or district personnel involved in resolution of the matter determine the text is no longer necessary. The school principal shall provide notice to the USOE of the date the text is destroyed.

G. School personnel who contact a parent, guardian or law enforcement agency in response to the USOE's notification of potential harm shall provide the USOE with the name of the person contacted and the date of the contact within three business days from the date of contact.

Notice of Continuation May 9, 2005

53A-1-603(3)  
53A-1-401(3)

**R277-473-9. Standardized Testing Rules and Professional Development Requirement.**

A. It is the responsibility of all educators to take all reasonable steps to ensure that standardized tests reflect the ability, knowledge, aptitude, or basic skills of each individual student taking standardized tests.

B. School districts/charter schools shall develop policies and procedures consistent with the law and Board rules for standardized test administration, make them available and provide training to all teachers and administrators who shall administer state tests.

C. At least once each school year, school districts/charter schools shall provide professional development for all teachers, administrators, and standardized test administrators concerning guidelines and procedures for standardized test administration, including teacher responsibility for test security and proper professional practices.

D. School district/charter school assessment staff shall use the Testing Ethics Policy Power Point presentation and the Testing Ethics booklet developed by the USOE, available on the USOE Assessment homepage in providing training for all test administrators/proctors.

E. Each and every test administrator/proctor shall individually sign a Testing Ethics signature page also available on the USOE Assessment homepage.

F. All teachers and test administrators shall conduct test preparation, test administration, and the return of all protected test materials in strict accordance with the procedures and guidelines specified in test administration manuals, school district/charter school rules and policies, Board rules, and state application of federal requirements for funding.

G. Teachers, administrators, and school personnel shall not:

- (1) provide students directly or indirectly with specific questions, answers, or the subject matter of any specific item in any standardized test prior to test administration;
- (2) copy, print, or make any facsimile of protected testing material prior to test administration without express permission of the specific test publisher, including USOE, and school district/charter school administration;
- (3) change, alter, or amend any student answer sheet or any other standardized test materials at any time in such a way as to alter the student's intended response;
- (4) use any prior form of any standardized test (including pilot test materials) that has not been released by the USOE in test preparation without express permission of the specific test publisher, including USOE, and school district/charter school administration;
- (5) violate any specific test administration procedure or guideline specified in the test administration manual, or violate any state or school district/charter school standardized testing policy or procedure;
- (6) knowingly and intentionally do anything that would inappropriately affect the security, validity, or reliability of standardized test scores of any individual student, class, or school;

H. Violation of any of these rules may subject licensed educators to possible disciplinary action under Rules of Professional Practices and Conduct for Utah Educators, R686-103-6(I).

**KEY: educational testing  
August 7, 2009**

**Art X Sec 3**

**R277. Education, Administration.****R277-477. Distribution of Funds from the Interest and Dividend Account (School LAND Trust Funds) and Administration of the School LAND Trust Program.****R277-477-1. Definitions.**

A. "Board" means the Utah State Board of Education. The Board is the representative and advocate for beneficiaries of the School Trust corpus and the School LAND Trust Program.

B. "Most critical academic needs" for purposes of this rule means needs identified in the school improvement plan developed in accordance with Section 53A-1a-108.5.

C. "Fall Enrollment Report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report from the previous year.

D. "Funds" means interest and dividend income as defined under Section 53A-16-101.5(2).

E. "Interest and Dividends Account" means an account created under Section 53A-16-101 established to collect interest and dividends from the permanent State School Fund until the end of the fiscal year at which time the funds are distributed to school districts through the School LAND Trust Program.

F. "Local board of education" means the locally-elected board designated in Section 53A-3-101 that makes decisions and directs the actions of local school districts and is directed in Section 53A-16-101.5(5)(b) to approve School LAND Trust plans for schools under the local board's authority.

G. "School Children's Trust Section" means employees designated by the Superintendent who have responsibility for overseeing the use of School LAND Trust program funds.

H. "School community" means the geographic area designated by the school district as the attendance area with reasonable inclusion of the parents or legal guardians of additional students who are attending the school.

I. "State Charter School Board (SCSB)" means the board designated under Section 53A-1a-501.5 that has responsibility for making recommendations regarding the welfare of charter schools to the Board and the board that has responsibility to approve School LAND Trust plans for charter schools. The SCSB has primary responsibility to provide training and oversight for charter school School LAND Trust plans.

J. "State Superintendent of Public Instruction (Superintendent)" means the individual appointed by the Board as provided for in Section 53A-1-301(1) to administer all programs assigned to the Board in accordance with the policies and the standards established by the Board.

K. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report of the school district, charter school, or USDB.

L. "USDB" means the Utah Schools for the Deaf and the Blind.

M. "USOE" means the Utah State Office of Education.

**R277-477-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by Section 53A-16-101.5(3)(c) which allows the Board to adopt rules regarding the time and manner in which the student count shall be made for allocation of school trust land funds, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) provide direction in the distribution of interest and dividends from the Interest and Dividends Account created in Section 53A-16-101 and funded in Section 53A-16-101.5(2) through school districts;

(2) provide for appropriate and adequate oversight of the

expenditure and use of School LAND Trust monies by designated local boards of education, the SCSB, and the Board;

(3) provide for review and monitoring of funds and revenue generated by school trust lands; and

(4) determine the time and manner in which the student count shall be made for allocation of the monies as provided in Section 53A-16-101.5(3)(c).

**R277-477-3. Distribution of Funds -- Determination of Proportionate Share.**

A. Funds shall be distributed to school districts and charter schools as provided under Section 53A-16-101.5(3)(a). The distribution shall be based on the state's total fall enrollment as reflected in the audited October 1 Fall Enrollment Report from the previous school year.

B. Each school district and the USOE, with regard to charter schools and the USDB, shall distribute funds received under R277-477-3A to each school within each school district or to each charter school and USDB on an equal per student basis.

C. Local boards of education and the USOE may adjust distributions, maintaining an equal per student distribution within a school district for school openings and closures and for boundary changes occurring after the audited October 1 Fall Enrollment Report of the prior year.

D. All public non-charter schools receiving funds shall have a school community council as required by Sections 53A-1a-108 and R277-491; funds shall be used to enhance or improve a school's academic excellence consistent with Section 53A-16-101.5. Plans shall be approved by the local board of education. Required school community council-generated plans or programs include:

- (1) School Improvement Plan;
- (2) School LAND Trust Program;
- (3) Reading Achievement Plan (for elementary schools)
- (4) Professional Development Plan;
- (5) Child Access Routing Plan; and
- (6) Recommendations regarding school/school district programs and community environment.

E. All charter schools that elect to receive School LAND Trust funds shall have a committee consisting of a majority of parents elected from parents of students currently attending the charter school that is designated to make decisions about the School LAND Trust funds, and a current school plan for enhancing or improving academic excellence consistent with Section 53A-16-101.5 approved by the SCSB for state chartered schools.

F. The plan shall be electronically submitted to the USOE on the School LAND Trust Program website.

G. All charter schools shall be considered collectively as a school district to receive a base amount under Section 53A-16-101.5(3)(a)(i).

H. The USDB shall receive the average statewide per pupil base amount as the school's base allocation.

I. In order to receive its allocation, a school shall satisfy the requirements of Section 53A-16-101.5(4-7).

J. Plans shall include specific academic goals, steps to meet those goals, measurements to assess improvement and specific expenditures to implement plans that may include purchase of workbooks, textbooks, professional development, computer hardware and software, library and media supplies, or supplement funding for aides, teachers and specialists, and other tools for student academic improvement consistent with Section 53A-16-101.5(5).

K. Income from the Interest and Dividends Account shall be distributed to school districts, USDB, and charter schools after the close of the state fiscal year as the USOE receives the funds in the Interest and Dividends Account within the Uniform School Fund.

L. Local boards of education or the SCSB shall approve plans annually and shall ensure timely distribution of the funds to schools with approved plans.

M. When approving school plans on the School LAND Trust Program website, school district and charter school personnel shall report the meeting date(s) when the local board of education or the SCSB approved the plans.

N. Funds not used in the school approved plan may be carried over by the school to the next school year and added to the School LAND Trust Program funds available for expenditure in that school the following year. Schools shall provide an explanation for any carry over that exceeds one-third of the school's allocation in the school plan or report.

O. School LAND Trust Program funds shall be focused on the school's most critical academic needs.

P. School LAND Trust Program funds shall be focused on implementing a recommended course of action to enhance or improve student academic achievement and implement a component of the school improvement plan focused on the school's identified most critical academic needs, as explained in Section 53A-1a-108.5 and Section 53A-16-101.5(5).

Q. Examples of successful programs using School LAND Trust Program monies include activities such as:

- (1) credit recovery courses and programs;
- (2) study skills classes;
- (3) college entrance exam preparation classes;
- (4) academic field trips;
- (5) classroom equipment and materials such as flashcards, math manipulatives, calculators, microscopes, maps, books, or student planners;
- (6) teachers and teacher aides;
- (7) professional development directly tied to school academic goals;
- (8) computer labs, software, LCDs, smart boards;
- (9) books and textbooks.

R. Examples of programs not eligible for funding using School LAND Trust Program monies include plans to improve school climate, provide security, address behavioral issues, prevent bullying, install permanent auditorium audio systems, and initiate or support other non-academic school needs.

S. Schools serving students with disabilities may use funds as needed to directly influence and improve student performance according to the student Individual Education Plans (IEPs).

T. The School Children's Trust Section of the USOE shall create and electronically post model plans for elementary and secondary schools.

U. Funds from the School LAND Trust Program that are expended inconsistent with the requirements and academic intent of the law, inconsistent with R277-477, or inconsistent with the original school board/charter board approval shall be withheld by the USOE in subsequent years until the misappropriated funds have been restored.

V. Schools serving only youth in custody may form committees and submit plans to the district serving the students. Youth in custody schools shall receive the same per pupil distribution as other schools in the district providing services.

W. Plans submitted by charter schools shall be prepared, submitted and approved by the charter school committee established in R277-470-9D, requiring a majority of elected parents to serve on the committee, and then submitted first to the local charter school board, then to the local board of education for approval, if the school is chartered by the district, or to the SCSB if the school is chartered by the Board.

X. Plans submitted by the USDB governing board shall be reviewed and approved by the State Superintendent or designee.

**R277-477-4. Administration of School LAND Trust Program.**

A. The School Children's Trust Section of the USOE shall

provide support to local boards of education, to the SCSB and to local charter trust land committees, as directed by the Superintendent.

B. Support services shall include:

(1) Regional training and, to the extent of resources available, school district or school training for school community councils, as requested by local boards of education or the SCSB;

(2) Training materials;

(3) Model plans for school improvement, reading achievement, School LAND Trust, professional development assistance, and child access routing plans for both elementary and secondary schools.

(4) Materials, suggested practices and plans for use by community councils and charter school trust land committees to:

(a) increase community and parent awareness and knowledge of community councils;

(b) increase community and parent knowledge about school trust lands and their history and purpose in generating funds for public schools;

(c) encourage parent participation in developing plans for local board approval for the use of School LAND Trust allotments.

C. The School Children's Trust Section shall monitor development of School LAND Trust plans and assist local community councils and charter school trust land committees with plan development as requested, and monitor expenditures and compliance with statutory requirements. Assistance/monitoring may include:

(1) timely notification of annual School LAND Trust allotments to public schools;

(2) clear and timely notification of required timelines for plan submission;

(3) periodic, cost-effective and scheduled review of submitted school plan consistency and plan expenditures and results;

(4) verifying web postings and other information regarding school community council and charter school trust land committees compliance with the Utah Public and Open Meetings Act.

D. The School Children's Trust Section shall receive direction from the Superintendent as it provides monitoring and review.

E. Monitoring and review shall be accomplished primarily through written/electronic assurances from school community councils and charter school trust land committees, written/electronic submission of information from local school boards and charter schools and random and selective paper audits of School LAND Trust expenditures and the execution of School LAND Trust plans.

F. The School Children's Trust Section shall, under the direction of the Superintendent, provide oversight and expertise regarding the School LAND Trust account and all related activities. Oversight and activities may include:

(1) attending meetings where school trust land, permanent fund, and school community council issues are discussed and voted on;

(2) providing information to other state agencies, general public, and the Legislature regarding school trust lands and revenues;

(3) reviewing and providing information as representatives of the Superintendent to boards, state agencies and employees that have responsibility for managing school trust lands, maximizing trust land revenues, and investing the permanent State School Fund prudently;

(4) increase and strengthen beneficiary monitoring; and  
(5) other activities or assignments as directed by the Superintendent.

**R277-477-5. Information to USOE.**

A. Information on each school's plan to address most critical academic needs shall be completed via the School LAND Trust Program website maintained through the USOE for accurate and uniform reporting.

B. To facilitate submission of information by schools, each school board shall establish a timeline for timely submission of information and a district submission date for the district schools not later than May 15 of each year.

C. Timelines shall allow for school committee reconsideration and editing of the school plan following local board of education or SCSB requested changes.

D. USOE staff may visit schools receiving funds from the School LAND Trust Program as directed by the Superintendent to discuss the program, receive information and suggestions, provide training, and answer questions.

E. School districts and charter schools wishing to submit information to the School LAND Trust website through a comprehensive electronic plan shall meet the parameters for programming and data entry required by the USOE. They shall review School LAND Trust plans on the USOE website prior to local board of education or SCSB approval to ensure information consistent with the law has been downloaded by individual schools into the electronic plan visible on the School LAND Trust Program website.

F. Charter school and school district business administrators shall enter financial data relating to the School LAND Trust Program on the School LAND Trust Program website at the time they prepare and submit Annual Program Report (APR) data to the USOE. The appropriate data shall appear in the final reports submitted online by school community councils for reporting to parents as required in Section 53A-1a-108.

G. The financial data shall include:

(1) the annual distribution received by each school (the sum of the distributions to schools within a school district equals the total distributed to the school district by the USOE);

(2) expenditures made by each school from revenues received from the School LAND Trust in the prior fiscal year.

H. Expenditures made after the close of the fiscal year shall be accounted for as expenditures in the following fiscal year.

I. The financial report in each school final report shall be consistent with the narrative submitted by that school community council or charter committee.

**KEY: schools, trust lands funds****August 7, 2009****Art X Sec 3****Notice of Continuation November 23, 2005A-16-101.5(3)(c)****53A-1-401(3)**

**R277. Education, Administration.****R277-491. School Community Councils.****R277-491-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Candidate" means a parent or school employee who has filed for election to the school community council.
- C. "Contested race" means the election of members to a school community council when there are more candidates than open positions.
- D. "Days" means calendar days unless otherwise specifically designated.
- E. "Develop school improvement plan and school trust program and other programs" means to participate actively in the creation of plans, including analysis of school assessment data, development of School LAND Trust budgets, and review of School LAND Trust expenditures under Section 53A-16-101.5(5)(a)(iv) and 53A-16-101.5(6)(b)(ii). This may include establishing subcommittees where needed or assigning work to individuals.
- F. "Parent" means the parent or legal guardian of a student attending the non-charter public school or of a student who will be enrolled at the school in the next school year.
- G. "Parent member" means a parent or guardian of a student who is attending the school or of a student who will be enrolled at the school in the next school year if the election is held in the spring. A parent member of a school community council may not include a person who meets the definition of a school employee member unless the person's employment at the school does not exceed an average of six hours per week, consistent with Section 53A-1a-108(1)(a)(ii).
- H. "School administrator" means a school principal, school assistant principal or designee as specifically assigned by the school administrator.
- I. "School community" means the geographic area designated by the school district as the attendance area with reasonable inclusion of the parents or legal guardians of additional students who are attending the school.
- J. "School employee member" means a person employed at the school for more than an average of six hours per week by the school or school district; the principal is one school employee member.
- K. "Secure ballot box" means a closed container prepared by the school for the deposit of secret ballots for the school community council elections.
- L. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report.
- M. "Students attending the school" for purposes of this rule means students currently attending the school and those officially enrolled to attend the school in the next school year.
- N. "USDB" means the Utah Schools for the Deaf and the Blind.
- O. "USOE" means the Utah State Office of Education.

**R277-491-2. Authority and Purpose.**

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- B. Local boards of education for school districts and the State Charter School Board for state-sponsored charter schools are responsible for school community council operations, plans, oversight, and training.
- C. The purpose of this rule is to:
- (1) provide procedures and clarifying information to school community councils to assist them in fulfilling school community council responsibilities consistent with Section 53A-1a-108(3);

- (2) provide direction to school districts and schools in establishing and maintaining school community councils whose primary focus is to develop, approve, and assist in implementing school improvement plans, and advise school/school district administrators consistent with Sections 53A-1a-108(3) and 53A-16-101.5;

- (3) provide a framework and support for improved academic achievement of students that is locally driven from within individual schools, through critical review of testing results and other indicators of student success, by establishing meaningful, measurable goals and implementing research-based programs and processes to reach the goals;

- (4) encourage increased participation of the parents, school employees and others that support the purposes of the school community councils; and

- (5) encourage compliance with the law in the election of school community councils, in meeting reporting requirements, in complying with open and public meetings requirements.

**R277-491-3. School Community Council Member Election Provisions.**

A. Parents may stand for election as parent members of a school community council at a school if their child(ren) are attending the school or will be enrolled at the school in the next school year if the community council election is held in the spring.

B. Parents may vote for the school community council parent members if their child(ren) are enrolled or will be attending the school in the next school year, consistent with the intent to encourage the greatest participation possible of all available parents.

C. School community councils may establish procedures that allow for ballots to be clearly marked and mailed to the school in the case of geography or school distances that would otherwise discourage parent participation. Hand-delivered or mailed ballots shall meet the same timelines for voters voting in person.

D. Entire school districts or schools may allow parents to vote by electronic ballot. If school districts/schools allow voting by electronic means, the opportunity shall be clearly explained on the school district/school website including:

- (1) directions for electronic voting;
- (2) security provisions for electronic voting;
- (3) statement to parents and community members that violations of a school district's/school's voting procedures may disqualify a parent's vote or invalidate a specific school election, or both.

E. Ballots and voting are required only in the event of a school community council contested race.

F. School community councils are encouraged to establish clear and written:

- (1) procedures that are consistent with state law, Board rules, and local board policies;
- (2) procedures for the selection of school community council chairs and vice chairs;
- (3) timelines and procedures for school community council elections that may include receiving information from applicants in a timely manner; and
- (4) additional clarification and procedures to assist in the efficient operation of school community councils consistent with the law.

**R277-491-4. School Community Council School/School Administrator Responsibilities.**

A. A school administrator may not serve as chair or co-chair of the school community council.

B. The school community council chair shall provide the following information to the school community, with assistance from the school administration:



(1) Notice of dates and times of school community council elections at least 14 days before the elections are held;

(2) Timely notice of school community council positions that are up for election;

(3) Instructions for applying to become a school community council member together with timelines for submitting information and applications;

(4) Notice of the school community council meeting schedule, provided in the first 14 days of the school year;

(5) A summary of the school community council's actions and activities for the first half of the school year, provided mid-way through the school year;

(6) A summary of the annual expenditure report of all School LAND Trust Program funds provided to the school community and to the local board of education or State Charter School Board in the fall of the school year following the school year that the school plans were implemented; and

(7) Posting the school community council meeting information (time, place and date of meeting; meeting agenda and previous meeting minutes) on the school's website at least one week prior to each meeting, and on the access door(s) of the school on the day of the meeting.

B. The school community council chair, assisted by the school administrator, shall provide information on the school website and in at least one other direct delivery method ensuring that all parents are notified as provided in Section 53A-1a-108(7)(a).

C. The school community council chair, assisted by the school administrator, shall act in compliance with the Utah Open and Public Meetings Act, Section 52-4-101 et seq., including:

(1) posting upcoming agendas and meeting locations;

(2) posting minutes of the most recent meeting;

(3) posting the agenda and location of the upcoming meeting on the school's website at least one week prior to the meeting;

(4) posting the agenda and location of the upcoming meeting on the school's access door on the day of the meeting;

(5) providing timely written minutes of the meeting; and

(6) recording the meeting, and other required or appropriate activities.

D. School community council responsibilities do not allow for closed meetings, consistent with the purposes of Section 52-4-205.

E. School community councils shall become familiar with and consider the following:

(1) Satisfying the meeting recording process with sensitivity for parents and community members whose primary language is not English; and

(2) The limitations of open and public meetings in secure or locked school settings and facilities.

#### **R277-491-5. Parent Rights and Responsibilities.**

A. Parents of students attending a school and to the extent possible, parents whose children will attend the school in the next school year (for spring community council elections) shall receive notice of open school community council positions and of elections consistent with Section 53A-1a-108.

B. Parents of students attending a school shall have access to schedules, agendas, minutes and decisions consistent with Sections 53A-1a-108(7) and (8).

C. School community council parent members shall participate fully in the development of various school plans described in Section 53A-1a-108(3) including, at a minimum:

(1) School Improvement Plan;

(2) School LAND Trust Plan;

(3) Reading Achievement Plan (for elementary schools);

(4) Professional Development Plan;

(5) Child Access Routing Plan; and

(6) Review of School Health Plans required under Section 53A-11-204.

D. Parents shall receive timely notice of school community council timelines and procedures that affect parent member elections, school community council meeting information and other parent rights or opportunities, consistent with state law, Board rules, and local board policy.

#### **R277-491-6. Additional School Community Council Information and Provisions.**

A. School community councils shall set the beginning terms for school community council members consistent with Section 53A-1a-108(5)(g).

B. School community councils shall report on plans, programs, and expenditures, including detailed descriptions of expenditures for professional development, at least annually to local boards of education and cooperate with the legislative and USOE monitoring, and audits.

C. School community councils may establish procedures and requirements for parent notification and election timelines that are not inconsistent with Sections 53A-1a-108, 53A-16-101.5, 52-4-101 et. seq., this rule, or local board policy.

D. Public schools that are secure facilities, juvenile detention facilities, hospital program schools, and other small special programs may receive all funds available to schools with school community councils if the schools demonstrate and document a good faith effort to recruit members, have meetings and publicize results as recognized and affirmed by local boards of education.

E. School community councils may designate districts, areas or grade levels in order to recruit school community council members from all areas of the school community. If parents from designated areas do not apply for the school community council positions, positions shall be filled with interested parents who do apply.

F. Local boards of education may ask school community councils to address local issues at the school community council level for discussion before bringing the issues to local boards of education. School community councils may be asked for information to inform local board decisions.

G. Local boards of education, and the State Charter School Board for state-sponsored charter schools, shall report approval dates of required plans to the USOE. School community councils are encouraged to advise and inform elected local board members.

H. Local boards of education make decisions in governing school districts with superintendents and principals acting under the direction and in behalf of local board of education in all areas of governance, including implementing approved School Improvement and School LAND Trust Program plans.

#### **KEY: school community councils August 7, 2009**

**Art X Sec 3  
53A-1-401(3)**

**R277. Education, Administration.****R277-516. Education Employee Required Reports of Arrests and Required Background Check Policies for Non-licensed Employees.****R277-516-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Licensed educator" means an individual who holds a valid Utah educator license and has satisfied all requirements to be a licensed educator in the Utah public school system (examples are traditional public school teachers, charter school teachers, school administrators, USOE and school district specialists). A licensed educator may or may not be employed in a position that requires an educator license. Licensed educators include individuals who are student teaching, who are in alternative routes to licensing programs or positions and individuals who hold district- or charter school-specific licenses.

C. "Public education employer" means the education entity that hires and employs an individual, including public school districts, the Utah State Office of Education, Regional Service Centers, and charter schools.

D. "USOE" means the Utah State Office of Education.

**R277-516-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the Board, by Sections 53A-1-301(3)(a) and 53A-1-301(3)(d)(x) which instructs the State Superintendent of Public Instruction (Superintendent) to perform duties assigned by the Board that include presenting to the Governor and the Legislature each December a report of the public school system for the preceding year that includes investigation of all matters pertaining to the public schools, and statistical and financial information about the school system which the Superintendent considers pertinent; and by Sections 53A-1-402(1)(a)(i) and (iii) which direct the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and the evaluation of instructional personnel.

B. The purpose of this rule is ensure that all students who are compelled by law to attend public schools, subject to release from school attendance consistent with Section 53A-11-102, are instructed and served by public school teachers and employees who have not violated laws that would endanger students in any way.

**R277-516-3. Licensed Public Education Employee Personal Reporting of Arrests.**

A. A licensed educator who is arrested for the following alleged offenses shall report the arrest within 48 hours or as soon as possible to the licensed educator's district superintendent, charter school director or designee:

(1) any matters involving arrests for alleged sex offenses;

(2) any matters involving arrests for alleged drug-related offenses;

(3) any matters involving arrests for alleged alcohol-related offenses; and

(4) any matters involving arrests for alleged offenses against the person under Title 76, Chapter 5, Offenses Against the Person.

B. A licensed educator shall report convictions, including pleas in abeyance and diversion agreements within 48 hours or as soon as possible upon receipt of notice of the conviction, plea in abeyance or diversion agreement.

C. The district superintendent, charter school director or designee shall report conviction, arrest or offense information received from licensed educators to the USOE within 48 hours of receipt of information from licensed educators. The USOE shall develop an electronic reporting process on the USOE

website.

D. The licensed educator shall report for work following the arrest and notice to the employer unless directed not to report for work by the employer, consistent with school district or charter school policy.

**R277-516-4. Non-licensed Public Education Employee Background Check Policies.**

A. School districts and charter schools shall adopt policies for non-licensed public education employee background checks that include at least the following components:

(1) periodic background checks of non-licensed employees;

(2) non-licensed employees shall submit to criminal background checks at least every six years;

C. School district and charter school policies shall determine the background check process necessary based on the non-licensed employee's assignment.

D. School districts and charter schools shall submit to the Utah Department of Public Safety a complete list of non-licensed employees including names, dates of birth, and social security numbers.

**R277-516-5. Non-licensed Public Education Employee Arrest Reporting Policy Required from School Districts and Charter Schools.**

A. School districts/charter schools shall have a policy requiring reporting of designated offenses by non-licensed public employees and all employees who drive motor vehicles as an employment responsibility.

B. School districts/charter schools shall have an employee reporting policy for non-licensed employees adopted in an open board meeting no later than September 15, 2009. The policy shall be available on the school district/charter school website or provided to the USOE or both.

C. The policy shall include the following minimum components:

(1) reporting of the following:

(a) convictions, including pleas in abeyance and diversion agreements;

(b) any matters involving arrests for alleged sex offenses;

(c) any matters involving arrests for alleged drug-related offenses;

(d) any matters involving arrests for alleged alcohol-related offenses; and

(e) any matters involving arrests for alleged offenses against the person under Title 76, Chapter 5, Offenses Against the Person.

(2) a timeline for receiving reports required under R277-516-3B from licensed educators who drive as an employment assignment and from other non-licensed public education employees;

(3) immediate suspension from student supervision responsibilities for alleged sex offenses and other alleged offenses which may endanger students during the period of investigation;

(4) immediate suspension from transporting students or public education vehicle operation or maintenance for alleged offenses involving alcohol or drugs during the period of investigation;

(5) adequate due process for the accused employee consistent with Section 53A-3-410(10);

(6) a process to review arrest information and make employment decisions that protect both the safety of students and the confidentiality and due process rights of employees;

(7) timelines and procedures for maintaining records of arrests and convictions of non-licensed public education employees. Records shall:

(a) include final administrative determinations and actions

following investigation; and

(b) be maintained only as necessary to protect the safety of students and with strict requirements for the protection of confidential employment information.

**R277-516-6. Public Education Employer Responsibilities Upon Receipt of Arrest Information from Employees.**

A. A public education employer that receives arrest information about a licensed public education employee shall review arrest information and assess the employment status consistent with Section 53A-6-501, R277-515, and the school district/charter school's policy.

B. A public education employer that receives arrest information about a non-licensed public education employee shall review arrest information and assess the employee's employment status considering the non-licensed public education employee's assignment and consistent with a local board-approved policy for ethical behavior of non-licensed employees.

C. A local board shall provide appropriate training to non-licensed public education employees about the provisions of the local board's policy for self-reporting and ethical behavior of non-licensed public education employees.

D. A public education employer shall cooperate with the USOE in investigations of licensed educators.

**R277-516-7. USOE Responsibility for Review of Arrest/Conviction Information from Licensed Educators.**

A. The USOE shall review reports from licensed educators in a timely manner.

B. The USOE shall investigate information received from educators under this rule consistent with procedures under Section 53A-6-401 and R686-100.

C. The USOE shall cooperate with school districts/charter schools in the investigative and disciplinary process.

**KEY: school employees, self reporting  
August 7, 2009**

Art X Sec 3  
53A-1-301(3)(a)  
53A-1-301(3)(d)(x)  
53A-1-402(1)(a)(i)  
53A-1-402(1)(a)(iii)

**R277. Education, Administration.****R277-705. Secondary School Completion and Diplomas.****R277-705-1. Definitions.**

In addition to terms defined in Section 53A-1-602:

A. "Accredited" means evaluated and approved under the Standards for Accreditation of the Northwest Association of Accredited Schools or the accreditation standards of the Board, available from the Utah State Office of Education Accreditation Specialist.

B. "Board" means the Utah State Board of Education.

C. "Criterion-referenced test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

D. "Cut score" means the minimum score a student must attain for each subtest to pass the UBSCT.

E. "Demonstrated competence" means subject mastery as determined by school district standards and review. School district review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.

F. "Diploma" means an official document awarded by a public school district or high school consistent with state and district graduation requirements and the provisions of this rule.

G. "Individualized Education Program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Utah Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

H. "Military child or children" means a K-12 public education student whose parent(s) or legal guardian(s) satisfies the definition of Section 53A-11-1401.

I. "Secondary school" means grades 7-12 in whatever kind of school the grade levels exist.

J. "Section 504 Plan" means a written statement of reasonable accommodations for a student with a qualifying disability that is developed, reviewed, and revised in accordance with Section 504 of the Rehabilitation Act of 1973.

K. "Special purpose schools" means schools designated by regional accrediting agencies, such as Northwest. These schools typically serve a specific population such as students with disabilities, youth in custody, or schools with specific curricular emphasis. Their courses and curricula are designed to serve their specific populations and may be modified from traditional programs.

L. "Supplemental education provider" means a private school or educational service provider which may or may not be accredited, that provides courses or services similar to public school courses/classes.

M. "Transcript" means an official document or record(s) generated by one or several schools which includes, at a minimum: the courses in which a secondary student was enrolled, grades and units of credit earned, UBSCT scores and dates of testing, citizenship and attendance records. The transcript is usually one part of the student's permanent or cumulative file which also may include birth certificate, immunization records and other information as determined by the school in possession of the record.

N. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) systematic norm-referenced achievement testing of all students in grades 3, 5, and 8 required by this part in all schools within each school district by means of tests designated by the Board;

(2) criterion-referenced achievement testing of students in all grade levels in basic skills courses;

(3) direct writing assessments in grades 5 and 8; and

(4) beginning with the 2003-2004 school year, a tenth grade basic skills competency test as detailed in Section 53A-1-611.

O. "Unit of credit" means credit awarded for courses taken consistent with this rule or upon school district/school authorization or for mastery demonstrated by approved methods.

P. "Utah Alternative Assessment (UAA)" means an assessment instrument for students in special education with disabilities so severe they are not able to participate in the components of U-PASS even with testing accommodations or modifications. The UAA measures progress on instructional goals and objectives in the student's individual education program (IEP).

Q. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade to include at a minimum components on English, language arts, reading and mathematics. Utah students shall satisfy the requirements of the UBSCT in addition to state and district graduation requirements prior to receiving a high school diploma indicating a passing score on all UBSCT subtests.

R. "UBSCT Advisory Committee" means a committee that is advisory to the Board with membership appointed by the Board, including appropriate representation of special populations from the following:

- (1) parents;
- (2) high school principal(s);
- (3) high school teacher(s);
- (4) district superintendent(s);
- (5) Coalition of Minorities Advisory Committee;
- (6) Utah State Office of Education staff;
- (7) local school board(s);
- (8) higher education.

**R277-705-2. 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)(b) and (c) which direct the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; Sections 53A-1-603 through 53A-1-611 which direct the Board to adopt rules for the conduct and administration of U-PASS; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide consistent definitions, provide alternative methods for students to earn and schools to award credit, to provide rules and procedures for the assessment of all students as required by law, and to provide for differentiated diplomas or certificates of completion consistent with state law.

**R277-705-3. Required School District Policy Explaining Student Credit.**

A. All Utah school districts or schools and charter schools shall have a policy, approved in an open meeting by the governing board, explaining the process and standards for acceptance and reciprocity of credits earned by students in accordance with Utah state law. Policies shall provide for specific and adequate notice to students and parents of all policy requirements and limitations.

B. School districts and schools shall adhere to the following standards for credits or coursework from schools, supplemental education providers accredited by the Northwest Association of Accredited Schools, and accredited distance learning schools:

(1) Public schools shall accept credits and grades awarded to students from schools or providers accredited by the Northwest Association of Accredited Schools or approved by the Board without alteration.

(2) School district or school policies may establish reasonable timelines and may require adequate and timely

documentation of authenticity for credits and grades submitted.

C. School district or school policies shall provide various methods for students to earn credit from non-accredited sources, course work or education providers. Methods, as designated by the school district or school may include:

- (1) Satisfaction of coursework by demonstrated competency, as evaluated at the school district or school level;
- (2) Assessment as proctored and determined at the school or school level;
- (3) Review of student work or projects by school or school district administrators; and
- (4) Satisfaction of electronic or correspondence coursework, as approved at the school or school district level.

D. Schools/school districts may require documentation of compliance with Section 53A-11-102 prior to reviewing student home school or competency work, assessment or materials.

E. School/school district policies for participation in extracurricular activities, awards, recognitions, and enhanced diplomas may be determined locally consistent with the law and this rule.

F. A school district or school has the final decision-making authority for the awarding of credit and grades from non-accredited sources consistent with state law, due process, and this rule.

#### **R277-705-4. Diplomas and Certificates of Completion.**

A. School districts or schools shall award diplomas and certificates of completion.

B. School districts or schools shall offer differentiated diplomas to secondary school students and adults to include:

(1) a high school diploma indicating on the diploma that a student successfully completed all state and district course requirements for graduation and passed all subtests of the UBSCT.

(2) a high school diploma indicating on the diploma that a student did not receive a passing score on all UBSCT subtests; the student shall have:

- (a) met all state and district course requirements for graduation; and
- (b) beginning with the graduating class of 2007, participated in UBSCT remediation consistent with school district or school policies and opportunities; and
- (c) provided documentation of at least three attempts to take and pass all subtests of the UBSCT unless:
  - (i) the student took all subtests of the UBSCT offered while the student was enrolled in Utah schools; or
  - (ii) a student's IEP team has determined that the student's participation in statewide assessment is through the UAA.

C. School districts or schools shall establish criteria for students to earn a certificate of completion that may be awarded to students who have completed their senior year, are exiting the school system, and have not met all state or district requirements for a diploma.

#### **R277-705-5. Students with Disabilities.**

A. A student with disabilities served by special education programs shall satisfy high school completion or graduation criteria, consistent with state and federal law and the student's IEP.

B. A student may be awarded a certificate of completion or a differentiated diploma, consistent with state and federal law and the student's IEP or Section 504 Plan.

#### **R277-705-6. Adult Education Students.**

A. Students who are officially enrolled in a school district as adult education students shall not be required to attempt or pass the UBSCT in order to qualify for an adult education diploma.

B. Adult education students are eligible only for an adult

education secondary diploma.

C. After the 2006-2007 school year, adult education diplomas cannot be upgraded or changed to traditional, high school-specific diplomas.

D. School districts shall establish policies:

- (1) allowing or disallowing adult education student participation in graduation activities or ceremonies.
- (2) allowing or disallowing adult education students from attempting the UBSCT.
- (3) providing for wording, on adult education diplomas, including allowing or disallowing adult education diplomas to state that student did or did not pass UBSCT.
- (4) establishing timelines and criteria for satisfying adult education graduation/diploma requirements.

#### **R277-705-7. Utah Basic Skills Competency Testing Requirements and Procedures.**

A. All Utah public school students shall participate in Utah Basic Skills Competency testing, unless exempted consistent with R277-705-11, and unless alternate assessment is designated in accordance with federal law or regulations or state law.

B. Timeline:

(1) Beginning with students in the graduating class of 2006, UBSCT requirements shall apply.

(2) No student may take any subtest of the UBSCT before the tenth grade year.

(3) Tenth graders should first take the test in the second half of their tenth grade year.

(4) Exceptions may be made to this timeline with documentation of compelling circumstances and upon review by the school principal and Utah State Office of Education assessment staff.

C. UBSCT components, scoring and consequences:

(1) UBSCT consists of subtests in reading, writing and mathematics.

(2) Students who reach the established cut score for any subtest in any administration of the assessment have passed that subtest.

(3) Students shall pass all subtests to qualify for a high school diploma indicating a passing score on all UBSCT subtests unless they qualify under one of the exceptions of state law or this rule such as R277-705-7D.

(4) Students who do not reach the established cut score for any subtest shall have multiple additional opportunities to retake the subtest.

(5) Students who have not passed all subtests of the UBSCT by the end of their senior year may receive a diploma indicating that a student did not receive a passing score on all UBSCT subtests or a certificate of completion.

(6) Specific testing dates shall be calendared and published at least two years in advance by the Board.

D. Reciprocity and new seniors:

(1) Students who transfer from out of state to a Utah high school after the tenth grade year may be granted reciprocity for high school graduation exams taken and passed in other states or countries based on criteria set by the Board and applied by the local board.

(2) Students for whom reciprocity is not granted and students from other states or countries that do not have high school graduation exams shall be required to pass the UBSCT before receiving a high school diploma indicating a passing score on all UBSCT subtests if they enter the system before the final administration of the test in the student's senior year.

(3) The UBSCT Advisory Committee following review of applicable documentation shall recommend to the Board the type of diploma that a student entering a Utah high school in the student's senior year after the final administration of the UBSCT may receive.

## E. Testing eligibility:

(1) Building principals shall certify that all students taking the test in any administration are qualified to be tested.

## (2) Students are qualified if they:

(a) are enrolled in tenth grade, eleventh, or twelfth grade (or equivalent designation in adult education) in a Utah public school program; or

(b) are enrolled in a Utah private/parochial school (with documentation) and are at least 15 years old or enrolled at the appropriate grade level; or

(c) are home schooled (with documentation required under Section 53A-11-102) and are at least 15 years old; and

(3) Students eligible for accommodations, assistive devices, or other special conditions during testing shall submit appropriate documentation at the test site.

## F. Testing procedures:

(1) Three subtests make up the UBSCT: reading, writing, and mathematics. Each subtest may be given on a separate day.

(2) The same subtest shall be given to all students on the same day, as established by the Board.

(3) All sections of a subtest shall be completed in a single day.

(4) Subtests are not timed. Students shall be given the time necessary within the designated test day to attempt to answer every question on each section of the subtest.

(5) Makeup opportunities shall be provided to students for the UBSCT according to the following:

(a) Students shall be allowed to participate in makeup tests if they were not present for the entire UBSCT or subtest(s) of the UBSCT.

(b) School districts shall determine acceptable reasons for student makeup eligibility which may include absence due to illness, absence due to family emergency, or absence due to death of family member or close friend.

(c) School districts shall provide a makeup window not to exceed five school days immediately following the last day of each administration of the UBSCT.

(d) School districts shall determine and notify parents in an appropriate and timely manner of dates, times, and sites of makeup opportunities for the UBSCT.

(6) Arrangements for extraordinary circumstances or exceptions to R277-705-5 shall be reviewed and decided by the UBSCT Advisory Committee on a case-by-case basis consistent with the purposes of this rule and enabling legislation.

(7) School districts/schools shall allow appropriate exams to substitute for UBSCT attempts or successful completion of UBSCT for military children consistent with Section 53A-11-1404(2).

**R277-705-8. Security and Accountability.**

A. Building principals shall be responsible to secure and return completed tests consistent with Utah State Office of Education timelines.

B. School district testing directors shall account for all materials used, unused and returned.

C. Results shall be returned to students and parents/guardians no later than eight weeks following the administration of each test.

D. Appeals for failure to pass the UBSCT due to extraordinary circumstances:

(1) If a student or parent has good reason to believe, including documentation, that a testing irregularity or inaccuracy in scoring prevented a student from passing the UBSCT, the student or parent may appeal to the local board within 60 days of receipt of the test results.

(2) The local board shall consider the appeal and render a decision in a timely manner.

(3) The parent or student may appeal the local board's decision through the UBSCT Advisory Committee, under rules

adopted by the Board.

(4) Appeals under this section are limited to the criteria of R277-705-8D(1).

**R277-705-9. Designation of Differentiated Diplomas and Certificates of Completion.**

A. As provided under Section 53A-1-611(2)(d), districts or schools shall designate in express language at least the following types of diplomas or certificates:

(1) High School Diploma indicating a passing score on all UBSCT subtests.

(2) High School Diploma indicating that a student did not receive a passing score on all UBSCT subtests.

(3) Certificate of Completion.

(4) High school diploma indicating student achievement on assessments for school districts and charter schools exempted from UBSCT consistent with R277-705-11.

B. The designation shall be made on the face of the diploma or certificate of completion provided to students.

**R277-705-10. Student Rights and Responsibilities Related to Graduation, Transcripts and Receipt of Diplomas.**

A. School districts shall supervise the granting of credit and awarding of diplomas, but may delegate the responsibility to schools within the district.

B. A school district or school may determine criteria for a student's participation in graduation activities, honors, and exercises, independent of a student's receipt of a diploma or certificate of completion.

C. Diplomas or certificates, credit or unofficial transcripts may not be withheld from students for nonpayment of school fees.

D. School districts or schools shall establish consistent timelines for all students for completion of graduation requirements. Timelines shall be consistent with state law and this rule.

E. School districts/charter schools shall work with enrolled military children to evaluate the students' coursework or to assist students in completing coursework to allow military children to graduate with the students' age-appropriate graduating class consistent with Section 53A-11-1404.

F. Consistent with Section 53A-11-1404(3), if a Utah school is unable to facilitate a military child's receipt of diploma by evaluating coursework in Utah schools and previous schools attended, the Utah school shall contact the military child's previous local education agency and aid, to the extent possible, the receipt of a diploma.

**R277-705-11. Student Achievement Testing Exceptions.**

A. The Board may exempt a school district or charter school from U-PASS testing requirements if a school district or charter school pilots an assessment system that incorporates:

(1) online classroom-based assessment that utilizes adaptive testing in all grades;

(2) online writing assessment in grades 4 through 12;

(3) assessments administered in grades 8, 10, and 11;

(4) college placement assessments in grades 11 to provide information for 12th grade high school course selections; and

(5) is subject to an accountability plan and high school graduation standards that are based on the assessment system described in R277-705-11A(1), (2), (3), and (4) above and developed and adopted by the Board.

B. Exemptions may not exceed three rural school districts, two urban school districts, and five charter schools.

C. Exemptions may not continue beyond July 1, 2010.

D. Students moving from an exempted school district or charter school to a nonexempted school district or charter school, or students moving from a nonexempted school district or charter school to an exempted school district or charter

school during their 11th or 12th grade year may receive a diploma based on the requirements of their previous or new school district as determined by the parents and school administrators of the school they attend at the time of graduation.

**KEY: curricula**

**August 7, 2009**

**Art X Sec 3**

**Notice of Continuation February 2, 2007 53A-1-402(1)(b)**

**53A-1-603 through 53A-1-611**

**53A-1-401(3)**

**R277. Education, Administration.****R277-713. Concurrent Enrollment of High School Students in College Courses.****R277-713-1. Definitions.**

A. "Adjunct/Concurrent faculty" means instructors approved by the cooperating USHE institution and approved by school district or charter school receiving concurrent enrollment services from the instructor to teach concurrent enrollment classes on behalf of the USHE institution.

B. "Annual Concurrent Enrollment Contract" means a written plan, negotiated by a school district and a USHE institution, to provide college level courses to high school students.

C. "Board" means the Utah State Board of Education.

D. "Concurrent enrollment" for state funding and for the purposes of this rule means enrollment by public school students in one or more USHE institution course(s) under a contractual agreement between the USHE institution and a school district/public school. Students continue to be enrolled in public schools, counted in Average Daily Membership, and receive credit toward graduation. They also receive college credit for courses.

E. "Fees" for purposes of concurrent enrollment and this rule mean expenses to students directly related to enrollment and tuition. Fees do not include reasonable lab costs, expenses for textbooks and consumable curriculum materials that are required only for USHE credit or grades.

F. "USHE" means the Utah System of Higher Education.

G. "USOE" means the Utah State Office of Education.

**R277-713-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which provides for the State Board to have general supervision and control over public schools and by Section 53A-17a-120.5 which directs the Board to adopt rules providing that a school participating in the concurrent enrollment programs offered under Section 53A-15-101 shall receive an allocation from the monies as provided in Section 53A-15-101, Section 53A-1-402(1)(c) which directs the Board to adopt minimum standards for curriculum, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of concurrent enrollment is to provide a challenging college-level and productive secondary school experience, particularly in the senior year, and to provide transition courses that can be applied to post-secondary education.

C. The purpose of this rule is to specify the standards and procedures for concurrent enrollment courses and criteria for funding appropriate concurrent enrollment expenditures.

**R277-713-3. Student Eligibility.**

A. Schools and USHE institutions shall jointly establish student eligibility requirements which shall be sufficiently selective to predict a successful experience.

B. Local schools have the primary responsibility for identifying students who are eligible to participate in concurrent enrollment classes.

C. To ensure that a student is prepared for college level work, an appropriate assessment shall be administered to the student prior to participation in all concurrent mathematics and English courses, and to determine that the student meets prerequisites previously established for the same campus-based course by the sponsoring USHE institutions.

D. Each student participating in the concurrent enrollment program shall have a current student education/occupation plan (SEOP) on file at the participating school, as required under Section 53A-1a-106(2)(b).

**R277-713-4. Courses and Student Participation.**

A. The awarding of USHE institution credit for concurrent enrollment courses is the province of colleges and universities governed by USHE policies.

B. Concurrent enrollment offerings shall be limited to courses in English, mathematics, fine arts, humanities, science, social science, world languages, and career technical programs to allow a focus of energy and resources on quality instruction in these courses. However, there may be a greater variety of courses in the career technical education area. Concurrent Enrollment courses should assist students toward post-secondary degrees.

C. All concurrent enrollment courses shall be approved or orchestrated by the high school or the USOE and shall provide for waiver of fees to eligible students.

D. Only courses taken from a master list maintained by the Curriculum Section at the USOE shall be reimbursed from state concurrent enrollment funds.

E. Beginning with the 2008-09 school year, the Board of Regents, after consultation with school districts/charter schools, shall provide the USOE with proposed new course offerings, including syllabi and curriculum materials by November 30 of the year preceding the school year in which courses shall be offered.

F. Concurrent enrollment funding shall be provided only for 1000 or 2000 level courses unless a student's SEOP identifies a student's readiness and preparation for a higher level course. This exception shall be individually approved by the student's counselor and school district or charter school concurrent enrollment administrator. Concurrent enrollment funding is not intended for unilateral parent/student initiated college attendance or course-taking.

G. Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs. The number of courses selected shall be kept small enough to ensure coordinated statewide development and training activities for participating teachers.

H. Course content, procedures, examinations, teaching materials, and program monitoring shall be the responsibility of the appropriate USHE institution, shall be consistent with Utah law, and shall ensure quality and comparability with courses offered on the college or university campus.

I. Participation in concurrent enrollment generates higher education credit that becomes a part of a student's permanent college transcript.

**R277-713-5. Program Delivery.**

A. Schools within the USHE that grant higher education/college credit may participate in the concurrent enrollment program, provided that such participation shall be consistent with the law and consistent with Board rules specific to the use of public education funds and rules for public education programs.

B. Concurrent enrollment courses shall be offered at the most appropriate location using the most appropriate methods for the course content, the faculty, and the students involved, consistent with Section 53A-17a-120(2)(a).

C. The delivery system and curriculum program shall be designed and implemented to take full advantage of the most current available educational technology.

D. Courses taken by students who have received a diploma, whose class has graduated or who have participated in graduation exercises are not eligible for concurrent enrollment funding. Senior students shall complete reimbursable concurrent enrollment courses prior to their graduation or participation in graduation exercises.

E. Concurrent enrollment is intended primarily for students in their last two years of high school.



(1) Concurrent enrollment may not include high school courses that are typically offered in grades 9 or 10.

(2) The Early College High School Program, specifically initiated to encourage students to earn college credit beginning in the ninth grade leading to a college diploma earned concurrently with a high school diploma, may enroll student Program participants in grades 9 and 10 in concurrent enrollment courses.

F. State reimbursement to school districts for concurrent enrollment courses may not exceed 30 semester hours per student per year.

G. Public schools/school districts shall use USOE designated 11-digit course codes for concurrent enrollment courses.

#### **R277-713-6. Student Tuition, Fees and Credit for Concurrent Enrollment Programs.**

A. Tuition or fees may not be charged to high school students for participation in this program consistent with Section 53A-15-101(6)(b)(iii).

B. Students may be assessed a one-time enrollment charge per institution.

C. Concurrent enrollment program costs attributable only to USHE credit or enrollment are not fees and as such are not subject to fee waiver under R277-407.

D. All students' costs related to concurrent enrollment classes, which may include consumables, lab fees, copying, and material costs, as well as textbooks required for the course, are subject to fee waiver consistent with R277-407.

E. The school district/school shall be responsible for these waivers. The agreement between the USHE institution and the district may address the responsibility for fee waivers.

##### **F. Credit:**

(1) A student shall receive high school credit for concurrent enrollment classes that is consistent with the district policies for awarding credit for graduation.

(2) College level courses taught in the high school carry the same credit hour value as when taught on a college or university campus and apply toward college/university graduation on the same basis as courses taught at the USHE institution to which the credits are submitted.

(3) Credit earned through the concurrent enrollment program shall be transferable from one USHE institution to another.

(4) Concurrent enrollment course credit shall count toward high school graduation requirements as well as for college credit.

#### **R277-713-7. Faculty Requirements.**

A. Nomination of adjunct faculty is the joint responsibility of the participating local school district(s) and the participating USHE institution. Public education teachers shall have secondary endorsements in the subject area(s) to be taught and meet highly qualified standards for their assignment(s) consistent with R277-510. Final approval of the adjunct faculty shall be determined by the appropriate USHE institution.

B. USHE institution faculty beginning their USHE employment in the 2005-06 school year who are not K-12 teachers and who have significant unsupervised access to K-12 students and instruct in the concurrent enrollment program defined under this rule shall complete a criminal background check consistent with Section 53A-3-410. The adjunct faculty employer shall have responsibility for determining the need for criminal background checks consistent with the law and for satisfying this requirement and shall maintain appropriate documentation.

##### **C. Adjunct faculty status of high school teachers:**

(1) High school teachers who hold adjunct or part time faculty status with a USHE institution for the purpose of

teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic department.

(2) USHE institutions and secondary schools shall share expertise and professional development, as necessary, to adequately prepare teachers at all levels to teach concurrent enrollment students and content, including both federal and state laws specific to student privacy and student records.

#### **R277-713-8. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.**

A. Each district shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the district in the prior year compared to the state total of completed concurrent enrollment hours. Successfully completed means that a student received USHE credit for the course. Concurrent enrollment funds may not reimburse districts for repeated concurrent enrollment courses. Appropriate reimbursement may be verified at any reasonable time by USOE audit.

B. The funds shall first be allocated proportionally, based upon student credit hours delivered.

(1) Courses that are taught by public school educators: 60 percent of the funds shall be allocated to local school boards and charter schools, and 40 percent of the funds shall be allocated to the State Board of Regents.

(2) Courses taught by college or university faculty: 60 percent of the funds shall be allocated to the State Board of Regents, and 40 percent of the funds shall be allocated to local school boards and charter schools.

C. Each high school shall receive its proportional share of district concurrent enrollment monies allocated to the district pursuant to Section 53A-17a-120 based upon the hours of concurrent enrollment course work successfully completed by students on the high school campus as compared to the state total of completed concurrent enrollment hours.

D. Funds allocated to school districts for concurrent enrollment shall not be used for any other program.

E. District use of state funds for concurrent enrollment is limited to the following:

(1) aid in staff development of adjunct faculty in cooperation with the participating USHE institution;

(2) assistance with delivery costs for distance learning programs;

(3) participation in the costs of district or school personnel who work with the program;

(4) student textbooks and other instructional materials; and

(5) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407.

(6) districts/charter schools may purchase classroom equipment required to conduct concurrent enrollment courses, in the aggregate, not to exceed ten (10) percent of a district's/charter school's annual allocation of concurrent enrollment monies.

(7) other uses approved in writing by the USOE consistent with the law and purposes of this rule.

F. School districts/charter schools shall provide the USOE with end-of-year expenditures reports itemized by the categories identified in R277-713-8D.

#### **R277-713-9. Annual Contracts and Other Student Instruction Issues.**

A. Collaborating school districts/charter schools and USHE institutions shall negotiate annual contracts including:

(1) the courses offered;

(2) the location of the instruction;

(3) the teacher;

(4) student eligibility requirements;

- (5) course outlines;
- (6) texts, and other materials needed; and
- (7) the administrative and supervisory services, in-service education, and reporting mechanisms to be provided by each party to the contract.

(a) each school district/charter school shall provide an annual report to the USOE regarding supervisory services and professional development provided by a USHE institution.

(b) each school district/charter school shall provide an annual report to the USOE indicating that all concurrent enrollment instructors are in compliance with R277-713-7B and C.

B. A school district/charter school shall provide a copy of the annual contract entered into between a school district/charter school and a USHE institution for the upcoming school year no later than May 30 annually.

C. The annual concurrent enrollment agreement between a USHE institution and a school district/charter school who has responsibility shall:

(1) provide for parental permission for students to participate in concurrent enrollment classes, which includes notice to parents that participation in concurrent enrollment courses count toward a student's college record/transcript,

(2) provide for the entity responsible for parent notification about concurrent enrollment purpose(s) and student and family privacy protections; and

(3) provide for discussion and training, as necessary, to all concurrent enrollment instructors about student information, student records laws, and student confidentiality.

D. This rule shall be effective on the date posted with the Division of Administrative Rules, and shall apply to students who enroll in course work beginning with the 2005-2006 school year, and continuing thereafter.

**KEY: students, curricula, higher education**

**August 7, 2009**

**Notice of Continuation September 6, 2007**

**Art X Sec 3**

**53A-17a-120**

**53A-1-402(1)(c)**

**53A-1-401(3)**

### **R311. Environmental Quality, Environmental Response and Remediation.**

#### **R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training.**

##### **R311-201-1. Definitions.**

Definitions are found in Rule R311-200.

##### **R311-201-2. Certification Requirement.**

(a) Certified UST Consultant. After December 31, 1995, no person shall provide or contract to provide information, opinions, or advice relating to UST release management, abatement, investigation, corrective action, or evaluation for a fee, or in connection with the services for which a fee is charged, without having certification to conduct these activities, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b). The Certified UST Consultant shall be the person directly overseeing UST release-related work. The Certified UST Consultant shall make pertinent project management decisions and be responsible for ensuring that all aspects of UST-related work are performed in an appropriate manner, and all related documentation for work performed submitted to the Executive Secretary shall contain the Certified UST Consultant's signature. After December 31, 1995, any release abatement, investigation, and corrective action work performed by a person who is not certified or who is not working under the direct supervision of a Certified UST Consultant, and is performed for compliance with Utah underground storage tank release-related rules, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b), may be rejected by the Executive Secretary.

(b) UST Inspector. After December 31, 1989, no person shall conduct underground storage tank inspection for determining compliance with Utah underground storage tank rules without having certification to conduct these activities. After December 31, 1989, no owner or operator shall allow any underground storage tank inspections for determining compliance with Utah underground storage tank rules to be conducted on a tank under their ownership or operation unless the person conducting the tank inspection is certified according to Rule R311-201.

(c) UST tester. After December 31, 1989, no person shall conduct UST testing without having certification to conduct such activities. After December 31, 1989, no owner or operator shall allow UST testing to be conducted on an UST under their ownership or operation unless the person conducting the UST testing is certified according to Rule R311-201. Certification by the Executive Secretary under this Rule for tank, line and leak detector testing shall apply only to the specific UST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment or by training determined by the Executive Secretary to be equivalent to the manufacturer training. The Executive Secretary may issue a limited certification restricting the type of UST testing the applicant can perform.

(d) Groundwater and soil sampler. After December 31, 1989, no person shall conduct groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks without having certification to conduct these activities. After December 31, 1989, no owner or operator shall allow any groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks to be conducted on a tank under their ownership or operation unless the person conducting the groundwater or soil sampling is certified according to Rule R311-201.

(e) UST Installer. After January 1, 1991, no person shall install an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. After January 1, 1991, no owner or

operator shall allow the installation of an underground storage tank to be conducted on a tank under their ownership or operation unless the person installing the tank is certified according to Rule R311-201. The Executive Secretary may issue a limited certification restricting the type of UST installation the applicant can perform.

(f) UST Remover. After January 1, 1991, no person shall remove an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. After January 1, 1991, no owner or operator shall allow the removal of an underground storage tank to be conducted on a tank under their ownership or operation unless the person conducting the tank removal is certified according to Rule R311-201.

##### **R311-201-3. Application for Certification.**

(a) Any individual may apply for certification by paying any applicable fees and by submitting an application to the Executive Secretary to demonstrate that the applicant

(1) meets applicable eligibility requirements specified in Subsection R311-201-4 and

(2) will maintain the applicable performance standards specified in Subsection R311-201-6 after receiving a certificate.

(b) Applications submitted under Subsection R311-201-3(a) shall be reviewed by the Executive Secretary for determination of eligibility for certification. If the Executive Secretary determines that the applicant meets the applicable eligibility requirements described in Subsection R311-201-4 and meets the standards described in Subsection R311-201-6, the Executive Secretary shall issue to the applicant a certificate.

(c) Certification for all certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to Section R311-201-9 or inactivated pursuant to Section R311-201-8. Certificates shall be subject to periodic renewal pursuant to Subsection R311-201-5.

##### **R311-201-4. Eligibility for Certification.**

(a) Certified UST Consultant.

(1) Training. For initial and renewal certification, an applicant must meet Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, as required by federal and state law, and within a six-month period prior to application must complete an approved training course or equivalent in a program approved by the Executive Secretary to provide training to include the following areas: state and federal statutes, rules and regulations, groundwater and soil sampling, and other applicable and related Department of Environmental Quality policies.

(2) Experience. Each applicant must provide with the application a signed statement or other evidence demonstrating three years, within the past seven years, of appropriately related experience in underground storage tank release abatement, investigation, and corrective action, or an equivalent combination of appropriate education and experience, as determined by the Executive Secretary.

(3) Education. Each applicant must provide with the application college transcripts or other evidence demonstrating the following:

(A) a bachelor's or advanced degree from an accredited college or university with major study in environmental health, engineering, biological, chemical, environmental, or physical science, or a specialized or related scientific field, or equivalent education/experience as determined by the Executive Secretary;

(B) a professional engineering certificate licensed under Title 58, Chapter 22, of the Professional Engineers and Land Surveyors Licensing Act or equivalent certification as determined by the Executive Secretary; or

(C) a professional geologist certificate licensed under Title 58, Chapter 76 of the Professional Geologist Licensing Act, or equivalent certification as determined by the Executive Secretary.

(4) Initial Certification Examination. Each applicant who is not certified pursuant to R311-201-3 must successfully pass an initial certification examination or equivalent administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial examination based on the training requirements as outlined in Subsection R311-201-4(a)(1).

(5) Renewal Certification Examination. Certified UST Consultants seeking to renew their certification pursuant to R311-201-5 must successfully pass a renewal certification examination or equivalent administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the renewal examination based on the training requirements as outlined in Subsection R311-201-4(a)(1). The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(6) Examination for Revoked or Expired Certification. Any applicant who is not a Certified UST Consultant on the date the renewal certification examination is given, because the consultant's prior UST Consultant certification was revoked or expired prior to completing a renewal application, must successfully pass the initial certification examination administered under R311-201-4(a)(4).

(b) UST Inspector.

(1) Training. For initial certification, an applicant must have successfully completed an underground storage tank inspector training course or equivalent within the six month period prior to application. The training course shall be approved by the Executive Secretary and shall include instruction in the following areas: corrosion, geology, hydrology, tank handling, tank testing, product piping testing, disposal, safety, sampling methodology, state site inspection protocol, state and federal statutes, rules and regulations. Renewal certification training will be established by the Executive Secretary. The applicant must provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(b)(1), and the standards and criteria against which the applicant will be evaluated. The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(c) UST Tester.

(1) Financial Assurance. An applicant or applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers UST testing and which, in combination, represent an unencumbered value of the largest UST testing contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$50,000, whichever is greater. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the certification application.

(2) Training.

(A) Tank and product piping tightness testing, and automatic line leak detector testing. For initial certification, an applicant must have successfully passed a training course conducted by the manufacturer of the UST testing equipment that he will be using, or a training course determined by the Executive Secretary to be equivalent to the manufacturer training, in the correct use of the necessary equipment, and

testing procedures required to operate the UST test system. An applicant for renewal of certification must have successfully passed an appropriate refresher training course conducted by the manufacturer of the UST testing equipment that he will be using, or training as determined by the Executive Secretary to be equivalent to the manufacturer training, in the correct use of the necessary equipment, and testing procedures required to operate the UST test system. For renewal certification, refresher training or equivalent must be completed within one year prior to the expiration date of the certificate. In addition, an applicant must complete underground storage tank testers training within the six month period prior to application in a program approved by the Executive Secretary to provide training to include applicable and related areas of state and federal statutes, rules and regulations. Renewal certification training will be established by the Executive Secretary. The applicant must provide documentation of training with the application.

(B) Cathodic protection testing. For initial and renewal of certification, the applicant shall provide documentation of training as a "Cathodic protection tester" as defined in 40 CFR 280.12. The applicant shall provide documentation of training with the application.

(3) Performance Standards of Equipment. An applicant shall submit documentation that demonstrates the UST testing equipment used by the applicant meets performance standards of 40 CFR Part 280.40(a)(3), 280.43(c), and 280.44(b) for tank and product piping tightness testing. This documentation shall be obtained through an independent lab, professional engineering firm, or other independent organization or individual approved by the Executive Secretary. The documentation shall be submitted at the time of application for certification.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(c)(2), and the standards and criteria against which the applicant will be evaluated. The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(d) Groundwater and soil sampler.

(1) Training. For initial certification an applicant shall successfully complete an underground storage tank groundwater and soil sampler training course or equivalent within the six month period prior to application. The training course shall be approved by the Executive Secretary and shall include instruction in the following areas: chain of custody, decontamination, EPA testing methods, groundwater and soil sampling protocol, preservation of samples during transportation, coordination with Utah certified labs, state and federal statutes, rules and regulations. Renewal certification training will be determined by the Executive Secretary. The applicant shall provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and subsequent examinations, based on the training requirements as outlined in Subsection R311-201-4(d)(1), and the standards and criteria against which the applicant will be evaluated. The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(e) UST Installer.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which

covers underground storage tank installation and which, in combination, represents an unencumbered value of not less than the largest underground storage tank installation contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial certification, an applicant must have successfully completed an underground storage tank installer training course or equivalent within the six-month period prior to the application. The training course shall be approved by the Executive Secretary, and shall include instruction in the following areas: tank installation, preinstallation tank testing, product piping testing, excavation, anchoring, backfilling, secondary containment, leak detection methods, piping, electrical, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank installations.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(e)(2), and the standards and criteria against which the applicant will be evaluated. The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(f) UST Remover.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank removal and which, in combination, represents an unencumbered value of not less than the largest underground storage tank removal contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial certification, an applicant must have successfully completed an underground storage tank remover approved training course or equivalent within the six-month period prior to the application. The training course shall be approved by the Executive Secretary and shall include instruction in the following areas: tank removal, tank removal safety practices, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank removals.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(f)(2), and the standards and criteria against which the applicant will be evaluated. The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

#### **R311-201-5. Renewal.**

(a) A certificate holder may apply for certificate renewal not more than six months prior to the expiration date of the certificate by:

(1) submitting a completed application form to demonstrate that the applicant meets the applicable eligibility requirements described in R311-201-4 and meets the applicable performance standards specified in R311-201-6;

(2) paying any applicable fees, and

(3) passing a certification renewal examination.

(b) If the Executive Secretary determines that the applicant meets the applicable eligibility requirements of R311-201-4 and the applicable performance standards of R311-201-6, the Executive Secretary shall reissue the certificate to the applicant.

(c) Renewal certificates shall be issued for a period equal to the initial certification period, and shall be subject to inactivation under R311-201-8 and revocation under R311-201-9.

(d) Any applicant who has a certification which has been revoked or expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and certification examination requirements for initial certification under R311-201-4 for the applicable certificate before receiving the renewal certification, except as provided in R311-201-4(a)(6) for certified UST consultants.

#### **R311-201-6. Standards of Performance.**

(a) Certified UST Consultant. An individual who provides UST consulting services in the State of Utah:

(1) shall display the certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding UST release-related consulting in this state;

(3) shall provide, or shall associate appropriate personnel in order to provide a high level of experience and expertise in release abatement, investigation, or corrective action;

(4) shall perform, or take steps to ensure that work is performed with skill, care, and diligence consistent with a high level of experience and expertise in release abatement, investigation, or corrective action;

(5) shall perform work and submit documentation in a timely manner as determined by the Executive Secretary and in a format established by the Division of Environmental Response and Remediation, as outlined in the most recent Consultant's Day Seminar Handbook;

(6) shall review and certify by signature any documentation submitted to the Executive Secretary in accordance with UST release-related compliance;

(7) shall ensure and certify by signature all pertinent release abatement, investigation, and corrective action work performed under the direct supervision of a Certified UST Consultant;

(8) shall report the discovery of any release caused by or encountered in the course of performing environmental sampling for compliance with Utah underground storage tank rules, or report the results indicating that a release may have occurred, to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(9) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,

(10) shall not participate in any other activities regulated under Rule R311-201 without meeting all requirements of that certification program.

(b) UST Inspector. An individual who performs underground storage tank inspecting for the Division of Environmental Response and Remediation:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules

and regulations regarding underground storage tank inspecting in this state;

(3) shall report the discovery of any release caused by or encountered in the course of performing tank inspecting to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(4) shall conduct inspections of USTs and records to determine compliance with this rule only as authorized by the Executive Secretary.

(5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,

(7) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(c) UST Tester. An individual who performs UST testing in the State of Utah:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding UST testing in this state;

(3) shall perform all work in a manner that there is no release of the contents of the tank;

(4) shall report the discovery of any release caused by or encountered in the course of performing tank testing to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(5) shall assure that all operations of UST testing which are critical to the integrity of the system and to the protection of the environment shall be supervised by a certified person;

(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release or suspected release from an underground storage tank or which would falsify UST testing results of the underground storage tank system;

(8) shall perform work in a manner that the integrity of the underground storage tank system is maintained; and,

(9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(d) Groundwater and soil sampler. An individual who performs environmental sampling for compliance with Utah underground storage tank rules:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank sampling in this state;

(3) shall report the discovery of any release caused by or encountered in the course of performing groundwater or soil sampling or report the results indicating that a release may have occurred to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(4) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,

(6) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(e) UST Installer. An individual who performs underground storage tank installation in the State of Utah:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank installation

in this state;

(3) shall perform all work in a manner that there is no release of the contents of the tank;

(4) shall report the discovery of any release caused by or encountered in the course of performing tank installation to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(5) shall assure that all operations of tank installation which are critical to the integrity of the system and to the protection of the environment which includes preinstallation tank testing, tank site preparation including anchoring, tank placement, backfilling, cathodic protection installation, service, or repair, vent and product piping assembly, fill tube attachment, installation of tank manholes, pump installation, secondary containment construction, and UST repair shall be supervised by a certified person;

(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release from an underground storage tank; and

(8) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(9) shall notify the Executive Secretary as required by R311-203-3(a) before installing or upgrading an UST.

(f) UST Remover. An individual who performs underground storage tank removal in the State of Utah:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws and regulations regarding underground storage tank removal in this state;

(3) shall perform all work in a manner that there is no release of the contents of the tank;

(4) shall report the discovery of any release caused by or encountered in the course of performing tank removal to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(5) shall assure that all operations of tank removal which are critical to safety and to the protection of the environment which includes removal of soil adjacent to the tank, disassembly of pipe, final removal of product and sludges from the tank, cleaning of the tank, purging or inerting of the tank, removal of the tank from the ground, and removal of the tank from the site shall be supervised by a certified person;

(6) shall not proceed to close a regulated UST without an approved closure plan, except as outlined in Subsection R311-204-2(b);

(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(8) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release from an underground storage tank; and

(9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program, except as outlined in Subsection R311-204-5(b).

#### **R311-201-7. Denial of Certification and Appeal of Denial.**

Any individual whose application or renewal application for certification or certification renewal is denied shall be provided with a written documentation by the Executive Secretary specifying the reason or reasons for denial. An applicant may appeal that determination to the Solid and Hazardous Waste Control Board using the procedures specified

in Section 63G-4-102, et seq., and Rule R311-210.

**R311-201-8. Inactivation of Certification.**

If an applicant was certified based upon his employer's financial assurance, certification is contingent upon the applicant's continued employment by that employer. If the employer loses his financial assurance or the applicant leaves the employer, his certificate shall automatically be deemed inactive and he shall no longer be certified for purposes of this Rule. Inactive certificates may be reactivated by submitting a supplemental application with new financial assurances and payment of any applicable fees. Reactivated certificates shall be effective for the remainder of their original term unless subsequently revoked or inactivated before the end of that term.

**R311-201-9. Revocation of Certification.**

Upon receipt of evidence that a certificate holder does not meet one or more of the eligibility requirements specified in Section R311-201-4 or does not meet one or more of the performance standards specified in Section R311-201-6, the individual's certification may be revoked by the Executive Secretary. Any appeal proceedings by the individual shall be conducted in accordance with the requirements of Section 63G-4-102, et seq., using informal procedures.

**R311-201-10. Reciprocity.**

If the Executive Secretary determines that another state's certification program is equivalent to the certification program provided in this rule, the applicant successfully passes the Utah certification examination, and payment of any fees associated with this rule are made, he may issue a Utah certificate. The certificate will be valid until the expiration date of the previous state's certificate or the expiration of the certification period described in Section R311-201-3(c), as appropriate, whichever is first.

**R311-201-11. Work Performed by Licensed Engineers or Geologists.**

(a) All work that qualifies as Professional Engineering or the Practice of Engineering, as defined in Section 58-22-102, shall be performed by or under the personal direction of a licensed Professional Engineer, or as qualifying under exemptions stated in Section 58-22-305. All documents and other work products submitted to the division for work that is performed under Section 58-22-102, shall be stamped and signed by an individual licensed under Section 58-22-301.

(b) All work that qualifies as the Practice of Geology Before the Public, as defined in Section 58-76-102, shall be performed by or under the personal direction of a licensed Professional Geologist, or as qualifying under exemptions stated in Section 58-76-304. All documents and other work products submitted to the division, for work that is performed under Section 58-76-102, shall be stamped and signed by an individual licensed under Section 58-76-301.

**R311-201-12. UST Operator Training and Registration.**

(a) To meet the Operator Training requirement (42 USC Section 6991i) of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility shall, by January 1, 2012, have UST facility operators that are trained and registered according to the requirements of this section. Each facility shall have three classes of operators: A, B, and C.

(1) A facility may have more than one person designated for each operator class.

(2) An individual acting as a Class A or B operator may do so for more than one facility.

(b) The UST owner or operator shall provide documentation to the Executive Secretary to identify the Class A, B, and C operators for each facility. If an owner or operator

does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(c) After January 1, 2012, new Class A and B operators shall be trained and registered within 30 days of assuming responsibility for an UST facility. New Class C operators shall be trained before assuming the responsibilities of a Class C operator.

(d) The Class A operator shall be an owner or employee who has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system. The Class A operator shall:

(1) have a general knowledge of UST systems;

(2) ensure that UST records are properly maintained according to 40 CFR 280;

(3) ensure that yearly UST fees are paid;

(4) ensure proper response to and reporting of emergencies caused by releases or spills from USTs;

(5) make financial responsibility documents available to the Executive Secretary as required; and

(6) ensure that Class B and Class C operators are trained and registered.

(e) The Class B operator shall implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems. The Class B operator shall be an owner, employee, or contractor working for the UST owner or operator. The Class B operator shall:

(1) ensure that on-site UST operator inspections are conducted according to the requirements of Subsection R311-201-12(h);

(2) ensure that UST release detection is performed according to 40 CFR 280 subpart D;

(3) ensure that the status of the UST system is monitored every seven days for alarms and unusual operating conditions that may indicate a release;

(4) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(e)(3), if it is not reported as a suspected release according to 40 CFR 280.50;

(5) ensure that appropriate release detection and other records are kept according to 40 CFR 280.34 and 280.45, and are made available for inspection;

(6) ensure that spill prevention, overflow prevention, and corrosion protection requirements are met;

(7) be on site for facility compliance inspections, or designate another individual to be on site for inspections;

(8) ensure that suspected releases are reported according to the requirements of 40 CFR 280.50; and

(9) ensure that Class C operators are trained and registered, and are on-site during operating hours.

(f) An individual who contracts to act as a Class B operator for an UST owner or operator, or performs UST operator inspections according to Subsection R311-201-12(h), and is not the owner or operator, or an employee of the owner or operator, shall be certified as an UST inspector according to Section R311-201-2, and shall meet all requirements of an UST inspector.

(g) The Class C operator is an employee and is generally the first line of response to events indicating emergency conditions. A Class C operator shall:

(1) be present at the facility at all times during normal operating hours;

(2) monitor product transfer operations according to 40 CFR 280.30(a), to ensure that spills and overfills do not occur;

(3) properly respond to alarms, spills, and overfills;

(4) notify Class A and/or Class B operators and appropriate emergency responders when necessary; and

(5) act in response to emergencies and other situations

caused by spills or releases from an UST system that pose an immediate danger or threat to the public or to the environment, and that require immediate action.

(h) UST Operator Inspections.

(1) Each UST facility shall have an on-site operator inspection conducted every 30 days, or as approved under Subsection R311-201-12(h)(4) or (5). The inspection shall be performed by or under the direction of the designated Class B operator. The Class B operator shall ensure that documentation of each inspection is kept and made available for review by the Executive Secretary.

(2) The UST operator inspection shall document that:

(A) release detection systems are properly operating and maintained;

(B) spill, overflow, vapor recovery, and corrosion protection systems are in place and operational;

(C) tank top manways, tank and dispenser sumps, secondary containment sumps, and under-dispenser containment are intact, and are properly maintained to be free of water, product, and debris;

(D) the tag or other identifying method issued under Subsection 19-6-411(7) is properly in place on each tank;

(E) alarm conditions that could indicate a release are properly investigated and corrected, and are reported as suspected releases according to 40 CFR 280.50 or documented to show that no release has occurred; and

(F) unusual operating conditions and other indications of a release or suspected release indicated in 40 CFR 280.50 are properly reported.

(3) The individual conducting the inspection shall use the form "UST Operator Inspection- Utah" to conduct on-site operator inspections. The form, dated April 30, 2009, and including information required to be completed during the inspection, is hereby incorporated by reference.

(4) The Executive Secretary may allow operator inspections to be performed less frequently in situations where it is impractical to conduct an inspection every 30 days. The owner or operator shall request the exemption, justify the reason for the exemption, and submit a plan for conducting operator inspections at the facility.

(5) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and R311-204-4 shall have an operator inspection every 90 days.

(i) A facility that normally has no employee or other responsible person on site, or is open to dispense fuel at times when no employee or responsible person is on site, shall have:

(1) a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders, and

(2) an emergency shutoff device, if the facility dispenses fuel.

(j) Operator Training and Registration

(1) Training and testing.

(A) Applicants for Class A and B operator registration shall successfully complete an approved operator training course within the six-month period prior to application.

(B) The training course shall be approved by the Executive Secretary, and shall include instruction in the following: notification, temporary and permanent closure, installation permitting, underground tank requirements of the 2005 Energy Policy Act, Class A, B, and C operator responsibilities, spill prevention, overflow prevention, UST release detection, corrosion protection, record-keeping requirements, emergency response, product compatibility, Utah UST rules and regulations, UST financial responsibility, and delivery prohibition.

(C) Applicants for Class A and B operator registration shall successfully pass a registration examination authorized by the Executive Secretary. The Executive Secretary shall determine the content of the examination.

(D) An individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(j)(1)(A) and (C) by completing the following within the six-month period prior to application:

(i) successfully passing a nationally recognized UST operator examination approved by the Executive Secretary, and

(ii) successfully passing a Utah UST rules and regulations examination authorized by the Executive Secretary. The Executive Secretary shall determine the content of the examination.

(E) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.

(2) Registration application.

(A) Applicants for Class A and B operator registration shall submit a registration application to the Executive Secretary, shall document proper training, and shall pay any applicable fees.

(B) Class C operators shall be designated by a Class B operator. The Class B operator shall maintain a list identifying the Class C operators for each UST facility. The list shall identify each Class C operator, the date of training, and the trainer. Identification on the list shall serve as the operator registration for Class C operators.

(C) A registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.

(D) Class A and B registration shall be effective for a period of three years, and shall not lapse or expire if the registered operator leaves the employment of the company under which the registration was obtained.

(3) Renewal of registration.

(A) Class A and B operators shall apply for renewal of registration not more than six months prior to the expiration of the registration by:

(i) submitting a completed application form;

(ii) paying any applicable fees; and

(iii) documenting successful completion of any re-training required by Subsection R311-201-12(k).

(B) If the Executive Secretary determines that the operator meets all the requirements for registration, the Executive Secretary shall renew the applicant's registration for a period equal to the initial registration.

(C) Any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(j)(1) before receiving the renewal registration.

(k) Re-training.

(1) A Class A operator shall be subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:

(A) lapsing of certificate of compliance;

(B) failure to provide acceptable financial responsibility;

or

(C) failure to ensure that Class B and C operators are trained and registered.

(2) A Class B operator shall be subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:

(A) failure to document significant operational compliance, as determined by the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both dated September 30, 2003, and incorporated by reference in Subsection R311-206-10(b)(1);

(B) failure to perform UST operator inspections required by Subsection R311-201-12(h);



(C) failure to have the tag or other identifying method issued under Subsection 19-6-411(7) properly in place on each tank; or

(D) failure to ensure that Class C operators are trained and registered, and are on-site during operating hours.

(3) To be re-trained, Class A and Class B operators shall successfully complete the appropriate Class A or B operator training course and examination, or shall complete an equivalent re-training course and examination approved by the Executive Secretary.

(4) Class A and B operators shall be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the Executive Secretary within 30 days of the re-training. If the documentation is not received, the Executive Secretary may revoke the certificate of compliance for the facility for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(5) If the documentation of re-training is not received by the Executive Secretary within six months of the date of determination of non-compliance, the Class A or B operator's registration will lapse. To re-register, the operator shall meet the requirements of Subsection R311-201-12(j)(1) and (2).

(6) If a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsections R311-201-12(k)(1) or (2), re-training shall not be required if the Class A or B operator successfully completes and documents re-training under Subsections R311-201-12(k)(3) and (4) for a prior determination of non-compliance that occurred during the previous nine months.

(I) Reciprocity.

(1) If the Executive Secretary determines that another state's operator training program is equivalent to the operator training program provided in this rule, he may accept an applicant's Class A or Class B registration application, provided that the applicant:

(A) submits a completed application form;

(B) passes the Utah UST rules and regulations examination referenced in Subsection R311-201-12(j)(1)(D)(ii), and

(C) submits payment of any applicable registration fees.

(2) The Class A or Class B registration shall be valid until the Utah registration expiration described in Subsection R311-201-12(j)(2)(D).

**KEY: hazardous substances, petroleum, underground storage tanks**

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**19-6-403**

**R315. Environmental Quality, Solid and Hazardous Waste.  
R315-15. Standards for the Management of Used Oil.  
R315-15-1. Applicability, Prohibitions, and Definitions.**

**1.1 APPLICABILITY**

This section identifies those materials which are subject to regulation as used oil under Section R315-15. This section also identifies some materials that are not subject to regulation as used oil under Rule R315-15, and indicates whether these materials may be subject to regulation as hazardous waste under Rules R315-1 through R315-14, and R315-50.

(a) Used oil. It is presumed that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal. Except as provided in Section R315-15-1.2, the requirements of Rule R315-15 apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in Section R315-2-9.

(b) Mixtures of used oil and hazardous waste.

(1) Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste that is listed in Section R315-2-10 are subject to regulation as hazardous waste under Rules R315-1 through R315-14, and R315-50, rather than as used oil under Rule R315-15.

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Section R315-2-10. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Section R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Subsection R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Characteristic hazardous waste. Mixtures of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in Section R315-2-9 and mixtures of used oil and hazardous waste that is listed in Section R315-2-10 solely because it exhibits one or more of the characteristics of hazardous waste identified in Section R315-2-9 are subject to:

(i) Except as provided in Subsection R315-15-1(b)(2)(iii), regulation as hazardous waste under Rules R315-1 through R315-14, and R315-50 rather than as used oil under Rule R315-15, if the resultant mixture exhibits any characteristics of hazardous waste identified in Section R315-2-9; or

(ii) Except as specified in Subsection R315-15-1.1(b)(2)(iii), regulation as used oil under Rule R315-15, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under Section R315-2-9.

(iii) Regulation as used oil under Rule R315-15, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability, e.g., mineral

spirits, provided that the mixture does not exhibit the characteristic of ignitability under Subsection R315-2-9(d).

(3) Conditionally exempt small quantity generator hazardous waste. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under Section R315-2-5, which incorporates by reference 40 CFR 261.5, are subject to regulation as used oil under Rule R315-15.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in paragraph (c)(2) of this section, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not used oil and thus not subject to Rule R315-15, and

(ii) If applicable are subject to the hazardous waste regulations of Rules R315-1 through R315-14, and R315-50.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under Rule R315-15.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under Rule R315-15.

(d) Mixtures of used oil with products.

(1) Except as provided in paragraph (d)(2) of this section, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under Rule R315-15.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to Rule R315-15 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of Section R315-15-2.

(e) Materials derived from used oil.

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, e.g., re-refined lubricants, are:

(i) Not used oil and thus are not subject to Rule R315-15, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of Rules R315-1 through R315-14, and R315-50 as provided in Subsection R315-2-3(c)(2)(i).

(2) Materials produced from used oil that are burned for energy recovery, e.g., used oil fuels, are subject to regulation as used oil under Rule R315-15.

(3) Except as provided in paragraph (e)(4) of this section, materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to Rule R315-15, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations of Rules R315-1 through R315-14, and R315-50 if the materials are listed or identified as hazardous wastes.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to Rule R315-15.

(f) Wastewater. Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewaters at facilities which have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil are not subject to the requirements of Rule R315-15. For purposes of this paragraph, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills,

or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility.

(1) Used oil mixed with crude oil or natural gas liquids, e.g., in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of Rule R315-15. The used oil is subject to the requirements of Rule R315-15 prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of Rule R315-15.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of Rule R315-15 provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of Rule R315-15.

(4) Except as provided in paragraph (g)(5) of this section, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of Rule R315-15 only if the used oil meets the specification of Section R315-15-1.2. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of Rule R315-15.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of Rule R315-15. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system, e.g., by pouring collected used oil into the waste water treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of Rule R315-15.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to Rule R315-15 until it is transported ashore.

(i) Used oil containing PCBs. In addition to the requirements of Rule R315-15, marketers and burners of used oil who market used oil containing any quantifiable level of PCBs are subject to the requirements found in 40 CFR 761.20(e).

(j) Inspections. Any duly authorized officer, employee or representative of the Department or the Board may, at any reasonable time and upon presentation of appropriate credentials and upon providing the opportunity to have a representative of the owner, operator, or agent in charge to be present, enter upon and inspect any property, premise, or place on or at which used oil is generated, transported, stored, treated or disposed of, and may have access to and the right to copy any records relating to used oil for purpose of ascertaining the compliance with Rule R315-15. Those persons referred to in this section may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

(k) Violations, Orders, and Hearings. If the Executive

Secretary has reason to believe a person is in violation of any provision of Rule R315-15, procedural requirements for compliance or cessation shall follow Section 19-6-721.

## 1.2 USED OIL SPECIFICATIONS

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under Rule R315-15 unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that claim complies with Sections R315-15-7.3, R315-15-7.4, and Subsection R315-15-7.5(b), the used oil is no longer subject to Section R315-15-6.

TABLE 1  
USED OIL NOT EXCEEDING ANY SPECIFICATION LEVEL IS NOT SUBJECT TO R315-15-6 WHEN BURNED FOR ENERGY RECOVERY(1)

| Constituent/property | Allowable level       |
|----------------------|-----------------------|
| Arsenic              | 5 ppm maximum         |
| Cadmium              | 2 ppm maximum         |
| Chromium             | 10 ppm maximum        |
| Lead                 | 100 ppm maximum       |
| Flash point          | 100 degrees F minimum |
| Total halogens       | 4,000 ppm maximum(2)  |

(1) The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste, see Subsection R315-15-1.1(b).

(2) Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under Subsection R315-15-1.1(b)(1). Such used oil is subject to Section R315-14-7, which incorporates by reference 40 CFR 266 Subpart H, rather than Rule R315-15 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR 761.20(e).

## 1.3 PROHIBITIONS

Except as authorized by the Board, a person may not place, discard, or otherwise dispose of used oil in the following manner:

(a) Surface impoundment prohibition. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under Rule R315-7 or R315-8.

(b) Use as a dust suppressant, weed suppressant, or for road oiling. The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited. Any disposal of used oil on the ground is prohibited under Subsection 19-6-706(1)(a)(iii).

(c) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(1) Solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the Board; or

(2) Any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under Rule R315-15.

(d) Used oil shall not be disposed in a solid waste treatment, storage, or disposal facility, except for the disposal of hazardous used oil as authorized under R315-2.

(e) Used oil shall not be disposed in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water;

## 1.4 BURNING IN PARTICULAR UNITS

Burning in particular units. Off-specification used oil fuel may be burned for energy recovery only in the devices described in Subsection R315-15-6.2(a).

## 1.5 DISPOSAL OF DE MINIMIS USED OIL

(a) Section R315-15-1.3 does not apply to release of de minimis quantities of used oil identified under Subsection 19-6-706(4)(a).

(b) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities if:

(1) To the extent reasonably possible all oil has been removed from the item or substance; and

(2) No free flowing oil remains in the item or substance.

#### 1.6 DISPOSAL OF USED OIL FILTERS

A person may dispose of a nonterne plated used oil filter that meets the exclusion of Subsection R315-2-4(b)(14) and is not mixed with hazardous waste defined by Rule R315-2.

#### 1.7 DEFINITIONS

(a) Definitions of terms used in Rule R315-15 are incorporated by reference in Section R315-1-1.

(b) The definition of the term "de minimis" as used in Rule R315-15 has the same meaning as in Subsection 19-6-706(4)(b).

(c) The definition of the term "financial responsibility" as used in Rule R315-15 means the mechanism by which a person who has a financial obligation satisfies that obligation.

### R315-15-2. Standards for Used Oil Generators.

#### 2.1 APPLICABILITY

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, Section R315-15-2 applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(1) Household "do-it-yourselfer" used oil generators. Household "do-it-yourselfer" used oil generators are not subject to regulation under Rule R315-15, except for the prohibitions of Section R315-15-1.3.

(2) Vessels. Vessels at sea or at port are not subject to Section R315-15-2. For purposes of Section R315-15-2, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the waste in compliance with Section R315-15-2 once the used oil is transported ashore. The co-generators may decide among them which party will fulfill the requirements of Section R315-15-2.

(3) Diesel fuel. Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to Rule R315-15 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of Section R315-15-2.

(4) Farmers. Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of Rule R315-15, except for the prohibitions of Section R315-15-1.3.

(b) Other applicable provisions. Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of Rule R315-15 as indicated in paragraphs (b)(1) through (5) of this section:

(1) Generators who transport used oil, except under the self-transport provisions of Subsections R315-15-2.5(a) and (b), shall also comply with Section R315-15-4.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, generators who process or re-refine used oil must also comply with Section R315-15-5.

(ii) Generators who perform the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on- or off-specification used oil fuel.

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(B) Separating used oil from wastewater generated on-site

to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Clean Water Act or other applicable Federal or state regulations governing the management or discharge of wastewater;

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to Subsection R315-15-1.1(c); or

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater pursuant to Section R315-15-2.4.

(3) Generators who burn off-specification used oil for energy recovery, except under the on-site space heater provisions of Section R315-15-2.4, shall also comply with Section R315-15-6.

(4) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2 shall also comply with Section R315-15-7.

(5) Generators who dispose of used oil shall also comply with Section R315-15-8.

#### 2.2 HAZARDOUS WASTE MIXING

(a) Mixtures of used oil and hazardous waste shall be managed in accordance with Subsection R315-15-1.1(b).

(b) The rebuttable presumption for used oil of Subsection R315-15-1.1(b)(1)(ii) applies to used oil managed by generators. Under the rebuttable presumption for used oil of Subsection R315-15-1.1(b)(1)(ii), used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and thus shall be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oil/fluids and certain used oils removed from refrigeration units.

#### 2.3 USED OIL STORAGE

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR part 112, in addition to the requirements of Section R315-15-2. Used oil generators are also subject to the standards and requirements of Rules R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of Section R315-15-2.

(a) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under Rule R315-7 or R315-8.

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects or deterioration; and

(2) Not leaking (no visible leaks).

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities shall be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities shall be labeled or marked clearly with the words "Used Oil."

(d) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, a generator shall comply with Section R315-15-9.

#### 2.4 ON-SITE BURNING

Generators may burn used oil in used oil-fired space heaters without a permit provided that:

(a) The heater burns only used oil that the owner or operator generates;

(b) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour;

(c) The combustion gases from the heater are vented to the ambient air;

(d) If registered as a Used Oil Collection Center as authorized in Section R315-15-3, the generator may burn used oil received from household do-it-yourselfer generators or farmers described in Subsection R315-15-2.1(a)(4); and

(e) The used oil is being legitimately recycled to utilize its energy content.

#### 2.5 OFF-SITE SHIPMENTS

Except as provided in paragraphs (a) through (c) of this section, generators shall ensure that their used oil is transported only by transporters who have obtained EPA identification numbers.

(a) Self-transportation of small amounts to approved collection centers. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to a used oil collection center that is registered or permitted to manage used oil.

(b) Self-transportation of small amounts to aggregation points owned by the generator. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site to an aggregation point provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to an aggregation point that is owned and/or operated by the same generator.

(c) Tolling arrangements. Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number if the used oil is reclaimed under a contractual agreement pursuant to which reclaimed oil is returned by the processor/re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract, known as a "tolling arrangement," shall indicate:

(1) The type of used oil and the frequency of shipments;

(2) That the vehicle used to transport the used oil to the processing/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and

(3) That reclaimed oil will be returned to the generator.

#### R315-15-3. Standards for Used Oil Collection Centers and Aggregation Points.

##### 3.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS

(a) Applicability. This section applies to owners or operators of all do-it-yourselfer (DIYer) used oil collection centers. A DIYer used oil collection center is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

(b) DIYer used oil collection center requirements. Owners or operators of all DIYer used oil collection centers shall comply with the generator standards in Section R315-15-2 and the record keeping requirements of Subsections R315-15-3.2(b)(3)(i) through (iv).

##### 3.2 GENERATOR USED OIL COLLECTION CENTERS

(a) Applicability. This section applies to owners or operators of generator used oil collection centers. A generator used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under Section R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of Subsection R315-15-2.5(a). Used generator oil collection centers may also accept used oil from household do-it-yourselfers and farmers described in Subsection R315-15-2.1(a)(4), if registered to do so.

(b) Generator used oil collection center requirements. Owners or operators of all generator used oil collection centers shall:

(1) Comply with the generator standards in Section R315-15-2;

(2) Be registered with the Division of Solid and Hazardous Waste to manage used oil; and

(3) Keep records of used oil received from off-site sources and picked up/transported from the collection center. This does not include used oil generated on-site from maintenance and servicing operations. These records shall be kept for a minimum of three years and shall contain the following information:

(i) Name and address of generator; or if unavailable, a written description of how the used oil was received.

(ii) Quantity of used oil received;

(iii) Date the used oil is received; and

(iv) Volumes of used oil picked up by a permitted transporter and the transporter's name and federal EPA identification number.

##### 3.3 USED OIL AGGREGATION POINTS OWNED BY THE GENERATOR

(a) Applicability. This section applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons under the provisions of Subsection R315-15-2.5(b). Used oil aggregation points may also accept used oil from household do-it-yourselfers as long as they register as do-it-yourselfer collection centers, as described in Section R315-15-13.1, and comply with do-it-yourselfer collection center standards in Section R315-15-3.1. Used oil aggregation points that accept used oil from other generators must register as collection centers, as described in Section R315-15-13.2, and comply with collection center standards in Section R315-15-3.2.

(b) Used oil aggregation point requirements. Owners or operators of all used oil aggregation points shall comply with the generator standards in Section R315-15-2.

#### R315-15-4. Standards for Used Oil Transporter and Transfer Facilities.

##### 4.1 APPLICABILITY

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, Section R315-15-4 applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities. Except as provided by Subsection R315-15-13.4(f), used oil transporters or operators of used oil transfer facilities shall obtain a permit from the Executive Secretary prior to accepting any used oil for transportation or transfer. The application for a permit shall include the information required by Section R315-15-13.4.

(1) Section R315-15-4 does not apply to on-site transportation.

(2) Section R315-15-4 does not apply to generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil collection center as specified in Subsection R315-15-2.5(a).

(3) Section R315-15-4 does not apply to generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in Subsection R315-15-2.5(b).

(4) Section R315-15-4 does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/refiner, or burner subject to the requirements of Rule R315-15. Except as provided in paragraphs (a)(1) through (a)(3) of this section, Section R315-15-4 does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(b) Imports and exports. Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of Section R315-15-4 from the time the used oil enters and until the time it exits Utah.

(c) Trucks used to transport hazardous waste. Unless trucks previously used to transport hazardous waste are emptied as described in Section R315-2-7 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of Subsection R315-15-1.1(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.

(d) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of Rule R315-15 as indicated in paragraphs (d)(1) through (5) of this section:

(1) Transporters who generate used oil shall also comply with Section R315-15-2;

(2) Transporters who process or re-refine used oil, except as provided in Section R315-15-4.2, shall also comply with Section R315-15-5;

(3) Transporters who burn off-specification used oil for energy recovery shall also comply with Section R315-15-6;

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2 shall also comply with Section R315-15-7; and

(5) Transporters who dispose of used oil shall also comply with Section R315-15-8.

#### 4.2 RESTRICTIONS ON TRANSPORTERS WHO ARE NOT ALSO PROCESSORS OR RE-REFINERS

(a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in paragraph (b) of this section, used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in Section R315-15-5.

(b) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation, e.g., settling and water separation, but that are not designed to produce, or make more amenable for production of, used oil derived products unless they also comply with the processor/re-refiner requirements in Section R315-15-5.

(c) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in Section R315-15-5.

#### 4.3 NOTIFICATION

(a) Identification numbers. Used oil transporters who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the Executive Secretary of his used oil activity by submitting either:

(1) A completed EPA Form 8700-12. To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Transporter company name;

(ii) Owner of the transporter company;

(iii) Mailing address for the transporter;

(iv) Name and telephone number for the transporter point of contact;

(v) Type of transport activity, i.e., transport only, transport and transfer facility, transfer facility only;

(vi) Location of all transfer facilities at which used oil is stored; and

(vii) Name and telephone number for a contact at each transfer facility.

#### 4.4 USED OIL TRANSPORTATION

(a) Deliveries. A used oil transporter shall deliver all used oil received to:

(1) Another used oil transporter, provided that the transporter has obtained an EPA identification number;

(2) A used oil processing/re-refining facility which has obtained an EPA identification number;

(3) An off-specification used oil burner facility which has obtained an EPA identification number; or

(4) An on-specification used oil burner facility.

(b) DOT Requirements. Used oil transporters shall comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 shall comply with all applicable regulations in 49 CFR 171 through 180.

(c) Used oil discharges. In the event of a used oil discharge, a transporter shall comply with Section R315-15-9.

#### 4.5 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), the used oil transporter shall determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below 1,000 ppm.

(b) The transporter shall make this determination by:

(1) Testing the used oil; or

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Section R315-2-10. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they

are processed, through a tolling arrangement as described in Subsection R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Record retention. Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section shall be maintained by the transporter for at least three years.

#### 4.6 USED OIL STORAGE AT TRANSFER FACILITIES

Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR 112, in addition to the requirements of Section R315-15-4. Used oil transporters are also subject to the standards of Title R311, which incorporates by reference 40 CFR 280, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of Section R315-15-4.

(a) Applicability. This section applies to used oil transfer facilities. Used oil transfer facilities are transportation related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to the processor/re-refiner requirements as found in Section R315-15-5.

(b) Storage units. Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under Rule R315-7 or R315-8.

(c) Condition of units. Containers and aboveground tanks used to store used oil at transfer facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking (no visible leaks).

(d) Secondary containment. Containers, existing aboveground tanks, and new aboveground tanks used to store used oil at transfer facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of, at a minimum:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dikes, berms, or retaining walls except areas where existing portions of existing aboveground tanks meet the ground.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(e) Labels.

(1) Containers and aboveground tanks used to store used oil at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(f) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, the owner/operator of a transfer facility shall comply with Section R315-15-9.

#### 4.7 TRACKING

(a) Acceptance. Used oil transporters shall keep a record of each used oil shipment accepted for transport. Records for

each shipment shall include:

(1) The name and address of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(2) The EPA identification number, if applicable, of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(3) The quantity of used oil accepted;

(4) The date of acceptance; and

(5)(i) Except as provided in paragraph (a)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport.

(ii) Intermediate rail transporters are not required to sign the record of acceptance.

(b) Deliveries. Used oil transporters shall keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor/re-refiner, or disposal facility. Records of each delivery shall include:

(1) The name and address of the receiving facility or transporter;

(2) The EPA identification number of the receiving facility or transporter;

(3) The quantity of used oil delivered;

(4) The date of delivery; and

(5) (i) Except as provided in paragraph (a)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(ii) Intermediate rail transporters are not required to sign the record of delivery.

(c) Exports of used oil. Used oil transporters shall maintain the records described in paragraphs (b)(1) through (b)(4) of this section for each shipment of used oil exported to any foreign country.

(d) Record retention. The records described in paragraphs (a), (b), and (c) of this section shall be maintained for at least three years.

(e) Reporting. A used oil transporter/transfer facility shall report annually to the Executive Secretary by March 1 of each year. The report shall be consistent with the requirements of Subsection R315-15-13.4(d).

#### 4.8 MANAGEMENT OF RESIDUES

Transporters who generate residues from the storage or transport of used oil shall manage the residues as specified in Subsection R315-15-1.1(e).

### R315-15-5. Standards for Used Oil Processors and Re-Refiners.

#### 5.1 APPLICABILITY

(a) The requirements of Section R315-15-5 apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of Section R315-15-5 do not apply to:

(1) Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in Section R315-15-4.2; or

(2) Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in Subsection R315-15-6.2(b).

(b) Other applicable provisions. Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of Rule R315-15 as indicated in paragraphs (b)(1) through (b)(5) of this section.

(1) Processors/re-refiners who generate used oil shall also

comply with Section R315-15-2.

(2) Processors/re-refiners who transport used oil shall also comply with Section R315-15-4.

(3) Except as provided in paragraphs (b)(3)(i) and (b)(3)(ii) of this section, processors/re-refiners who burn off-specification used oil for energy recovery shall also comply with Section R315-15-6. Processor/re-refiners burning used oil for energy recovery under the following conditions are not subject to Section R315-15-6:

(i) The used oil is burned in an on-site space heater that meets the requirements of Section R315-15-2.4; or

(ii) The used oil is burned for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(4) Processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2 shall also comply with Section R315-15-7.

(5) Processors/re-refiners who dispose of used oil shall also comply with Section R315-15-8.

(c) Processors/re-refiners shall obtain a permit from the Executive Secretary prior to processing or re-refining used oil. An application for a permit shall contain the information required by Section R315-15-13.5.

## 5.2 NOTIFICATION

(a) Identification numbers. Used oil processors/re-refiners who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the Executive Secretary of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12. To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Processor or re-refiner company name;

(ii) Owner of the processor or re-refiner company;

(iii) Mailing address for the processor or re-refiner;

(iv) Name and telephone number for the processor or re-refiner point of contact;

(v) Type of used oil activity, i.e., process only, process and re-refine;

(vi) Location of the processor or re-refiner facility.

## 5.3 GENERAL FACILITY STANDARDS

(a) Preparedness and prevention. Owners and operators of used oil processor/re-refiner facilities shall comply with the following requirements:

(1) Maintenance and operation of facility. Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water which could threaten human health or the environment.

(2) Required equipment. Unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in paragraphs (a)(2)(i) through (iv) of this section, all facilities shall be equipped with the following:

(i) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(ii) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(iii) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(3) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(4) Access to communications or alarm system.

(i) Whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in paragraph (a)(2) of this section.

(ii) If there is ever just one employee on the premises while the facility is operating, the employee shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in paragraph (a)(2) of this section.

(5) Required aisle space. The owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(6) Arrangements with local authorities.

(i) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

(A) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(B) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(C) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(D) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(ii) Where State or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the operating record.

(b) Contingency plan and emergency procedures. Owners and operators of used oil processors and re-refiners facilities shall comply with the following requirements:

(1) Purpose and implementation of contingency plan.

(i) Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water.

(ii) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of used oil which could threaten human health or the environment.



## (2) Content of contingency plan.

(i) The contingency plan shall describe the actions facility personnel shall take to comply with paragraphs (b)(1) and (6) of this section in response to fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water at the facility.

(ii) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112 or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions necessary to comply with the requirements of R315-15.

(iii) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to paragraph (a)(6) of this section.

(iv) The plan shall list names, addresses, and phone numbers, office and home, of all persons qualified to act as emergency coordinator. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. See also paragraph (b)(5) of this section.

(v) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of used oil or fires.

(3) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(i) Maintained at the facility; and

(ii) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(4) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(i) Applicable regulations are revised;

(ii) The plan fails in an emergency;

(iii) The facility changes its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

(5) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(6) Emergency procedures.

(i) Whenever there is an imminent or actual emergency

situation, the emergency coordinator, or the designee when the emergency coordinator is on call, shall immediately:

(A) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(B) Notify appropriate State or local agencies with designated response roles if their help is needed.

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records of manifests and, if necessary, by chemical analysis.

(iii) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he shall report his findings as follows:

(A) If his assessment indicated that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. He shall be available to help appropriate officials decide whether local areas should be evacuated; and

(B) He shall implement the actions as required in Section R315-15-9.

(v) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.

(vi) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(vii) Immediately after an emergency, the emergency coordinator shall provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(viii) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(A) No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and

(B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(C) The owner or operator shall notify the Executive Secretary, and appropriate local authorities that the facility is in compliance with paragraphs (b)(6)(viii)(A) and (B) of this section before operations are resumed in the affected area(s) of the facility.

(ix) The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the incident to the Executive Secretary. The report shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident, e.g., fire, explosion;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

#### 5.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), the owner or operator of a used oil processing/re-refining facility shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The owner or operator shall make this determination by:

- (1) Testing the used oil; or
- (2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Section R315-2-10. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Section R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

#### 5.5 USED OIL MANAGEMENT

Used oil processor/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR 112, in addition to the requirements of Section R315-15-5. Used oil processors/re-refiners are also subject to the standards and requirements of Rules R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of Section R315-15-5.

(a) Management units. Used oil processors/re-refiners may not store used oil in units other than tanks, containers, or units subject to regulation under Rule R315-7 or R315-8.

(b) Condition of units. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be:

- (1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and
- (2) Not leaking (no visible leaks).

(c) Secondary containment. Containers, existing aboveground tanks, and new aboveground tanks used to store or process used oil at processing and re-refining facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of, at a minimum:

- (i) Dikes, berms, or retaining walls; and
- (ii) A floor. The floor shall cover the entire area within the

dike, berm, or retaining wall, except areas where existing portions of existing aboveground tanks meet the ground.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(d) Labels.

(1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, an owner/operator shall comply with Section R315-15-9.

(f) Closure.

(1) Aboveground tanks. Owners and operators who store or process used oil in aboveground tanks shall comply with the following requirements:

(i) At closure of a tank system, the owner or operator shall remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under this chapter. Nonhazardous solid waste, must be managed in accordance with Section R315-301-4.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (f)(1)(i) of this section, then the owner or operator shall close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills, Section R315-7-21.4.

(2) Containers. Owners and operators who store used oil in containers shall comply with the following requirements:

(i) At closure, containers holding used oils or residues of used oil shall be removed from the site;

(ii) The owner or operator shall remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under Rule R315-2.

#### 5.6 ANALYSIS PLAN

Owners or operators of used oil processing and re-refining facilities shall develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of Section R315-15-5.4 and, if applicable, the marketer requirements in Section R315-15-7.3. The owner or operator shall keep the plan at the facility.

(a) Rebuttable presumption for used oil in Section R315-15-5.4. At a minimum, the plan shall specify the following:

(1) Whether sample analyses or knowledge of the halogen content of the used oil will be used to make this determination.

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in Section R315-50-6, which incorporates by reference 40 CFR 261, Appendix I; or

(B) A method shown to be equivalent under Section R315-2-15;

(ii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iii) The methods used to analyze used oil for the

parameters specified in Section R315-15-5.4; and

(3) The type of information that will be used to determine the halogen content of the used oil.

(b) On-specification used oil fuel in Section R315-15-7.3. At a minimum, the plan shall specify the following if Section R315-15-7.3 is applicable:

(1) Whether sample analyses or other information will be used to make this determination;

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in Section R315-50-6, which incorporates by reference 40 CFR 261, Appendix I; or

(B) A method shown to be equivalent under Section R315-2-15;

(ii) Whether used oil will be sampled and analyzed prior to or after any processing/re-refining;

(iii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iv) The methods used to analyze used oil for the parameters specified in Section R315-15-7.3.

(3) The type of information that will be used to make the on-specification used oil fuel determination.

#### 5.7 TRACKING

(a) Acceptance. Used oil processors/re-refiners shall keep a record of each used oil shipment accepted for processing/re-refining. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the processor/re-refiner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(3) The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(5) The quantity of used oil accepted; and

(6) The date of acceptance.

(b) Delivery. Used oil processor/re-refiners shall keep a record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(2) The name and address of the burner, processor/re-refiner, or disposal facility which will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(4) The EPA identification number of the burner, processor/re-refiner, or disposal facility which will receive the used oil;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(c) Record retention. The records described in paragraphs (a) and (b) of this section shall be maintained for at least three years.

#### 5.8 OPERATING RECORD AND REPORTING

(a) Operating record.

(1) The owner or operator shall keep a written operating record at the facility.

(2) The following information shall be recorded, as it

becomes available, and maintained in the operating record until closure of the facility:

(i) Records and results of used oil analyses performed as described in the analysis plan required under R315-15-5.6;

(ii) Summary reports and details of all incidents that require implementation of the contingency plan as specified in Subsection R315-15-5.3(b); and

(iii) Records detailing the mass balance of wastewater entering and leaving the facility. This includes wastewater discharge records. This does not include water used in non-contact cooling processes.

(b) Reporting. A used oil processor/re-refiner shall report annually to the Executive Secretary by March 1 of each year. The report shall be consistent with the requirements of Subsection R315-15-13.5(d).

#### 5.9 OFF-SITE SHIPMENTS OF USED OIL

Used oil processors/re-refiners who initiate shipments of used oil off-site shall ship the used oil using a used oil transporter who has obtained an EPA identification number.

#### 5.10 MANAGEMENT OF RESIDUES

Owners and operators who generate residues from the storage, processing, or re-refining of used oil shall manage the residues as specified in Subsection R315-15-1.1(e).

### **R315-15-6. Standards for Used Oil Burners Who Burn Used Oil for Energy Recovery.**

#### 6.1 APPLICABILITY

(a) General. The requirements of Section R315-15-6 apply to used oil burners except as specified in paragraphs (a)(1) through (a)(3) of this section. An off-specification used oil burner is a facility where used oil not meeting the specification requirements in Section R315-15-1.2 is burned for energy recovery in devices identified in Subsection R315-15-6.2(a). Facilities burning used oil for energy recovery under the following conditions are not subject to Section R315-15-6:

(1) The used oil is burned by the generator in an on-site space heater under the provisions of Section R315-15-2.4;

(2) The used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing; or

(3) The used oil burned by the facility is obtained from a registered marketer who claims the oil meets the used oil fuel specifications set forth in Section R315-15-1.2 and who delivers the oil in the manner set forth in Subsection R315-15-7.5(b).

(b) Other applicable provisions. Used oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of Rule R315-15 as indicated below.

(1) Burners who generate used oil shall also comply with Section R315-15-2;

(2) Burners who transport used oil shall also comply with Section R315-15-4;

(3) Except as provided in Subsection R315-15-6.2(b)(2), burners who process or re-refine used oil shall also comply with Section R315-15-5;

(4) Burners who direct shipments of off-specification used oil from their facility to an off-specification used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2 shall also comply with Sections R315-15-7 and R315-15-13.7;

(5) Burners who dispose of used oil shall comply with Section R315-15-8; and

(6) Burners who collect used oil must also comply with the collection center requirements in Section R315-15-3. Burners who burn used oil collected from other generators must become marketers and comply with the provisions of Section R315-15-7. Burners who collect and burn used oil that does not fall into the categories of "do-it-yourself" or farmer-generated

used oil as described in Subsections R315-15-2.1(a)(1) and (4), must also become marketers and comply with the provisions of Section R315-15-7.

(c) Specification fuel. Persons burning used oil that meets the used oil fuel specifications of Section R315-15-1.2 under the conditions described in Subsections R315-15-6.1(a)(1) through (3) are not subject to Section R315-15-6, provided that the burner complies with the requirements of Section R315-15-7 and Subsection R315-15-13.6(a).

#### 6.2 RESTRICTIONS ON BURNING

(a) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in Section R315-1-1, which incorporates by reference 40 CFR 260.10;

(2) Boilers, as defined in Section R315-1-1, which incorporates by reference 40 CFR 260.10, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Used oil-fired space heaters provided that the burner meets the provisions of Section R315-15-2.4; or

(3) Hazardous waste incinerators subject to regulation under Section R315-7-22 or R315-8-15.

(b)(1) With the following exception, off-specification used oil burners may not process used oil unless they also comply with the requirements of Section R315-15-5.

(2) Off-specification used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of producing on-specification used oil without also complying with the processor/re-refiner requirements in Section R315-15-5.

#### 6.3 NOTIFICATION

(a) Identification numbers. Off-specification used oil burners which have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. An off-specification used oil burner who has not received an EPA identification number may obtain one by notifying the Executive Secretary of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12. To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Burner company name;

(ii) Owner of the burner company;

(iii) Mailing address for the burner;

(iv) Name and telephone number for the burner point of contact;

(v) Type of used oil activity; and

(vi) Location of the burner facility.

#### 6.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), a used oil burner shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The used oil burner shall determine if the used oil contains above or below 1,000 ppm total halogens by:

(1) Testing the used oil;

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used; or

(3) Using information provided by the processor/re-refiner, if the used oil has been received from a processor/re-refiner subject to regulation under Section R315-15-5.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Section R315-2-10. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Subsection R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Record retention. Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section shall be maintained by the burner for at least 3 years.

#### 6.5 USED OIL STORAGE

Used oil burners are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR part 112, in addition to the requirements of Section R315-15-6. Used oil burners are also subject to the standards and requirements of Rules R311-200 through R315-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of Section R315-15-6.

(a) Storage units. Used oil burners may not store used oil in units other than tanks, containers, or units subject to regulation under Rule R315-7 or R315-8.

(b) Condition of units. Containers and aboveground tanks used to store oil at used oil burner facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking (no visible leaks).

(c) Secondary containment. Containers, existing aboveground tanks, and new aboveground tanks used to store off-specification used oil at burner facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of, at a minimum:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of existing aboveground tanks meet the ground.

(2) The entire containment system, including walls and floor, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(d) Labels.

(1) Containers and aboveground tanks used to store off-specification used oil at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer off-specification used oil

into underground storage tanks at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, a burner shall comply with Section R315-15-9.

#### 6.6 TRACKING

(a) Acceptance. Off-specification used oil burners shall keep a record of each off-specification used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

- (1) The name and address of the transporter who delivered the used oil to the burner;
  - (2) The name and address of the generator or processor/re-refiner from whom the used oil was sent to the burner;
  - (3) The EPA identification number of the transporter who delivered the used oil to the burner;
  - (4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent to the burner;
  - (5) The quantity of used oil accepted; and
  - (6) The date of acceptance.
- (b) Record retention. The records described in paragraph (a) of this section shall be maintained for at least three years.

#### 6.7 NOTICES

(a) Certification. Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor/re-refiner, the burner shall provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying that:

- (1) The burner has notified the Executive Secretary stating the location and general description of his used oil management activities; and
  - (2) The burner will burn the used oil only in an industrial furnace or boiler identified in Subsection R315-15-6.2(a).
- (b) Certification retention. The certification described in paragraph (a) of this section shall be maintained for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor/re-refiner.

#### 6.8 MANAGEMENT OF RESIDUES

Burners who generate residues from the storage or burning of used oil shall manage the residues as specified in Subsection R315-15-1.1(e).

### **R315-15-7. Standards for Used Oil Fuel Marketers.**

#### 7.1 APPLICABILITY

(a) Any person who conducts either of the following activities is subject to the requirements of Sections R315-15-7 and R315-15-13.7:

- (1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or
- (2) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2.

(b) The following persons are not marketers subject to Section R315-15-7:

- (1) Used oil generators, and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors/re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processors/re-refiners who incidentally burn used oil are not marketers subject to Section R315-15-7;
- (2) Persons who direct shipments of on-specification used

oil and who are not the first person to claim the oil meets the used oil fuel specifications of Section R315-15-1.2.

(c) Any person subject to the requirements of Section R315-15-7 shall also comply with one of the following:

- (1) Section R315-15-2 - Standards for Used Oil Generators;
- (2) Section R315-15-4 - Standards for Used Oil Transporters and Transfer Facilities;
- (3) Section R315-15-5 - Standards for Used Oil Processors and Re-refiners; or
- (4) Section R315-15-6 - Standards for Used Oil Burners who Burn Off-Specification Used Oil for Energy Recovery.

(d) A person may not act as a used oil fuel marketer without receiving a registration number issued by the Executive Secretary pursuant to Section R315-15-13.7.

#### 7.2 PROHIBITIONS

A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

- (a) Has an EPA identification number; and
- (b) Burns the used oil in an industrial furnace or boiler identified in Subsection R315-15-6.2(a).

#### 7.3 ON-SPECIFICATION USED OIL FUEL

(a) Analysis of used oil fuel. A generator, transporter, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of Section R315-15-1.2 by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications.

(b) Record retention. A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under Section R315-15-1.2, shall keep copies of analyses of the used oil, or other information used to make the determination, for three years.

#### 7.4 NOTIFICATION

(a) Identification numbers. A used oil fuel marketer subject to the requirements of Section R315-15-7 who has not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) A marketer who has not received an EPA identification number may obtain one by notifying the Executive Secretary of their used oil activity by submitting either:

- (1) A completed EPA Form 8700-12, which can be obtained by calling the Utah Division of Solid and Hazardous Waste at 801-538-6170; or
- (2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

- (i) Marketer company name;
- (ii) Owner of the marketer;
- (iii) Mailing address for the marketer;
- (iv) Name and telephone number for the marketer point of contact; and
- (v) Type of used oil activity, e.g., generator directing shipments of off-specification used oil to a burner.

#### 7.5 TRACKING

(a) Off-specification used oil delivery. Any used oil marketer who directs a shipment of off-specification used oil to a burner shall keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

- (1) The name and address of the transporter who delivers the used oil to the burner;
- (2) The name and address of the burner who will receive the used oil;
- (3) The EPA identification number of the transporter who

delivers the used oil to the burner;

- (4) The EPA identification number of the burner;
- (5) The quantity of used oil shipped; and
- (6) The date of shipment.

(b) On-specification used oil delivery. A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under Section R315-15-1.2 shall keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment shall include the following information:

- (1) The name and address of the facility receiving the shipment;
- (2) The quantity of used oil fuel delivered;
- (3) The date of shipment or delivery; and
- (4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under Subsection R315-15-7.3(a).

(c) Record retention. The records described in paragraphs (a) and (b) of this section shall be maintained for at least three years.

#### 7.6 NOTICES

(a) Certification. Before a used oil generator, transporter, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he shall obtain a one-time written and signed notice from the burner certifying that:

- (1) The burner has notified the Executive Secretary stating the location and general description of used oil management activities; and
- (2) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in Subsection R315-15-6.2(a).

(b) Certification retention. The certification described in paragraph (a) of this section shall be maintained for three years from the date the last shipment of off-specification used oil is shipped to the burner.

### R315-15-8. Standards for the Disposal of Used Oil.

#### 8.1 APPLICABILITY

The requirements of Section R315-15-8 apply to all used oils that cannot be recycled and are therefore being disposed.

#### 8.2 DISPOSAL

(a) Disposal of hazardous used oils. Used oils that are identified as a hazardous waste and cannot be recycled in accordance with Rule R315-15 shall be managed in accordance with the hazardous waste management requirements of Rules R315-1 through R315-14, and R315-50.

(b) Disposal of nonhazardous used oils. Used oils that are not hazardous wastes and cannot be recycled under Rule R315-15 shall be disposed in a solid waste disposal facility meeting the applicable requirements of Rules R315-301 through R315-318 and authorized by the Board.

#### 8.3 USE AS A DUST SUPPRESSANT, WEED SUPPRESSANT, OR FOR ROAD OILING

The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited.

### R315-15-9. Emergency Controls.

#### 9.1 IMMEDIATE ACTION

In the event of a release of used oil, the person responsible for the material at the time of the release shall immediately:

- (a) Take appropriate action to minimize the threat to human health and the environment.
- (b) Notify the Utah State Department of Environmental Quality, 24-hour Answering Service, 801-536-4123 for used oil releases exceeding 25 gallons, or smaller releases that pose a potential threat to human health or the environment. Small leaks and drips from vehicles are considered de minimis and are

not subject to the release clean-up provisions of R315-15-9.

(c) Provide the following information when reporting the release:

- (1) Name, phone number, and address of person responsible for the release.
- (2) Name, title, and phone number of individual reporting.
- (3) Time and date of release.
- (4) Location of release--as specific as possible including nearest town, city, highway, or waterway.
- (5) Description contained on the manifest and the amount of material released.
- (6) Cause of release.
- (7) Possible hazards to human health or the environment and emergency action taken to minimize that threat.
- (8) The extent of injuries, if any.
- (d) An air, rail, highway, or water transporter who has discharged used oil shall:

(1) Give notice, if required by 49 CFR 171.15 to the National Response Center, 800-424-8802 or 202-426-2675; and

(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(e) A water, bulk shipment, transporter who has discharged used oil shall give the same notice as required by 33 CFR 153.203 for oil and hazardous substances.

#### 9.2 EMERGENCY CONTROL VARIANCE

If a release of used oil requires immediate removal to protect human health or the environment, as determined by the Executive Secretary, a variance may be granted by the Executive Secretary to the EPA Identification Number requirement for used oil transporters until the released material and any residue or contaminated soil, water, or other material resulting from the release no longer presents an immediate hazard to human health or the environment, as determined by the Executive Secretary.

#### 9.3 RELEASE CLEAN-UP

The person responsible for the material at the time of the release shall clean up all the released material and any residue or contaminated soil, water or other material resulting from the release or take action as may be required by the Executive Secretary so that the released material, residue, or contaminated soil, water, or other material no longer presents a hazard to human health or the environment. The cleanup or other required actions shall be at the expense of the person responsible for the release.

#### 9.4 REPORTING

Within 15 days after any release of used oil that is reported under R315-15-9.1(b), the person responsible for the material at the time of the release shall submit to the Board or the Executive Secretary a written report which contains the following information:

- (a) The person's name, address, and telephone number;
- (b) Date, time, location, and nature of the incident;
- (c) Name and quantity of material(s) involved;
- (d) The extent of injuries, if any;
- (e) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
- (f) The estimated quantity and disposition of recovered material that resulted from the incident.

### R315-15-10. Financial Requirements.

(a) Used oil activities. An owner or operator of an off-specification burner, transportation, processing, re-refining, or transfer facility, or a group of such facilities, is financially responsible for:

- (1) cleanup and closure costs,
- (2) general liabilities, including operation of motor vehicles, worker compensation and contractor liability, and
- (3) environmental pollution legal liability for bodily injury

or property damage to third parties resulting from sudden or non-sudden used oil releases. The owner or operator of a permitted used oil facility or operation shall present evidence satisfactory to the Executive Secretary of its ability to meet these financial requirements. The owner or operator shall present with its permit application the information the Executive Secretary requires to demonstrate its general comprehensive liability coverage. The owner or operator shall use the financial mechanisms described in Section R315-15-12 to demonstrate its ability to meet the financial requirements of Subsection R315-15-10(a)(1) and (a)(3). In approving the financial mechanisms used to satisfy the financial requirements, the Executive Secretary will take into account existing financial mechanisms already in place by the facility if required by Sections R315-7-15, R315-8-8, and R311-201-6. Additionally, the Executive Secretary will consider other relevant factors in approving the financial mechanisms, such as the volumes of used oil handled and existing secondary containment. Financial responsibility, environmental pollution legal liability and general liability coverage shall be provided to the Executive Secretary as part of the permit application and approval process and shall be maintained until released by Executive Secretary. Changes in extent, type, or amount of the environmental pollution legal liability and financial responsibility shall be considered a permit modification requiring notification to and approval from the Executive Secretary.

(b) Environmental pollution legal liability coverage for third party damages at used oil facilities. Each used oil processor, re-refiner, transfer facility, and off-specification burner shall obtain and maintain environmental pollution liability coverage for bodily injury and property damage to third parties resulting from sudden and non-sudden accidental releases of used oil at its facility. This liability coverage shall be maintained for the duration of the permit or until released by the Executive Secretary as provided for in this section. Changes in extent, type, or amount of the financial mechanism will be considered a permit modification requiring notification to and approval from the Executive Secretary. The minimum amount of environmental pollution legal liability coverage using an assurance mechanism as specified in this section for third-party damages shall be:

(1) For operations where individual volumes of used oil are greater than 55 gallons, such as tanks, storage vessels, used oil processing equipment, and that are raised above grade-level sufficiently to allow for visual inspection of the underside for releases shall be required to obtain coverage in the amount of \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, exclusive of legal defense costs, and

(2) For operations in whole or part that do not qualify under Subsection R315-15-10(b)(1), coverage shall be in the amount of \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, and \$3 million per occurrence for non-sudden releases, with an annual aggregate coverage of \$6 million, exclusive of legal defense costs.

(3) For operations covered under Subsection R315-15-10(b)(2), the owner or operator may choose to use a combined liability coverage for sudden and non-sudden accidental releases in the amount of \$4 million per occurrence, with an annual aggregate coverage of \$8 million, exclusive of legal defense costs.

(c) Used oil transporter environmental pollution legal liability coverage for third party damages. Each used oil transporter shall obtain environmental pollution legal liability coverage for bodily injury and property damage to third parties covering sudden accidental releases of used oil from its vehicles and other equipment and containers used during transit, loading, and unloading in Utah, and shall maintain this coverage for the duration of the permit or until released by the Executive

Secretary as provided for in this section. The minimum amount of the coverage for used oil transporters shall be \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, exclusive of legal defense costs. Changes in extent, type, or amount of the liability coverage shall be considered a permit modification requiring notification to and approval from the Executive Secretary.

(d) An owner or operator responsible for cleanup and closure under Section R315-15-11 or environmental pollution legal liability for bodily injury and property damage to third parties under Subsections R315-15-10(b) and (c) shall demonstrate its ability to satisfy its responsibility to the Executive Secretary through the use of an acceptable financial assurance mechanism indicated under Section R315-15-12.

(e) Used Oil Collection Centers. An owner of a used oil collection center shall be subject to the same liability requirements as a permitted facility under Subsection R315-15-10(a) and (b) unless these requirements are waived by the Executive Secretary. Pursuant to Section 19-6-710, the Executive Secretary may waive the requirement of proof of liability insurance or other means of financial responsibility that may be incurred in collecting or storing used oil if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system;

(3) The storage tank or container is clearly labeled with the words "Used Oil";

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received; and

(5) Oil sorbent material is readily available on site for immediate cleanup of spills.

(f) The Executive Secretary shall release an owner or operator from its existing financial responsibility mechanism as described in Section R315-15-10 when:

(1) The Executive Secretary approves an alternative mechanism;

(2) The owner or operator has achieved cleanup and closure according to Section R315-15-11; or

(3) The Executive Secretary determines that financial responsibility is no longer applicable under Rule R315-15.

(g) State of Utah and Federal government used oil permittees are exempt from the requirements of Section R315-15-10.

#### **R315-15-11. Cleanup and Closure.**

11.1 The owner or operator of a used oil collection, aggregation, transfer, processing/re-refining, or off-specification used oil burning facility shall remove all used oil and used oil residues from the site of operation and return the site to a post-operational land use in a manner that:

(a) Minimizes the need for further maintenance;

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of used oil, used oil constituents, leachate, contaminated run-off, or used oil decomposition products to the ground or surface waters, or to the atmosphere; and

(c) Complies with the closure requirements of Section R315-15-11 or supplies evidence acceptable to the Executive Secretary demonstrating a closure mechanism meeting the requirements of Section R315-7-15, R315-8-8, or 311-201-6.

(d) The permittee shall be responsible for used oil, used oil contaminants, or used oil residual materials that have been discharged or migrate beyond the facility property boundary.

The permittee is not relieved of all or any responsibility to cleanup, remedy or remediate a release that has discharged or migrated beyond the facility boundary where off-site access is denied. When off-site access is denied, the permittee shall demonstrate to the satisfaction of the Executive Secretary that, despite the permittee's best efforts, the permittee was unable to obtain the necessary permission to undertake the actions to cleanup, remedy or remediate the discharge or migration. The responsibility for discharges or migration beyond the facility property boundary does not convey any property rights of any sort, or any exclusive privilege to the permittee.

#### 11.2 CLEANUP AND CLOSURE PLAN

##### (a) Written plan.

(1) The owner or operator of a used oil transfer, off-specification burner, or processing/re-refining facility shall have a written cleanup and closure plan. The cleanup and closure plan shall be submitted to the Executive Secretary for approval as part of the permit application.

(2) When physical or operational conditions at the facility change that result in a change in the nature or extent of cleanup and closure or an increase in the estimated costs of cleanup and closure, the owner or operator shall submit a modified plan for review and approval by the Executive Secretary.

(3) Changes in the amount or face value of a financial mechanism that are the result of the annual inflation update from the application of the implicit price deflator multiplier to a permit cleanup and closure plan cost estimate shall not require approval by the Executive Secretary.

(4) The adjustment shall be made by recalculating the cleanup closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce, Bureau of Economic Analysis in its Survey of Current Business as specified in Section 264.145(b)(1) and (2). The inflation factor is the incremental increase of the latest published annual Deflator to the Deflator for the previous year divided by the previous year Deflator. The first adjustment is made by multiplying the cleanup closure cost estimate by the inflation factor. The result is the adjusted cleanup closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted cleanup closure cost estimate by the latest inflation factor.

(b) Content of plan. The plan shall identify steps necessary to perform partial or final cleanup and closure of the facility at any point during its active life.

(1) The cleanup and closure plan shall be based on third-party, direct-estimated costs or on third-party costs using RS Means methods, applications, procedures, and use cost values applicable to the location of the facility and include, at least:

(i) A description of how each used oil management unit at the facility will be closed.

(ii) A description of how final cleanup and closure of the facility will be conducted. The description shall identify the maximum extent of the operations which will be cleaned, closed, or both during the active life of the facility.

(iii) An estimate of the maximum inventory of used oil to be stored onsite at any one time during the life of the facility and a detailed description of the methods to be used during partial cleanup and closure final cleanup and closure, or both, including, but not limited to, methods for removing, transporting, or disposing of all used oil, and identification of the off-site used oil facilities to be used, if applicable.

(iv) A detailed description of the steps needed to remove or decontaminate all used oil and used oil residues and contaminated containment system components, equipment, structures, and soils during partial or final cleanup and closure, including procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of

decontamination required to satisfy closure. This description shall address the management and disposal of all residues resulting from the decontamination activity, including, but not limited to, rinse waters, rags, personal protective equipment, small hand implements, vehicles, and mechanized equipment.

(v) A detailed description of other activities necessary during the cleanup and closure period to ensure that all partial closures shall satisfy the final cleanup and closure plan.

(vi) A cleanup and closure cost estimate and a mechanism for financial responsibility to cover the cost of cleanup and closure.

(vii) State of Utah and Federal government used oil permittees are exempt from the requirements of Subsection R315-15-11(b)(1)(vi).

(2) The owner or operator shall update its cleanup and closure plan cost estimate and provide the updated estimate to the Executive Secretary, in writing, within 60 days following a facility modification that causes an increase in the amount of the financial responsibility required under Section R315-15-10. Within 30 days of the Executive Secretary's approval of a permit modification for the cleanup and closure plan that would result in an increased cost estimate, the owner or operator shall provide to the Executive Secretary:

(i) evidence that the financial assurance mechanism amount or value includes the cleanup and closure cost estimate increase; or

(ii) other mechanisms covering the increased closure plan cost estimate and a summary document indicating the multiple financial mechanisms, by mechanism name, account number, and the amounts to satisfy Sections R315-15-10 and 11.

(c) The owner or operator shall update the cleanup and closure cost estimate to adjust for inflation and include the updated estimate in the permitted facility's annual report due by March 1st of each year, using either:

(1) the multiplier formed from the gross domestic product implicit price deflator ratio of the current calendar year to the past calendar year as published by the federal government Bureau of Economic Analysis; or

(2) new cleanup and closure cost estimate from the recalculation of the cleanup and closure plan costs to account for all changes in scope and nature of the facility or facilities, in current dollars.

#### 11.3 TIME ALLOWED TO INITIATE CLOSURE

(a) The owner or operator shall initiate closure in accordance with the approved cleanup and closure plan and notify the Executive Secretary of this fact:

(1) Within 90 days after the owner or operator receives the final volume of used oil; or

(2) The Executive Secretary revokes the facility's used oil permit.

(b) During the cleanup and closure period or at any other time, if the Executive Secretary determines that the owner or operator has failed to comply with Rule R315-15, the Executive Secretary may, after 30 days, on written notice to the owner or operator, draw upon the financial mechanism associated with the cleanup and closure plan for the facility or facilities covered by the financial responsibility requirements of Section R315-15-10.

#### 11.4 CERTIFICATION OF CLOSURE

(a) Within 60 days of completion of cleanup and closure, the owner or operator of a permitted used oil facility shall submit to the Executive Secretary, by registered mail, a certification that the used oil facility has been cleaned and closed in accordance with the specifications in the approved cleanup and closure plan. The certification shall be signed by the owner or operator and by an independent, Utah-registered professional engineer.

(b) The Executive Secretary shall make the determination of whether cleanup and closure has been completed according



to the cleanup and closure plan and Rule R315-15.

### **R315-15-12. Financial Assurance.**

#### **12.1 DEFINITIONS**

For the purposes of Section R315-15-12, the following definitions apply:

(a) "Existing used oil facility" means any used oil transfer facility, off-specification burner, or used oil processing/re-refining facility in operation on July 1, 1993 under a used oil operating permit issued by the Division of Oil, Gas and Mining and in effect on or before June 30, 1993. An existing used oil facility is also required to obtain a permit from the Executive Secretary in accordance with Section R315-15-13.

(b) "New used oil facility" means any used oil transfer, off-specification burner, or used oil processing/re-refining facility that was not in operation as a used oil facility on July 1, 1993, and received an operating permit in accordance with Section R315-15-13 from the Executive Secretary after July 1, 1993.

(c) "Financial assurance mechanism" means "reclamation surety" as used in Sections 19-6-709 and 19-6-710 of the Used Oil Management Act.

#### **12.2 APPLICABILITY**

(a) The owner or operator of an existing or new used oil facility requiring a permit under Section R315-15-13 shall establish a financial assurance mechanism as evidence of financial responsibility under Section R315-15-10 sufficient to assure cleanup and closure of the facility in conformity with Subsection R315-15-11.1 with one or more of the financial assurance mechanisms of Subsection R315-15-12.3 prior to receiving a permit from the Executive Secretary.

(b) Any increase in capacity to store or process used oil at a used oil facility permitted by the Executive Secretary, above the storage or processing capacity identified in the permit application approved by the Executive Secretary, shall require the owner or operator of the permitted used oil facility to increase the amount or face value of the financial assurance mechanism to meet the additional capacity. The additional amount or increase in face value of financial assurance mechanism shall be in place and effective before operation of the increased storage or processing capacity and shall meet the requirements of Subsections R315-15-12.3 and R315-15-12.4.

(c) DIYer used oil collection centers, generator used oil collection centers, and used oil aggregation points are not required to post a financial assurance mechanism, but are subject to the cleanup and closure requirements of Sections R315-15-10 and R315-15-11 unless they have received a waiver in writing from the Executive Secretary under Subsection R315-15-10(e).

#### **12.3 FINANCIAL ASSURANCE MECHANISMS**

(a) Any financial assurance mechanism used to show financial responsibility under Sections R315-15-10 and 11 for an existing or new used oil facility shall:

- (1) be legally valid, binding, and enforceable under Utah and federal law;
- (2) be approved by the Executive Secretary;
- (3) ensure that funds will be available in a timely fashion for:

(i) completing all cleanup and closure activities indicated in the closure plan of the permit approved by the Executive Secretary; and

(ii) environmental pollution legal liability for third party damages for bodily injury and property damage resulting from a sudden or non-sudden accidental release of used oil from or arising from permitted operations; and

(4) require a written notice sent by certified mail to the Executive Secretary 120 days prior to cancellation or termination of the financial mechanism.

(5) be updated each year to adjust for inflation, using either:

(i) the gross domestic product implicit price deflator ratio of the increase of the current calendar year to the past calendar year or

(ii) a new estimated cleanup and closure cost estimate recalculated to account for all changes in scope and nature of the permitted operation.

(b) The owner or operator of an existing or new used oil facility shall establish a financial assurance mechanism for cleanup and closure by one of the following mechanisms and shall submit a signed original or an original signed duplicate of the financial assurance mechanism to the Executive Secretary for approval as part of the permit application:

(1) Trust Fund.

(i) The trustee shall be an entity which has the authority to act as a trustee and whose operations are regulated and examined by a federal or state agency.

(ii) A signed original or an original signed duplicate of the trust agreement and accompanied by a formal certification of acknowledgement shall be submitted to the Executive Secretary.

(iii) For trust funds not fully funded at the time of permit approval by the Executive Secretary, incremental payments into the trust fund shall be made annually by the owner or operator to fully fund the trust within five years of the Executive Secretary's approval of the permit as follows:

(A) initial payment value shall be the initial cleanup and closure cost estimate value divided by the pay-in period, not to exceed five years, and

(B) next payment value shall be the difference of the approved current cleanup and closure cost estimate less the trust fund value, all divided by the remaining number of years in the pay-in period, and

(C) subsequent next payments shall be made into the trust fund annually on or before the anniversary date of the initial payment made into the trust fund, and

(D) no latter than 30 days after the last incremental payment to fully fund the trust, the permittee shall provide proof to the Executive Secretary in writing that the trust fund has been fully funded according to the current permitted cleanup and closure cost estimate.

(iv) For a new used oil facility, the payment into the trust fund shall be made before the initial receipt of used oil.

(v) For an existing used oil facility, the payment into the trust fund shall be made on or before April 1, 1994.

(vi) The owner or operator, or other person authorized to conduct cleanup and closure activities may request reimbursement from the trustee for cleanup and closure completed when approved in writing by the Executive Secretary.

(vii) The request for reimbursement may be granted by the trustee as follows:

(A) only if sufficient funds exist to cover the reimbursement request; and

(B) if justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Executive Secretary in writing prior to the trustee granting reimbursement.

(viii) The Executive Secretary may cancel the incremental trust funding option at any time and require the permittee to provide either a fully funded trust or other cleanup and closure financial mechanism as provided in Section R315-15-12 under the following conditions:

(A) upon the insolvency of the permittee, or

(B) when a violation of Sections R315-15-10, 11 or 12 has been determined.

(ix) The trust agreement shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.2.

(2) Surety Bond Guaranteeing Payment.

(i) The bond shall be effective as follows:

(A) For a new used oil facility, before the initial receipt of

used oil; or

(B) For an existing used oil facility, on or before April 1, 1994.

(ii) The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator shall notify the Executive Secretary that a copy of the bond has been placed in the operating record.

(iii) The penal sum of the bond shall be in an amount at least equal to the cleanup and closure cost estimate developed under Subsection R315-15-11.2.

(iv) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(v) The owner or operator shall establish a standby trust agreement at the time the bond is established.

(A) The standby trust agreement shall meet the requirements of Subsection R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (viii), and (ix) and the standby trust agreement shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.14.

(B) Payment made under the terms of the bond shall be deposited by the surety directly into the standby trust agreement and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Executive Secretary.

(vi) The surety bond shall automatically be renewed on the expiration date unless cancelled by the surety company 120 days in advance by sending both the bond applicant and the Executive Secretary a written cancellation notice by certified mail.

(vii) The bond applicant may terminate the bond for nonpayment of fee by providing written notice, by certified mail, to the Executive Secretary 120 days prior to termination.

(viii) Any change to the form or content of the surety bond shall be submitted to the Executive Secretary for approval and acceptance.

(ix) The surety bond shall follow the language provided by the Executive Secretary found in Subsection R315-15-17.3.

(3) Letter of Credit

(i) The letter of credit shall be effective as follows:

(A) For a new used oil facility, before the initial receipt of used oil; or

(B) For an existing used oil facility, on or before April 1, 1994.

(ii) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a state or federal agency.

(iii) The letter of credit shall be issued in an amount at least equal to the cleanup and closure cost estimate developed under Subsection R315-15-11.2.

(iv) The owner or operator shall establish a standby trust agreement at the time the letter of credit is established.

(A) The standby trust agreement shall meet the requirements of Subsection R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (viii), and (ix) and the surety bond shall follow the language incorporated by reference in Subsection R315-15-17.14.

(B) Payment made under the terms of the letter of credit shall be deposited by the surety directly into the standby trust fund and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Executive Secretary.

(vi) The letter of credit shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.4.

(4) Insurance.

(i) The insurance shall be effective as follows:

(A) For a new used oil facility before the initial receipt of used oil; or

(B) For an existing used oil facility on or before April 1, 1994.

(C) Insurance coverage period shall be the earliest date of permit issuance or a retroactive date established by the earliest period of coverage for any financial assurance mechanism.

(ii) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(iii) The insurance policy shall guarantee that funds will be available to perform the cleanup and closure activities approved by the Executive Secretary.

(iv) The policy shall guarantee that the insurer will be responsible for the paying out of funds to the owner or operator or person authorized to conduct the cleanup and closure activities, as approved by the Executive Secretary, up to an amount equal to the face amount of the policy. Payment of any funds by the insurer shall be made with the written concurrence of the Executive Secretary.

(A) The Insurer shall establish a standby trust agreement for only the benefit of the Executive Secretary when the Executive Secretary notifies the Insurer that the Executive Secretary is making a claim, as provided for in Rule R315-15, for cleanup and closure of a permitted used oil transfer, processor, re-refiner, or off-specification burner facility.

(B) The Insurer shall place the face value of the applicable coverage in the trust within thirty (30) days of establishing the standby trust agreement.

(C) The standby trust agreement shall meet the requirements of Subsection R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (xi), and the standby trust agreement shall follow the language provided by the Executive Secretary incorporated by reference in Subsection R315-15-17.14.

(v) The insurance policy shall be issued for a face amount at least equal to the cleanup and closure cost estimate developed under Subsection R315-15-11.2.

(vi) An owner or operator, or other authorized person may receive reimbursements for cleanup and closure activities completed if:

(A) the value of the policy is sufficient to cover the reimbursement request; and

(B) justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Executive Secretary prior to receiving reimbursement.

(vii) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator.

(viii) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Executive Secretary 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator shall obtain an alternate financial assurance mechanism meeting the requirements for financial responsibility under Section R315-15-10 and of this subsection within 60 days of notice of cancellation of the policy.

(ix) The policy coverage amount for cleanup and closure is exclusive of legal and defense costs.

(x) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

(xi) The Insurer as first-payer is liable for the payment of amounts within any deductible, retention, self-insured retention (SIR), or reserve applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible, retention, self-insured retention, or

reserve for which coverage is otherwise demonstrated as specified in Section R315-15-12.

(xii) Whenever requested by the Executive Secretary, the Insurer agrees to furnish to the Executive Secretary a signed duplicate original of the policy and all endorsements.

(xiii) Cancellation of the policy, whether by the Insurer, the Insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the used oil management facility, will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Executive Secretary for those facilities which are located in Utah.

(xiv) Any other termination of the policy will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Executive Secretary for those facilities which are located in Utah.

(xv) All policy provisions related to Rule R315-15 shall be construed pursuant to the laws of the State of Utah. In the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the Insured will submit to the jurisdiction of the appropriate court of the State of Utah, and will comply with all the requirements necessary to give such court jurisdiction. All matters arising hereunder, including questions related to the interpretation, performance and enforcement of this policy, shall be determined in accordance with the law and practice of the State of Utah (notwithstanding Utah conflicts of law rules).

(xvi) Endorsement(s) added to, or removed from the policy that have the effect of affecting the environmental pollution liability language, directly or indirectly, shall be approved in writing by the Executive Secretary before said endorsement(s) become effective.

(xvii) Neither the Insurer or Insured shall contest the state of Utah's use of the drafting history of the insurance policy in a judicial interpretation of the policy or endorsement(s) to said policy.

(xviii) The Insurer shall establish a standby trust fund for the benefit of the Executive Secretary at the time the Executive Secretary first makes a claim against the insurance policy.

(A) The standby trust fund shall meet the requirements of Subsection R315-15-12.3(b)(1), except for item Subsections R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (ix) and the standby trust agreement shall follow the wording found in Subsection R315-15-17.14.

(B) Payment made under the terms of the insurance policy shall be deposited by the Insurer as grantor directly into the standby trust fund and payments from the trust fund shall be approved by the trustee with the written concurrence of the Executive Secretary.

(5) The owner or operator of an existing or new used oil facility may establish a financial assurance mechanism by a combination of the above mechanisms as approved by the Executive Secretary.

(c) The owner or operator of an existing or new used oil facility or operation shall establish a financial assurance mechanism for bodily injury and property damage to third parties resulting from sudden and/or non-sudden accidental releases of used oil from a permitted used oil facility or operation as follows:

(1) An owner or operator that is a used oil processor, transfer facility, or off-specification burner, or a group of such facilities regulated under Rule R315-15 shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and/or non-sudden accidental release of used oil arising from operations or operations of the facility or group of facilities shall have and maintain liability coverage in the amount as specified in Subsection R315-15-

10(b). This liability coverage shall be demonstrated by one or more of the financial mechanisms in Subsection R315-15-12.3(c)(3).

(2) An owner or operator that is a used oil transporter regulated under Rule R315-15, must demonstrate financial responsibility for bodily injury and property damage to third parties resulting from sudden release of used oil arising from transit, loading and unloading, to or from facilities within Utah. The owner or operator shall maintain liability coverage for sudden accidental occurrences in the amount specified in Subsection R315-15-10(c). This liability coverage shall be demonstrated by one or more of the financial mechanisms in Subsection R315-15-12.3(c)(3).

(3) The owner or operator using insurance to demonstrate compliance with Subsection R315-15-10(b) or (c) shall use one or more of the following financial assurance mechanisms:

(i) Insurance. The owner or operator shall follow the wording provided by the Executive Secretary found in Subsections R315-15-17.5 through R315-15-17.9, as may be applicable.

(ii) Trust. The owner or operator shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.12.

(iii) Surety Bond. The owner or operator shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.11.

(iv) Letter of Credit. The owner or operator shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.10.

(d) Adjustments by the Executive Secretary. If the Executive Secretary determines that the levels of financial responsibility required by Subsection R315-15-10(b) or (c), as applicable are not consistent with the degree and duration of risk associated with used oil operations or facilities, the Executive Secretary may adjust the level of financial responsibility required under Subsection R315-15-10(b) or (c), as applicable, as may be necessary to protect human health and the environment. This adjusted level will be based on the Executive Secretary's assessment of the degree and duration of risk associated with the used oil operations or facilities. In addition, if the Executive Secretary determines that there is a significant risk to human health and the environment from non-sudden release of used oil resulting from the used oil operations or facilities, the Executive Secretary may require that an owner or operator of the used oil facility or operation comply with Subsection R315-15-10(b) and (c), as applicable. An owner or operator must furnish, within a reasonable time to the Executive Secretary when requested in writing, any information which the Executive Secretary requests to determine whether cause exists for an adjustment to the financial responsibility under Subsection R315-15-10(b) or (c) with the used oil operations or facilities. Failure to provide the requested information as and when requested under this section may result in the Executive Secretary revoking the owner's or operator's used oil permit(s). Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification.

(e) When the owner or operator of a permitted used oil facility or operation believes that its responsibility for cleanup and closure or for environmental pollution liability as described in Subsection R315-15-10(d) has changed, it may submit a written request to the Executive Secretary to modify its permit to reflect the changed responsibility.

(f) The Executive Secretary may release the requirement for cleanup and closure financial assurance after the owner or operator has clean-closed the facility according to Section R315-15-11.

(g) The owner or operator of a permitted used oil facility or operation may request the Executive Secretary to modify its permit to change its financial assurance mechanism or

mechanisms as described in Section R315-15-12.

(h) The Executive Secretary may modify the permit to change financial assurance mechanism or mechanisms after the owner or operator has established a replacement financial assurance mechanism or mechanisms acceptable to the Executive Secretary.

(i) Incapacity of owners or operators, guarantor, or financial institution. An owner or operator of a permitted used oil facility or operation shall notify the Executive Secretary by certified mail within 10 days of the commencement of a bankruptcy proceeding naming the owner or operator as debtor.

(1) An owner or operator who fulfills the financial responsibility requirements by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be considered to be without the required financial responsibility or liability coverage in the event of:

(i) bankruptcy of the trustee or issuing institution; or  
(ii) a suspension or revocation of the authority of the trustee institution to act as trustee; or

(iii) a suspension or revocation of the authority of the institution to issue a surety bond, a letter of credit, or an insurance policy.

(2) The owner or operator of a permitted used oil facility or operation must establish other financial responsibility or liability coverage within 60 days after such an event.

#### 12.4 ANNUAL UPDATE OF CLOSURE COST ESTIMATE AND FINANCIAL ASSURANCE MECHANISM

(a) The financial responsibility information required by Sections R315-15-10, 11, and 12 and submitted to the Executive Secretary with the initial permit application for a used oil facility or operation, or information provided as part of subsequent modifications to the permit made thereafter, shall be updated annually.

(b) The following annual updated financial responsibility information for the previous calendar year shall be submitted to the Executive Secretary by March 1 of each year for each permitted facility or operation:

(1) The cleanup and closure cost estimate shall be based on a third party performing cleanup and closure of the facility to a post-operational land use in accordance with Subsection R315-15-11.1.

(2) The financial assurance mechanism shall be adjusted to reflect the new cleanup and closure cost estimate.

(3) The type of financial assurance mechanism, its current face value, and corresponding financial institution's instrument control number shall be provided.

(4) The type of environmental pollution liability financial responsibility for third-party damage mechanism shall be provided, including:

- (i) policy number or other mechanism control number,
- (ii) effective date of policy or other mechanism, and
- (iii) coverage types and amounts.

(5) The type of general liability insurance information shall be provided, including:

- (i) policy number,
- (ii) date of policy, effective date of policy, retroactive date of coverage, if applicable, and
- (iii) coverage types and amounts.

(c) Other type of information deemed necessary to evaluate compliance with a permitted used oil facilities or operations and Sections R315-15-10, 11, and 12, shall be provided upon request by the Executive Secretary.

### R315-15-13. Registration and Permitting of Used Oil Handlers.

#### 13.1 DO-IT-YOURSELF USED OIL COLLECTION CENTERS

(a) Applicability. A person may not operate a do-it-yourselfer (DIYer) used oil collection center without holding a

registration number issued by the Executive Secretary.

(b) General. The application for a registration number shall include the following information regarding the DIYer used oil collection center:

- (1) the name and address of the operator;
- (2) the location of the center;
- (3) the type of storage and secondary containment to be used;

(4) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(5) a spill containment plan in the event of a release of used oil; and

(6) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. Pursuant to Section 19-6-710, the Executive Secretary may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

#### 13.2 GENERATOR USED OIL COLLECTION CENTERS

(a) Applicability. A person may not operate a generator used oil collection center without holding a registration number issued by the Executive Secretary.

(b) General. The application for registration shall include the following information regarding the generator used oil collection center:

- (1) the name and address of the operator;
- (2) the location of the center;
- (3) whether the center will accept DIYer used oil;
- (4) the type of storage and secondary containment to be used;

(5) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(6) a spill containment plan in the event of a release of used oil; and

(7) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) permit. Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. Pursuant to Section 19-6-710, the Executive Secretary may waive the requirement of proof of

liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

### 13.3 USED OIL AGGREGATION POINTS

(a) Applicability. A person may operate a used oil aggregation point without holding a registration number issued by the Executive Secretary unless that aggregation point also accepts used oil from household do-it-yourselfers (DIYers) or other generators.

(b) If an aggregation point accepts used oil from household DIYers, it must register with the Division as a DIYer collection center and comply with the DIYer standards in Section R315-15-3.1.

(c) If an aggregation point accepts used oil from other generators it must register with the Division as a generator collection center and comply with the standards in Section R315-15-3.2.

### 13.4 USED OIL TRANSPORTERS AND USED OIL TRANSFER FACILITIES

(a) Applicability. Except as provided by Section R315-15-13.4(f), a person may not operate as a used oil transporter or operate a transfer facility without holding a permit issued by the Executive Secretary.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the transporter's base of operations and the location of any transfer facilities, if applicable;

(3) Maps of all transfer facilities, if applicable;

(4) The methods to be used for collecting, storing, and delivering used oil;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in collecting, transporting, or storing used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil; and

(12) A closure plan meeting the requirements of Section R315-15-11.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Section 63J-1-303. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers and permit approvals.

(d) Annual Reporting. Each transporter/transfer facility shall submit an annual report to the Division of their activities during the calendar year. The annual report shall be submitted to the Division no later than March 1, of the year following the reported activities. The Annual report shall either be submitted on a form provided by the Division or shall contain the following information:

(1) the EPA identification number, name, and address of the transporter/transfer facility;

(2) the calendar year covered by the report;

(3) the total amount of used oil transported;

(4) the itemized amounts and types of used oil transferred to permitted transporters/transfer facilities, used oil processors/re-refiners, off-specification used oil burners, and used oil fuel marketers; and

(5) the itemized amounts and types of used oil transferred inside and outside the state, indicating the state of transfer, and the specific name, address and telephone number of the operations or facility to which used oil was transferred.

(e) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Permits by rule. Notwithstanding any other provisions of Section R315-15-13.4, a used oil generator who transports used oil generated at a non-contiguous operation to a central collection facility for the purpose of storing it shall be deemed to have an approved used oil transporter permit if the generator meets all of the following conditions:

(1) Transports only used oil generated by the generator;

(2) Transports the used oil in a service vehicle owned by the generator;

(3) Transports the used oil to a facility that the generator owns, operates, or both;

(4) Subsequently burns the stored used oil for energy recovery at that facility, or arranges for a permitted used oil transporter to pick up the used oil;

(5) Complies with Sections R315-15-4.3, R315-15-4.4, and R315-15-4.8, and Subsections R315-15-4.6(b) through (f) and R315-15-4.7(b) and (d);

(6) Notifies the Executive Secretary with the information required by Subsection R315-15-13.4(b)(6);

(7) Registers as a used oil fuel marketer and complies with Section R315-15-7; and

(8) Is defined by one of the following Standard Industrial Classification (SIC) codes found in the Standard Industrial Classification Manual, 1987, published by the US Office of Management and Budget:

(i) 10 (metal mining);

(ii) 12 (coal mining);

(iii) 13 (oil and gas extraction);

(iv) 14 (mining and quarrying of nonmetallic minerals, except fuels;

(v) 15 (building construction--general contractors and operative builders);

(vi) 16 (heavy construction other than building construction);

(vii) 1791 (miscellaneous special trade contractors);

(viii) 1794 (excavation work); and

(ix) 1795 (wrecking and demolition work).

### 13.5 USED OIL PROCESSORS/RE-REFINERS

(a) Applicability. A person may not operate as a used oil

processing/re-refining facility without holding a permit issued by the Executive Secretary.

(b) General. The application for a permit shall include the following information:

- (1) The name and address of the operator;
- (2) The location of the facility;
- (3) A map of the facility;
- (4) The grades of oil to be produced;
- (5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;
- (6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;
- (7) The methods of disposing of any waste by-products;
- (8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;
- (9) An emergency spill containment plan;
- (10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in processing or rerefining used oil;
- (11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil; and
- (12) A closure plan meeting the requirements of Section R315-15-11.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Section 63J-1-303. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers and permit approvals.

(d) Annual Reporting. Each used oil processing or rerefining facility shall submit an annual report to the Division of their activities during the calendar year. The annual report shall be submitted to the Division no later than March 1, of the year following the reported activities. The annual report shall either be submitted on a form provided by the Division or shall contain the following information:

- (1) the EPA identification number, name, and address of the processor/re-refiner facility;
- (2) the calendar year covered by the report;
- (3) the quantities of used oil accepted for processing/rerefining and the manner in which the used oil is processed/rerefined, including the specific processes employed;
- (4) the average daily quantities of used oil processed at the beginning and end of the reporting period;
- (5) an itemization of the total amounts of used oil processed or rerefined during the reporting period year specifying the type and amounts of products produced, i.e., lubricating oil, fuel oil, etc.; and
- (6) the amounts of used oil prepared for reuse as a lubricating oil, as a fuel, and for other uses, specifying each type of use, the amounts of used oil consumed or used in the process of preparing used oil for reuse, specifying the amounts and types of waste by-products generated including waste, water, and the methods and specific locations utilized for disposal.

(e) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

### 13.6 USED OIL BURNERS

(a) Specification used oil fuel burners. Facilities burning only on-specification used oil fuel are not required to register as used oil burners with the Executive Secretary.

(1) Applicability. These requirements apply to persons burning only used oil that meets the used oil fuel specification of Section R315-15-1.2, provided that the burner also complies with the requirements of Section R315-15-7.3. Persons burning

specification used oil fuel shall be considered to have an authorization from the Department, for the purpose of this section, if they hold a valid air quality operating order, or are exempt under Section R315-15-2.4.

(2) Notification. Specification used oil fuel burners are required to notify the Executive Secretary by submitting a letter that includes the following information:

- (i) Company name and location;
- (ii) Owner of the company; and
- (iii) Name and telephone number for the company point of contact.

(b) Off-specification used oil fuel burners

(1) Applicability. The permitting requirements of this section apply to used oil burners who burn off-specification used oil for energy recovery except as specified in Subsections R315-15-6.1(a)(1) through (3). A person may not burn off-specification used oil fuel for energy recovery without holding a permit issued by the Executive Secretary.

(2) Permit application. The application for a permit shall include the following information regarding the facility:

- (i) the name and address of the operator;
- (ii) the location of the facility;
- (iii) the type of containment and type and capacity of storage;
- (iv) the type of burner to be used;
- (v) the methods of disposing of any waste by-products;
- (vi) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;
- (vii) an emergency spill containment plan;
- (viii) proof of insurance or other means of financial responsibility for liabilities that may be incurred in storing and burning off-specification used oil fuels.

(ix) proof of form and amount of reclamation surety for any facility receiving and burning off-specification used oil.

(x) A closure plan meeting the requirements of Section R315-15-11.

(3) Permit fees. Registration and permitting fees are established under the terms and conditions of Section 63J-1-303. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers or permit approvals.

(4) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted during permit application within 20 days of the change.

(5) Permits by rule. Any facility permitted by rule is not required to obtain a permit as required by Subsection R315-15-13.6(b)(1), but may be required to follow operational practices, as determined by the Executive Secretary, to minimize risk to human health or the environment. A permit by rule is conditional upon continued compliance with the requirements of R315-15-13.6(b), as determined by the Executive Secretary. Notwithstanding any other provisions of Section R315-15-13.6, a hazardous waste incinerator facility which has been issued a final permit under R315-3-1, and which implements the requirements of R315-8-15, shall be deemed to have an approved off-specification used oil burner permit if that facility meets all of the following conditions:

- (i) Burns off-specification used oil only in devices specified in R315-15-6.2(a);
- (ii) Stores used oil in the manner described in R315-15-6.5;
- (iii) Tracks off-specification used oil shipments as described in R315-15-6.6;
- (iv) Complies with Sections R315-15-6.3 and R315-15-6.7;
- (v) Modifies its closure plan required under Section R315-8-7 (Closure and Post Closure), to include used oil storage and

burning devices, taking into account any used oil activities at this facility;

(vi) Modify its financial mechanism or mechanisms required under Section R315-8-8 (Financial Requirements), using a mechanism other than a corporate financial test/corporate written guarantee, to reflect the used oil activities at the facility; and

(vii) Submits to the Executive Secretary the information required by Subsection R315-15-13.6(b)(2)(i) through (vi), and a one-time declaration that the facility intends to burn off-specification used oil.

(6) Annual Reporting. Each off-specification used oil burner, including those permitted by rule under R315-15-13.6(b)(5), shall submit an annual report to the Division of their activities during the calendar year. The annual report shall be submitted to the Division no later than March 1, of the year following the reported activities. The annual report shall either be submitted on a form provided by the Division or shall contain the following information:

(i) the EPA identification number, name, and address of the burner facility;

(ii) the calendar year covered by the report; and

(iii) the total amount of used oil burned.

#### 13.7 USED OIL FUEL MARKETERS

(a) Applicability. A person may not act as a used oil fuel marketer, as defined in Section R315-15-7, without holding a registration number issued by the Executive Secretary.

(b) General. The application for a registration number shall include the following information regarding the facility acting as a used oil fuel marketer:

(1) The name and address of the marketer.

(2) The location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits, or registrations under this section.

(3) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities, including registrations or permits required under this part to collect, process/re-refine, transport, or store used oil.

(4) Registration fees. Registration and permitting fees are established under the terms and conditions of Section 63J-1-303. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers.

(5) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a registration within 20 days of the change.

#### R315-15-14. DIYer Reimbursement.

##### 14.1 DIYER USED OIL COLLECTION CENTER INCENTIVE PAYMENT APPLICABILITY

(a) The Division shall pay a quarterly recycling fee incentive to registered DIYer used oil collection centers and curbside programs approved by the Executive Secretary for each gallon of used oil collected from DIYer used oil generators on and after July 1, 1994, and transported by a permitted used oil transporter to a permitted used oil processor/re-refiner, burner, or registered marketer.

(b) All registered DIYer used oil collection centers can qualify for a recycling incentive payment of up to \$0.16 per gallon, subject to availability of funds and the priorities of Section 19-6-720.

##### 14.2 REIMBURSEMENT PROCEDURES

In order for DIYer collection centers to qualify for the recycling incentive payment they are required to comply with the following procedures.

(a) Submit a copy of all records and receipts from permitted transporters of DIYer used oil collected during the

quarter for which the reimbursement is requested, quarterly, beginning July 1, 1994 and ending September 30, 1994, and each quarter thereafter. These records shall be submitted within 30 days following the end of the calendar quarter in which the DIYer oil was collected and for which reimbursement is requested.

(b) Reimbursements will be issued by the Executive Secretary within 30 days following the report filing period.

(c) Reports received later than 30 days after the end of the calendar quarter for which reimbursement is requested will be paid during the next quarterly reimbursement period.

#### R315-15-15. Issuance and Revocation of Permits and Registrations.

##### 15.1 PUBLIC COMMENTS AND HEARING.

In considering permit applications under these Rules, the Executive Secretary shall adhere to the requirements of Section 19-6-712.

##### 15.2 REVOCATION OF PERMITS AND REGISTRATIONS.

Violation of any permit/registration conditions or failure to comply with any provisions of the applicable statutes and rules, shall be grounds for imposing statutory sanctions, including revocation of the permit or registration and denial of an application for permit or registration. The Executive Secretary shall notify, in writing, the owner or operator of any facility of intent to revoke a permit or registration.

#### R315-15-16. Grants.

##### 16.1 STATUTORY AUTHORITY.

Section 19-6-720 authorizes the Division of Solid and Hazardous Waste to award grants, as funds are available, for the following:

(a) Used oil collection centers; and

(b) Curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of collection programs.

##### 16.2 ELIGIBILITY AND APPLICATION.

(a) The establishment of new or the enhancement of existing used oil collection centers or curbside collection programs that address the proper management of used lubricating oil may be eligible for grant assistance.

(b) A Used Oil Recycling Block Grant Package, published by the Division, shall be completed and submitted to the Executive Secretary for consideration.

##### 16.3 LIMITATIONS.

(a) The grantee must commit to perform the permitted used oil handling activity for a minimum of two years.

(b) If the two-year commitment is not fulfilled, the grantee may be required to repay all or a portion of the grant amount.

#### R315-15-17. Wording of Financial Assurance Mechanisms.

##### 17.1 APPLICABILITY

Section R315-15-17 presents the standard wording forms to be used for the financial assurance mechanisms found in Section R315-15-12. The following forms are hereby incorporated by reference and are available at the Division of Solid and Hazardous Waste located at 288 North 1460 West, Salt Lake City, Utah, during normal business hours or on the Division's web site, <http://www.hazardouswaste.utah.gov/>.

17.1.2 The Division requires that the forms described in this rule shall be used for all filings. Actual copies may be used or facilities may adapt them to their word processing system. If adapted, the content, size, font, and format must be similar.

17.1.3 The Executive Secretary may substitute new wording for the wording found in any of the financial assurance mechanism forms when such language changes are necessary to conform to applicable financial industry changes, when industry-wide consensus language changes are submitted to the

Executive Secretary.

#### 17.2 TRUST AGREEMENTS

The trust agreement for a trust fund must be worded as found in the Trust Agreement Form published January 10, 2008 by the Executive Secretary.

#### 17.3 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST AGREEMENT TRUST FUND

The surety bond guaranteeing payment into a standby trust agreement trust fund must be worded as found in the Surety Bond Guaranteeing Payment into a Standby Trust Agreement Trust Fund Form published January 10, 2008 by the Executive Secretary.

#### 17.4 IRREVOCABLE STANDBY LETTER OF CREDIT WITH STANDBY TRUST AGREEMENT

The letter of credit must be worded as found in the Irrevocable Standby Letter of Credit with Standby Trust Agreement Form published January 10, 2008 by the Executive Secretary.

#### 17.5 UTAH USED OIL POLLUTION LIABILITY INSURANCE ENDORSEMENT FOR CLEANUP AND CLOSURE

The insurance endorsement of cleanup and closure must be worded as found in the Utah Used Oil Pollution Liability Insurance Endorsement for Cleanup and Closure Form published January 10, 2008 by the Executive Secretary.

#### 17.6 UTAH USED OIL TRANSPORTER POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil transporter pollution liability endorsement for sudden occurrence must be worded as found in the Utah Used Oil Transporter Pollution Liability Endorsement for Sudden Occurrence Form published January 10, 2008 by the Executive Secretary.

#### 17.7 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil pollution liability endorsement for sudden occurrence for permitted facilities other than permitted transporters must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Sudden Occurrence Form published January 10, 2008 by the Executive Secretary.

#### 17.8 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR NON-SUDDEN OCCURRENCE

The used oil pollution liability endorsement for non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement Non-Sudden Occurrence Form published January 10, 2008 by the Executive Secretary.

#### 17.9 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR COMBINED SUDDEN AND NON-SUDDEN OCCURRENCES

The used oil pollution liability endorsement combined for sudden and non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Combined Sudden and Non-Sudden Occurrences Form published January 10, 2008 by the Executive Secretary.

#### 17.10 LETTER OF CREDIT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY WITH OPTIONAL STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The letter of credit must be worded as found in the Letter of Credit for Third Party Damages from Environmental Pollution Liability with Optional Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form published January 10, 2008 by the Executive Secretary.

#### 17.11 PAYMENT BOND FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-

#### REFINER/OFF-SPECIFICATION BURNER FACILITY

A surety bond must be worded as found in the Payment Bond for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification burner Facility Form published January 10, 2008 by the Executive Secretary.

#### 17.12 TRUST AGREEMENT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A trust agreement must be worded as found in the Trust Agreement for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form published January 10, 2008 by the Executive Secretary.

#### 17.13 STANDBY TRUST AGREEMENT ASSOCIATED WITH THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY REQUIRING A STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A standby trust agreement must be worded as found in the Standby Trust Agreement Associated with Third Party Damages from Environmental Pollution Liability Requiring Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form published January 10, 2008 by the Executive Secretary.

#### 17.14 STANDBY TRUST AGREEMENT, OTHER THAN LIABILITY, FOR TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The standby trust agreement for a trust fund must be worded as found in the Standby Trust Agreement, other than Liability for Transfer/Processor/Re-refiner/Off-specification Burner Facility Form published January 10, 2008 by the Executive Secretary.

**KEY: hazardous waste, used oil  
September 1, 2009  
Notice of Continuation October 4, 2007**

**19-6-704**



**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-302. Eligibility Requirements.****R414-302-1. Citizenship and Alienage.**

(1) The Department incorporates by reference 42 CFR 435.406 2008 ed., which requires applicants and recipients to be U.S. citizens or qualified aliens and to provide verification of their U.S. citizenship or lawful alien status.

(2) The definitions in R414-1 and R414-301 apply to this rule.

(3) The Department shall decide if a public or private organization no longer exists or is unable to meet an alien's needs. The Department shall base the decision on the evidence submitted to support the claim. The documentation submitted by the alien must be sufficient to prove the claim.

(4) One adult household member must declare the citizenship status of all household members who will receive Medicaid. The client must provide verification of citizenship and identity as described in 42 CFR 435.407.

(5) A qualified alien, as defined in 8 U.S.C. 1641 who was residing in the United States prior to August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services.

(6) A qualified alien, as defined in 8 U.S.C. 1641 newly admitted into the United States on or after August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services after five years have passed from the person's date of entry into the United States.

(7) The Department accepts as verification of citizenship documents from federally recognized Indian tribes evidencing membership or enrollment in such tribe including those with international borders as required under Section 221(b)(1) of The Children's Health Insurance Program Reauthorization Act, Pub. L. No. 111 3, or as prescribed by the Secretary.

(8) The Department provides reasonable opportunity for applicants or clients to present satisfactory documentation of citizenship as required under Section 221(b)(2) of The Children's Health Insurance Program Reauthorization Act, Pub. L. No. 111 3.

(9) The Department considers that an infant born to a mother who is eligible for Medicaid at the time of such infant's birth has provided satisfactory evidence of citizenship. The Department does not require further verification of citizenship for such infant as required under Section 221(b)(3) of The Children's Health Insurance Program Reauthorization Act, Pub. L. No. 111 3.

**R414-302-2. Utah Residence.**

The Department adopts 42 CFR 435.403, 1997 ed., which is incorporated by reference. The Department adopts Subsection 1902(b) of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference.

**R414-302-3. Local Office Residence.**

Applicants may apply at any local office or outreach location. The Department may require applicants also applying for services from the Department of Workforce Services or foster care Medicaid to apply at the local office in the area where they reside.

**R414-302-4. Residents of Institutions.**

(1) The Department adopts 20 CFR 416.201 and 416.211, 1997 ed. and 42 CFR 435.1008, 1997 ed., which are incorporated by reference.

(2) The Department does not consider persons under the age of 18 to be residents of an institution if they are living temporarily in the institution while arrangements are being made for other placement.

(3) The Department does not consider an individual who

resides in a temporary shelter for a limited period of time as a resident of an institution.

(4) The Department considers ineligible residents of institutions for mental disease as non-residents while on conditional or convalescent leave from the institution.

**R414-302-5. Social Security Numbers.**

(1) The Department adopts 42 CFR 435.910, 1997 ed., which is incorporated by reference. The Department adopts Section 1137 of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference.

(2) Clients must provide their correct Social Security Number (SSN).

(a) The Department requires clients to provide their correct SSN or a proof of application for a SSN at the time of application for Medicaid.

(b) The Department requires clients who do not know their SSN or provide a SSN that is questionable to provide proof of application for a SSN upon application for Medicaid.

(c) Acceptable proof of application for a SSN is a Social Security Card, an official document from Social Security which identifies the correct number or a Social Security receipt form 5028, 2880, or 2853.

(d) The Department requires a new proof of application for a SSN at each recertification if the SSN has not been provided previously.

**R414-302-6. Application for Other Possible Benefits.**

The Department requires applicants for and recipients of medical assistance to apply for and take all reasonable steps to receive other possible benefits as required by 42 CFR 435.608, 2004 ed., which is incorporated by reference.

(2) Individuals who may be eligible for Medicare Part B benefits must apply for Medicare Part B and, if eligible, become enrolled in Medicare Part B to be eligible for Medicaid. The state pays the applicable monthly premium and cost-sharing expenses for Medicare Part B for individuals who are eligible for both Medicaid and Medicare Part B.

**R414-302-7. Third Party Liability.**

(1) The Department adopts 42 CFR 433.138(b) and 435.610, 1997 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 1998, which are incorporated by reference.

(2) The Department requires clients to report any changes in third party liability information within 30 days.

(3) The Department considers a client noncooperative if the client knowingly withholds third party liability information.

(4) The Department shall decide whether employer provided group health insurance would be cost effective for the state to purchase as a benefit of Medicaid.

(5) The Department requires clients residing in selected communities to be enrolled in a Health Maintenance Organization as their primary care provider. The Department shall enroll clients who do not make a selection in a Health Maintenance Organization that the Department selects. The Department shall notify clients of the Health Maintenance Organization that they will be enrolled in and allowed ten days to contact the Department with a different selection. If the client fails to notify the Department to make a different selection within ten days, the enrollment shall become effective for the next benefit month.

**R414-302-8. Medical Support Enforcement.**

The Department adopts 42 CFR 433.145 through 433.148, 1997 ed., which is incorporated by reference.

**R414-302-9. Relationship Determination for Family Medicaid.**

The Department adopts 42 CFR 435.602(a), 1997 ed., which is incorporated by reference.

**R414-302-10. Strikers - Family Medicaid.**

The Department adopts 45 CFR 233.106, 1997 ed., which is incorporated by reference.

**KEY: public assistance programs, application, eligibility, Medicaid**  
**September 1, 2009** **26-18**  
**Notice of Continuation January 25, 2008**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-303. Coverage Groups.****R414-303-1. Authority and Purpose.**

This rule is authorized by Utah Code Sections 26-1-5 and 26-18-3 and establishes Medicaid eligibility requirements for the following coverage groups:

- (1) Aged;
- (2) Blind;
- (3) Disabled;
- (4) Family;
- (5) Institutional;
- (6) Transitional;
- (7) Child;
- (8) Refugee;
- (9) Prenatal and Newborn;
- (10) Pregnant Women;
- (11) Community Supports Waiver for Home and Community Based Services;
- (12) Aging Home and Community Based Services Waiver;
- (13) Technologically Dependent Child Waiver/Travis C. Waiver;
- (14) Brain Injury Home and Community Based Services Waiver;
- (15) Physical Disabilities Waiver; and
- (16) Cancer Program.

**R414-303-2. Definitions.**

The definitions in R414-1 and R414-301 apply to this rule. In addition:

- (1) "Medicaid agency" means any one of the state departments that determine eligibility for one or more of the following medical assistance programs: Medicaid, the Primary Care Network, or the Covered-at-Work program.
- (2) "Federal poverty guideline" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of the term poverty means the federal poverty guideline.

**R414-303-3. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.**

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541, 2001 ed., which are incorporated by reference. The Department provides coverage to individuals as described in 20 CFR 416.901 through 416.1094, 2002 ed., which is incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv)(I) of Title XIX of the Social Security Act in effect January 1, 2001, which are incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2001, which is incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An applicant or recipient may request the State Medicaid Disability Office to review medical evidence to determine if the individual is disabled or blind. If the client has earned income, the State Medicaid Disability Office shall review

medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(a) If, within the prior 12 months, SSA has determined that the individual is not disabled, the Medicaid agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(b) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(c) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(d) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual denied disability status by the Medicaid Disability Review Office requests a fair hearing, the Disability Review Office may reconsider its determination as part of fair hearing process.

(a) The individual may provide the Department additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Department shall notify the individual of its decision upon reconsideration. Thereafter, the individual may choose to pursue or abandon his fair hearing rights.

(5) If the Department denies an individual's Medicaid application because it or SSA has determined that the individual is not disabled and that determination is later reversed on appeal and the individual has otherwise been eligible, the individual's eligibility shall extend back to the application that gave rise to the appeal.

(a) Eligibility cannot begin any earlier than the date of disability onset or the date that is three months before the date of application as defined in R414-306-4(2), whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the Medicaid agency to request the Disability Medicaid coverage.

(c) The individual must provide any verifications the Medicaid agency needs to determine eligibility for past or current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown to receive coverage, the spenddown must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2001, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by the section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv)(I) of Title XIX of the Social Security Act in effect January 1, 2001, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2001, for a given year, or as subsequently authorized by Congress. Applicants will be

denied coverage when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the Department shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The Department shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

#### **R414-303-4. Family Medicaid and Family Institutional Medicaid Coverage Groups.**

(1) This section provides the eligibility criteria for Family Medicaid and Family Institutional Medicaid Coverage groups.

(2) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, 2003 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7), and 1931(a), (b), and (g) (1931 FM) in effect January 1, 2003, which are incorporated by reference.

(3) For unemployed two-parent households, the Department does not require the primary wage earner to have an employment history.

(4) A specified relative, as that term is used in the provisions incorporated into this section, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following applies to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The income and resources of the specified relative are not counted unless the specified relative is also included in the Medicaid coverage group.

(d) If the specified relative is currently included in a 1931 Family Medicaid household, the child must be included in the 1931 FM eligibility determination for the specified relative.

(e) The specified relative may choose to be excluded from the Medicaid coverage group. If the specified relative chooses to be excluded from the Medicaid coverage group, the ineligible children of the specified relative must be excluded and the specified relative is not included in the income standard calculation.

(f) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources are not used to determine eligibility or spenddown.

(g) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income provisions apply:

(i) The monthly gross earned income of the specified relative and spouse is counted.

(ii) \$90 will be deducted from the monthly gross earned income for each employed person.

(iii) The \$30 and 1/3 disregard is allowed from earned income for each employed person, as described in R414-304-6(4).

(iv) Child care expenses and the cost of providing care for an incapacitated spouse necessary for employment are deducted

for only the specified relative's children, spouse, or both. The maximum allowable deduction will be \$200.00 per child under age two, and \$175.00 per child age two and older or incapacitated spouse each month for full-time employment. For part-time employment, the maximum deduction is \$160.00 per child under age two, and \$140.00 per child age two and older or incapacitated spouse each month.

(v) Unearned income of the specified relative and the excluded spouse that is not excluded income is counted.

(vi) Total countable earned and unearned income is divided by the number of family members living in the specified relative's household.

(5) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(6) Temporary absence from the home for purposes of schooling, vacation, medical treatment, military service, or other temporary purpose shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences caused solely by reason of employment, schooling, military service, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(7) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

(8) The Department imposes no suitable home requirement.

(9) Medicaid assistance is not continued for a temporary period if deprivation of support no longer exists. If deprivation of support ends due to increased hours of employment of the primary wage earner, the household may qualify for Transitional Medicaid described in R414-303-5.

(10) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity, a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration, or be determined disabled by the Medicaid Disability Review Office or the Social Security Administration;

(c) provide, either on a Department-approved form or in another written document, completed by one of the following licensed medical professionals: medical doctor; doctor of Osteopathy; Advanced Practice Registered Nurse; Physician's Assistant; or a mental health therapist, which includes a psychologist, Licensed Clinical Social Worker, Certified Social Worker, Marriage and Family Therapist, Professional Counselor, or MD, DO or APRN engaged in the practice of mental health therapy, that states the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

#### **R414-303-5. 12 Month Transitional Family Medicaid.**

The Department covers households that lose eligibility for 1931 Family Medicaid, in accordance with the provisions of Title XIX of the Social Security Act, Sections 1925 and 1931(c)(2).

#### **R414-303-6. Four Month Transitional Family Medicaid.**

(1) The Department adopts 42 CFR 435.112 and 435.115(f), (g) and (h), 2001 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) in effect January 1, 2001 which are incorporated by reference.

(2) Changes in household composition do not affect eligibility for the four month extension period. New household members may be added to the case only if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for Family Medicaid under Section 1931 of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

**R414-303-7. Foster Care and Independent Foster Care Adolescents.**

(1) The Department adopts 42 CFR 435.115(e)(2), 2001 ed., which is incorporated by reference.

(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

(3) The Department covers individuals who are 18 years old but not yet 21 years old as described in 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements.

(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services was the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.

(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.

(c) Medicaid eligibility under this coverage group is not available for any month before July 1, 2006.

(d) When funds are available, an eligible independent foster care adolescent can receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.

**R414-303-8. Subsidized Adoptions.**

(1) The Department adopts 42 CFR 435.115(e)(1), 2001 ed., which is incorporated by reference.

(2) Eligibility for subsidized adoptions is not governed by this rule. The Department of Human Services determines eligibility for subsidized adoption Medicaid.

**R414-303-9. Child Medicaid.**

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, 2001 ed., which are incorporated by reference.

(2) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(3) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

**R414-303-10. Refugee Medicaid.**

(1) The Department provides medical assistance to refugees in accordance with the provisions of 45 CFR 400.90 through 400.107 and 45 CFR, Part 401.

(2) Specified relative rules do not apply.

(3) Child support enforcement rules do not apply.

(4) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(5) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(6) Refugees may qualify for medical assistance for eight months after entry into the United States.

(7) The Department provides medical assistance to Iraqi and Afghan Special Immigrants in the same manner as medical assistance provided to other refugees.

**R414-303-11. Prenatal and Newborn Medicaid.**

(1) The Department incorporates by reference Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(IV), (VI), (VII), 1902(a)(47), 1902(e)(4) and (5) and 1902(l), in effect January 1, 2009, and Title XIX of the Social Security Act, Section 1902(k) in effect January 1, 1993, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider that the Department has determined is qualified to make a determination of presumptive eligibility for a pregnant woman and that meets the criteria defined in Section 1920(b)(2) of the Social Security Act;

(b) "presumptive eligibility" means a period of eligibility for medical services for a pregnant woman based on self-declaration that she meets the eligibility criteria.

(3) The Department provides coverage to pregnant women during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in R414-302-1;

(c) has a declared household income that does not exceed 133% of the federal poverty guideline applicable to her declared household size; and

(d) the woman is not covered by CHIP.

(4) No resource test applies to determine presumptive eligibility of a pregnant woman.

(5) A pregnant woman made eligible for a presumptive eligibility period must apply for Medicaid benefits by the last day of the month following the month the presumptive coverage begins.

(6) The presumptive eligibility period shall end on the earlier of:

(a) the day that the Medicaid agency determines whether the woman is eligible for Medicaid based on her application; or

(b) in the case of a woman who does not file a Medicaid application by the last day of the month following the month the woman was determined presumptively eligible, the last day of that following month.

(7) A pregnant woman may receive medical assistance during only one presumptive eligibility period for any single term of pregnancy.

(8) The Department elects to impose a resource standard on Newborn Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

(9) The Department elects to provide Prenatal Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

(10) At the initial determination of eligibility for Prenatal Medicaid, the agency determines the applicant's countable resources using SSI resource methodologies. Applicants for Prenatal Medicaid whose countable resources exceed \$5,000 must pay four percent of countable resources to the agency to receive Prenatal Medicaid. The maximum payment amount is \$3,367. The payment must be met with cash. The applicant cannot use any medical bills to meet this payment.

(a) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(b) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 2009.

(c) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the pregnant woman in a high risk category. To obtain this waiver of the resource payment, the woman must provide this information to the agency before the woman pays the resource payment so the agency can determine if she is in a high risk category.

(11) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. The mother can apply for Medicaid after the birth and if determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the Department determines if the infant is eligible under other Medicaid programs.

(12) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, without regard to whether the infant remains in the birth mother's home or whether the birth mother would continue to be eligible for Medicaid, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act, Pub. L. No. 111 3. The infant must continue to be a Utah resident to receive coverage.

(13) Children who meet the criteria under the Social Security Act, Section 1902(l)(1)(D) may qualify for the newborn program through the month in which they turn 19. The agency deems the parent's income and resources to the 18-year old to determine eligibility when the 18-year old lives in the parent's home. An 18-year old who does not live with a parent may apply on his own, in which case the agency does not deem income or resources from the parent.

#### **R414-303-12. Pregnant Women Medicaid.**

(1) The Department adopts 42 CFR 435.116 (a), 435.301 (a) and (b)(1)(i) and (iv), 2001 ed. and Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(III) in effect January 1, 2001, which are incorporated by reference.

#### **R414-303-13. DD/MR Home and Community Based Services Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(3) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group, except for individuals who only qualify for the Primary Care Network.

(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(5) All of the client's income is countable unless excluded

under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(6) To determine countable earned income, the Department will deduct from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 2001.

(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver eligible client that are paid by the waiver client.

(8) The spousal impoverishment provisions for Institutional Medicaid income apply.

(9) The client obligation for the contribution to care, which may be referred to as a spenddown, will be the amount of income that exceeds the personal needs allowance after allowable deductions. The contribution to care must be paid to the Department.

(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

#### **R414-303-14. Aging Home and Community Based Services Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid eligibility for Aging Home and Community-Based Services is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care except that the spousal impoverishment resource limits apply. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(3) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(4) All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. The client's contribution to care, which may be referred to as a spenddown, is determined counting only the client's income less allowable deductions.

(5) The spousal impoverishment provisions for Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver personal needs deduction.

(6) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

(7) The Department shall count a spouse's income only if the client is given a cash contribution from a spouse.

#### **R414-303-15. Technologically Dependent Child Waiver/Travis C. Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide

with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and renewed effective July 1, 2003 through June 30, 2008, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department in R414-303-15(3), non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-13, except that the earned income deduction is limited to \$125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-13, except that the earned income deduction is limited to \$125.

**R414-303-16. Persons with Brain Injury Home and Community Based Services Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver requires that the individual has medical needs resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(4) To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(5) All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-14.

(6) The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

**R414-303-17. Physical Disabilities Waiver.**

(1) The Department adopts 42 CFR 435.726, 435.832 and 435.217, 2006 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2005, which is incorporated by reference.

(2) The Department operates this program statewide with a limited number of slots, and eligibility for this waiver is limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than \$2000. The spousal impoverishment resource provisions for married, institutionalized clients in R414-305-3 apply to this rule.

(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. After determining countable income, eligibility is determined counting only the gross income of the client.

(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to become eligible. To determine the spenddown amount, the income rules for non-institutionalized aged, blind or disabled individuals in R414-304 apply except that income is not deemed from the client's spouse.

(8) Transfer of resource provisions described in R414-305-6 apply to this rule.

(9) The Department does not pay for waiver services when an individual has home equity that exceeds the limit set forth by the Deficit Reduction Act of 2005, Pub. L. 109-171.

(a) That limit is the minimum level allowed under the Deficit Reduction Act of 2005, 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 or nursing home services.

**R414-303-18. Medicaid Cancer Program.**

(1) The Department shall provide coverage to individuals described in 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2001, as amended by Pub. L. No. 106-354 effective October 24, 2000, which is incorporated by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) Medicaid eligibility for services under this program will be provided to women who have been screened for breast or cervical cancer under the Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) A woman who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Information Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the woman has insurance coverage but is subject to a pre-existing condition period that prevents her from receiving treatment for her breast or cervical cancer or precancerous condition, she is considered to not have other health insurance coverage until the pre-existing condition period ends at which time her eligibility for the program ends.

(4) A woman who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) A woman must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for a woman with breast or cervical cancer under 1902(a)(10)(A)(ii)(XVIII) ends when she is no longer in need of treatment for breast or cervical cancer. At each eligibility review, eligibility workers determine whether an

eligible woman is still in need of treatment based on the woman's doctor's statement or report.

**KEY: income, coverage groups, independent foster care adolescent**

September 1, 2009 26-18-3  
Notice of Continuation January 25, 2008 26-1-5



**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 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) If the individual could enroll in the Children's Health Insurance Program, 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) The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for the Primary Care Network.

(3) Any income in a trust that is available to, or is received by a household member, is countable income.

(4) 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.

(5) 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.

(6) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(7) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the certification period.

(8) 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.

(9) Child support payments received for a dependent child living in the home are counted as that child's income.

(10) 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.

(11) Supplemental Security Income and State Supplemental payments are countable income.

(12) 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.

(13) Income that is defined in 20 CFR 416 Subpart K, Appendix, 2004 edition, which is incorporated by reference, is not countable.

(14) 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.

(15) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(16) 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.

(17) Child Care Assistance under Title XX is not countable income.

(18) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the State Department of Health are not countable income.

(19) 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.

(20) 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.

(21) Reimbursements for employee work expenses incurred by an individual are not countable income.

(22) The value of food stamp assistance is not countable income.

(23) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

(24) The additional \$25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, which an individual may receive from March 2009 through June 2010 is not countable income.

(25) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, for certain government retirees are not countable income.

(26) The Consolidated Omnibus Reconciliation Act (COBRA) premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, is not countable income.

(27) The making work pay credit provided under Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, 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.

(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. The provisions of Section R414-308-3 apply to applicants of the Primary Care Network.

(3) The Department shall reinstate a medical case without requiring a new application if the case was closed in error.

(4) 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.

(5) An applicant may withdraw an application for the Primary Care Network program any time before the Department completes an eligibility decision on the application.

(6) 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) The Department does not require American Indians to pay an enrollment fee.

(b) Coverage does not begin until the Department receives the enrollment fee.

(c) 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.

(d) The enrollment fee is required at application and at each recertification.

(e) 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.

(f) 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 than 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.

(g) 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.

(7) 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 30 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 medical eligibility agency as defined in Subsection R414-308-3(2)(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**

**September 1, 2009**

**Notice of Continuation June 13, 2007**

**26-18-1**

**26-1-5**

**26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.****R414-320-1. Authority.**

This rule is authorized by Title 26, Chapter 18 and allowed under Section 1115 of the Social Security Act. This rule establishes the eligibility requirements for enrollment and the benefits enrollees receive under the Health Insurance Flexibility and Accountability Demonstration Waiver (HIFA), which is Utah's Premium Partnership for Health Insurance (UPP).

**R414-320-2. Definitions.**

The following definitions apply throughout this rule:

(1) "Adult" means an individual who is at least 19 and not yet 65 years of age.

(2) "Applicant" means an individual who applies for benefits under the UPP program, but who is not an enrollee.

(3) "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.

(4) "Child" means an individual who is younger than 19 years of age.

(5) "Children's Health Insurance Program" or "CHIP" provides medical services for children under age 19 who do not otherwise qualify for Medicaid.

(6) "Department" means the Utah Department of Health.

(7) "Enrollee" means an individual who applies for and is found eligible for the UPP program.

(8) "Employer-sponsored health plan" means a health insurance plan offered through an employer where:

(a) the employer contributes at least 50 percent of the cost of the health insurance premium of the employee;

(b) coverage includes at least physician visits, hospital inpatient services, pharmacy, well child visits, and children's immunizations;

(c) lifetime maximum benefits are at least \$1,000,000;

(d) the deductible is no more than \$2,500 per individual; and

(e) the plan pays at least 70% of an inpatient stay after the deductible.

(9) "Utah's Premium Partnership for Health Insurance" (UPP) program provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

(10) "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.

(11) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(12) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(13) "Local office" means any Department of Workforce Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(14) "Open enrollment" means a time period during which the Department accepts applications for the UPP program.

(15) "Public Institution" means an institution that is the responsibility of a governmental unit or that is under the administrative control of a governmental unit.

(16) "Primary Care Network" or "PCN" program provides primary care medical services to uninsured adults who do not otherwise qualify for Medicaid.

(17) "Recertification month" means the last month of the eligibility period for an enrollee.

(18) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(19) "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.

**R414-320-3. Applicant and Enrollee Rights and Responsibilities.**

(1) Any person who meets the limitations set by the Department may apply during an open enrollment period. The open enrollment period may be limited to:

(a) Adults with children living in the home;

(b) Adults without children living in the home;

(c) Adults enrolled in the PCN program;

(d) Children enrolled in the CHIP program;

(e) Adults or children who were enrolled in the Medicaid program within the last thirty days prior to the beginning of the open enrollment period; or

(f) Other groups 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 UPP 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 stops paying for coverage under an employer-sponsored health plan.

(b) An enrollee changes health insurance plans.

(c) An enrollee has a change in the amount of the premium they are paying for an employer-sponsored health insurance plan.

(d) An enrollee begins to receive coverage under, or begins to have access to Medicare or the Veteran's Administration Health Care System.

(e) An enrollee leaves the household or dies.

(f) An enrollee or the household moves out of state.

(g) Change of address of an enrollee or the household.

(h) 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 must continue to pay premiums and

remain enrolled in an employer-sponsored health plan to be eligible for benefits.

(11) Eligible children may choose to enroll in their employer-sponsored health insurance plan and receive UPP benefits, or they may choose direct coverage through the Children's Health Insurance Program.

**R414-320-4. 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 adult applicants and enrollees.

(2) The provisions of R382-10-6, R382-10-7, and R382-10-9 apply to child applicants and enrollees.

(3) An individual who is not a U.S. citizen and does not meet the alien status requirements of R414-302-1 or R382-10-6 is not eligible for any services or benefits under the UPP program.

(4) Applicants and enrollees for the UPP program are not required to provide Duty of Support information. An adult who would be eligible for Medicaid but fails to cooperate with Duty of Support requirements required by the Medicaid program cannot enroll in the UPP program.

(5) Individuals who must pay a spenddown or premium to receive Medicaid can enroll in the UPP 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 R414-320-16. If the Department has stopped enrollment, the individual must wait for an applicable open enrollment period to enroll in the UPP program.

**R414-320-5. Verification and Information Exchange.**

(1) The applicant and enrollee must provide verification of eligibility factors as requested by the Department.

(2) The Department may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(3) The Department safeguards information about applicants and enrollees.

(4) There are no provisions for taxpayers to see any information from client records.

(5) The director or designee shall decide if a situation is an emergency warranting release of information to someone other than the client. The information may be released only to an agency with comparable rules for safeguarding records. The information release cannot include information obtained through an income match system.

**R414-320-6. Residents of Institutions.**

(1) Residents of public institutions are not eligible for the UPP program.

(2) A child under the age of 18 is not a resident of an institution if the child is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

**R414-320-7. Creditable Health Coverage.**

(1) The Department adopts 42 CFR 433.138(b), 2007 ed., which is 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), is not eligible for enrollment.

(3) Eligibility for an individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage will be determined as follows:

(a) If the cost of the employer-sponsored coverage is less than 5% of the household's gross income, the individual is not

eligible for the UPP program.

(b) For adults, if the cost of the employer-sponsored coverage exceeds 15% of the household's gross income the adult may choose to enroll in the UPP program or may choose direct coverage through the Primary Care Network program if enrollment has not been stopped under the provisions of R414-310-16.

(c) A child may choose enrollment in UPP or direct coverage under the CHIP program if the cost of the employer sponsored coverage is equal to or more than 5% of the household's gross income.

(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, 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. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the UPP program ends once the individual becomes enrolled in the VA Health Care System.

(6) The Department shall deny eligibility if the applicant, spouse, or dependent child has voluntarily terminated health insurance coverage within the 90 days immediately prior to the application date for enrollment under the UPP program.

(a) An applicant, applicant's spouse, or dependent child can be eligible for the UPP program if their prior insurance ended more than 90 days before the application date.

(b) An applicant, applicant's spouse, or dependent child who voluntarily discontinues health insurance coverage under a COBRA plan, or under the Utah Comprehensive Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for the UPP program without a 90 day waiting period.

(7) An individual with creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program.

(8) 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, Medicare Part A or B, or the VA Health Care System.

(9) 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.

**R414-320-8. Household Composition.**

(1) The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for the UPP program:

- (a) The individual;
- (b) The individual's spouse living with the individual;
- (c) All 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.



**R414-320-9. Age Requirement.**

(1) An individual must be younger than 65 years of age to enroll in the UPP program.

(2) The individual's 65th birthday month is the last month the person can be eligible for enrollment in the UPP program.

**R414-320-10. Income Provisions.**

(1) For an adult to be eligible to enroll, gross countable household income must be equal to or less than 150% of the federal non-farm poverty guideline for a household of the same size.

(2) For children to be eligible to enroll, gross countable household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of the same size.

(3) 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.

(4) The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for the UPP program.

(5) Any income in a trust that is available to, or is received by a household member, is countable income.

(6) 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.

(7) 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.

(8) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(9) 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.

(10) 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.

(11) Child support payments received for a dependent child living in the home are counted as that child's income.

(12) 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.

(13) Supplemental Security Income and State Supplemental payments are countable income.

(14) Income that is defined in 20 CFR 416 Subpart K, Appendix, 2004 edition, which is incorporated by reference, is not countable.

(15) 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.

(16) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(17) 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.

(18) Child Care Assistance under Title XX is not countable income.

(19) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(20) Earned and unearned income of a child is not countable income if the child is not the head of a household.

(21) 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.

(22) Reimbursements for employee work expenses incurred by an individual are not countable income.

(23) The value of food stamp assistance is not countable income.

(24) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

(25) The additional \$25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, which an individual may receive from March 2009 through June 2010 is not countable income.

(26) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, for certain government retirees are not countable income.

(27) The Consolidated Omnibus Reconciliation Act (COBRA) premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, is not countable income.

(28) The making work pay credit provided under Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, is not countable income.

**R414-320-11. 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.

#### **R414-320-12. Assets.**

There is no asset test for eligibility in the UPP program.

#### **R414-320-13. Application Procedure.**

(1) The application is the initial request from an applicant for UPP enrollment. The application process includes gathering information and verifications to determine the individual's eligibility for enrollment.

(2) The applicant must complete and sign a written application or complete an application on-line via the Internet to enroll in the UPP program. The provisions of Section R414-308-3 apply to applicants of the UPP program.

(3) The Department shall reinstate a UPP case without requiring a new application if the case was closed in error.

(4) 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.

(5) An applicant may withdraw an application any time before the Department completes an eligibility decision on the application.

(6) If an eligible household requests enrollment for a new household member, the application date for the new household member 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 new member, including information about access to creditable health insurance.

(a) Benefits for the new household member 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 income test is not required to add the new household member for the months remaining in the current certification period.

(c) A new household member may be added only if the Department has not stopped enrollment under Section R414-320-15.

(d) Income of the new member will be considered at the next scheduled recertification.

(7) 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 UPP without waiting for the next open enrollment period.

(8) 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 UPP without waiting for the next open enrollment period.

(9) A new child born to or adopted by an enrollee may be enrolled in UPP without waiting for the next open enrollment period.

#### **R414-320-14. Eligibility Decisions and Recertification.**

(1) The Department adopts 42 CFR 435.911 and 435.912, 2007 ed., which are incorporated by reference.

(2) When an individual applies for UPP, 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 UPP 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 UPP program if it is an open enrollment period and the individual meets all the applicable criteria for eligibility. If the UPP program is not in an enrollment period, the individual must wait for an open enrollment period.

(b) At recertification, 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 UPP 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 enrollment eligibility criteria at a time when the Department has not already stopped enrollment under provisions of Section R414-320-16.

(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 30 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 and continues to meet all eligibility criteria, 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.

(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.

#### **R414-320-15. Effective Date of Enrollment and Enrollment Period.**

(1) The effective date of enrollment is the day that a completed and signed application is received at a local office as defined in Subsection R414-308-3(2)(a) and (b), and the applicant meets all eligibility criteria and enrolls in and pays the first premium for the employer-sponsored health insurance in the application month.

(2) The effective date of enrollment cannot be before the month in which the applicant pays a premium for the employer-sponsored health insurance and is determined as follows:

(a) The effective date of enrollment is the date an application is received and the person is found eligible, if the applicant enrolls in and pays the first premium for the employer-sponsored health insurance in the application month.

(b) If the applicant will not pay a premium for the employer-sponsored health insurance in the application month, the effective date of enrollment is the first day of the month in which the applicant pays a premium for the employer-sponsored health insurance. The applicant must enroll in the employer-sponsored health insurance no later than 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP.

(c) If the applicant does not enroll in the employer-sponsored health insurance within 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP, the application shall be denied and the individual will have to reapply during another open enrollment period.

(3) The effective date of enrollment for a newborn or newly adopted child is the date the newborn or newly adopted child is enrolled in the employer-sponsored health insurance if the family requests the coverage within 30 days of the birth or adoption. If the request is more than 30 days after the birth or adoption, enrollment is effective the date of report.

(4) The effective date of re-enrollment for a recertification is the first day of the month after the recertification month, if the recertification is completed as described in R414-320-13.

(5) If the enrollee does not complete the recertification as described in R414-320-13, 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.

(6) An individual found eligible 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 redetermination process in accordance with R414-320-13 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 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.

(7) If an adult enrollee discontinues enrollment in employer-sponsored insurance coverage, eligibility ends. If the enrollment in employer-sponsored insurance is discontinued involuntarily and the individual notifies the local office within 10 calendar days of when the insurance ends, the individual may switch to the PCN program for the remainder of the certification period.

(8) A child enrollee may discontinue employer-sponsored health insurance and move to direct coverage under the Children's Health Insurance Program at any time during the certification period without any waiting period.

(9) An individual enrolled in the Primary Care Network or the Children's Health Insurance Program who enrolls in an employer-sponsored plan may switch to the UPP program if the individual reports to the local office within 10 calendar days of enrolling in an employer-sponsored plan and before coverage on the employer-sponsored plan begins.

(10) If a UPP case closes for any reason, other than to become covered by another Medicaid program or the Children's Health Insurance Program, and remains closed for one or more calendar months, the individual must submit a new application to the local office during an open enrollment period to reapply. The individual must meet all the requirements of a new applicant.

(11) If a UPP case closes because the enrollee is eligible for another Medicaid program or the Children's Health Insurance Program, the individual may reenroll if there is no break in coverage between the programs, even if the State has stopped enrollment under R414-320-15.

(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.

(b) If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll. However, the individual must complete a new application and meet eligibility and income guidelines 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.

#### **R414-320-16. 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.

(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.

#### **R414-320-17. Notice and Termination.**

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(2) The Department shall terminate an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

(3) The Department shall terminate an individual's enrollment if the individual fails to complete the recertification process on time.

(4) The Department shall notify an enrollee in writing at least ten days before taking a proposed action adversely affecting the enrollee's eligibility. Notices 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;
- (f) The applicant or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(5) The Department need not give ten-day notice of termination if:

- (a) The enrollee is deceased;
- (b) The enrollee has moved out of state and is not expected to return;
- (c) The enrollee has entered a public institution or institution for mental disease;
- (d) The enrollee has enrolled in other health insurance coverage, in which case eligibility may cease immediately and without prior notice.

#### **R414-320-18. Improper Medical Coverage.**

(1) An individual who receives benefits under the UPP program for which he is not eligible is responsible to repay the Department for the cost of the benefits received.

(2) 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.

#### **R414-320-19. Benefits.**

(1) The UPP program provides cash reimbursement to enrollees as described in this section.

(2) The reimbursement shall not exceed the amount the employee pays toward the cost of the employer-sponsored coverage.

(3) The amount of reimbursement for an adult will be up to \$150 per month per individual.

(4) The amount of reimbursement for children will be up to \$100 per month per child for medical and an additional \$20 if they choose to enroll in employer-sponsored dental coverage.

(a) When the employer-sponsored insurance does not include dental benefits, the children may receive cash reimbursement up to \$100 for the medical insurance cost and enroll in direct dental coverage under the CHIP Program.

(b) When the employer-sponsored insurance includes dental, the applicant will be given the choice of enrolling the children in the employer-sponsored dental and receiving an additional reimbursement up to \$20, or enrolling in direct dental coverage through the CHIP Program.

**KEY: CHIP, Medicaid, PCN, UPP  
September 1, 2009**

**26-18-3  
26-1-5**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-501. Preadmission and Continued Stay Review.****R414-501-1. Introduction and Authority.**

This rule implements 42 USC 1396r(b)(3), (e)(5), and (f)(6)(B), and 42 CFR 456.1 through 456.23, and 456.350 through 456.380, by requiring the evaluation of each resident's need for admission and continued stay in a nursing facility. 42 USC 1396r, requirements for nursing facilities, and 42 CFR 483, requirements for states and long term care facilities, are adopted and incorporated by reference.

**R414-501-2. Definitions.**

In addition to the definitions in R414-1-1, the following definitions apply to Rules R414-501 through R414-503:

(1) "Activities of daily living" are defined in 42 CFR 483.25(a)(1), and further includes adaptation to the use of assistive devices and prostheses intended to provide the greatest degree of independent functioning.

(2) "Categorical determination" means a determination made pursuant to 42 CFR 483.130 and ATTACHMENT 4.39-A of the State Plan.

(3) "Code of Federal Regulations (CFR)" means the 1999 edition unless otherwise noted.

(4) "Continued stay review" means a periodic, supplemental, or interim review of a resident performed by a department health care professional either by telephone or on-site review.

(5) "Discharge planning" means planning that ensures that the resident has an individualized planned program of post-discharge continuing care that:

(a) states the medical, functional, behavioral and social levels necessary for the resident to be discharged to a less restrictive setting;

(b) includes the steps needed to move the resident to a less restrictive setting;

(c) establishes the feasibility of the resident's achieving the levels necessary for discharge; and

(d) states the anticipated time frame for that achievement.

(6) "Health care professional" means a duly licensed or certified physician, physician assistant, nurse practitioner, physical therapist, speech therapist, occupational therapist, registered professional nurse, licensed practical nurse, social worker, or qualified mental retardation professional.

(7) "Level I screening" means the preadmission identification screening discussed in R414-503-3.

(8) "Level II evaluation" means the preadmission evaluation and annual resident review for serious mental illness or mental retardation discussed in R414-503-4.

(9) "Medicaid resident" means a resident who is a Medicaid recipient.

(10) "Mental retardation" is defined in 42 CFR 483.102(b)(3) and includes "persons with related conditions" as defined in 42 CFR 435.1009.

(11) "Nursing facility" is defined in 42 USC 1396r(a), and also includes an intermediate care facility for the mentally retarded as defined in 42 USC 1396d(d).

(12) "Resident" means a person residing in a Medicaid-certified nursing facility.

(13) "Serious mental illness" is defined in 42 CFR 483.102(b)(1).

(14) "Significant change" means a major change in the resident's physical, mental, or psychosocial status that is not self limiting, impacts on more than one area of the resident's health status, and requires interdisciplinary review or revision of the care plan.

(15) "Skilled care" means those services defined in 42 CFR 409.32.

(16) "Specialized rehabilitative services" means those

services provided pursuant to 42 CFR 483.45 and R432-150-22.

(17) "Specialized services" means those services provided pursuant to 42 CFR 483.120 and ATTACHMENT 4.39 of the State Plan.

(18) "United States Code (USC)" means the 1993 edition unless otherwise noted.

(19) "Working days" means all days except Saturdays, Sundays, and recognized state holidays.

**R414-501-3. Preadmission Authorization.**

(1) A nursing facility shall perform a preadmission assessment when admitting an applicant, including an applicant who will be reclassified from Medicare skilled care to Medicaid nursing facility care, or who is currently funded from another source but anticipates applying for Medicaid within 90 days of admission, and has been referred by a mental health center or civilly committed to the mental health system. Preadmission authorization is not transferable from one nursing facility to another.

(2) A nursing facility may perform a preadmission assessment on any other person who applies for nursing facility care.

(3) A nursing facility must obtain prior approval from the department before admitting an applicant. A request for prior approval may be in writing or by telephone and shall include:

(a) the name, age, and Medicaid eligibility of the applicant;

(b) the date of transfer or admission to the nursing facility;

(c) the date of the surgical procedure or traumatic incident, if any, that caused the need for care;

(d) the reason for acute care inpatient hospitalization or emergency placement, if any, and the care and services needed;

(e) the applicant's current functional and mental status;

(f) the established diagnoses;

(g) the medications and treatments currently ordered for the applicant;

(h) the projected level of care placement and an evaluation of alternative care resources and support services previously used, currently in use, and available through the community and family;

(i) the name of the individual requesting the prior approval;

(j) the Level I screening, except the screening is not required for admission to an intermediate care facility for the mentally retarded; and

(k) the Level II determination, if required by the department.

(4) If the department gives prior approval, the nursing facility shall submit to the department within five working days a preadmission transmittal for the applicant, and shall begin preparing the complete contact for the applicant. The complete contact is a written application containing all the elements of a request for prior approval plus:

(a) the preadmission continued stay transmittal;

(b) a signed release of information;

(c) a history and physical;

(d) the physician's orders;

(e) a nursing assessment;

(f) a social evaluation;

(g) a discharge plan;

(h) a resident assessment instrument completed no later than 14 calendar days after the resident is admitted to a nursing facility; and

(i) the completed comprehensive plan of care that includes measurable objectives and timetables to treat medical and psychosocial needs that are identified in a comprehensive assessment of significant impairments in the resident's functional capacity and his capabilities to perform daily life functions.

(5) When a Medicaid resident is admitted to a hospital, the department may not require preadmission authorization when the Medicaid resident returns to the original nursing facility not later than three consecutive days after the date of discharge from the nursing facility. If the readmission occurs four or more days after the date of discharge from the nursing facility, the nursing facility shall complete the preadmission authorization process again. However, if a Medicaid resident returns to a nursing facility for the mentally retarded within the three day period and may require skilled care or services, then the nursing facility shall immediately request prior approval from the department.

(6) The department shall reimburse a nursing facility for the five days allowed in Subsection R414-501-3(6)(c) if the department, without full assessment, gives prior approval for a resident who is an immediate placement.

(a) An immediate placement shall meet one of the following criteria:

(i) The resident exhausted acute care benefits or was discharged by a hospital;

(ii) A Medicare fiscal intermediary changed the resident's level of care, or the Medicare benefit days terminated and there is a need for continuing services reimbursed under Medicaid;

(iii) Protective services in the Department of Human Services placed the resident for care;

(iv) A tragedy, such as fire or flood, has occurred in the home, and the resident is injured, or an accident leaves a dependent person in imminent danger and requires immediate institutionalization;

(v) A family member who has been providing care to the resident dies or suddenly becomes ill;

(vi) A nursing facility terminated services, either through an adverse certification action or closure of the facility, and the resident must be transferred to meet his medical or habilitation needs; or

(vii) In the previous placement, the resident presented a clear danger to himself, others, or property.

(b) The department shall deny an immediate placement unless the Level I screening is completed and the department determines a Level II evaluation is not required, or if the Level II evaluation is required, then the Level II evaluation is completed and the department determines the applicant qualifies for placement in a nursing facility and Medicaid reimbursement. The three exceptions to this requirement are when the applicant is a provisional placement for less than seven days, the applicant has previously been screened and the determinations will be reviewed on his annual resident review, or when the placement is after an acute hospital stay and the physician certifies that the placement will be for less than 30 days.

(c) Prior approval for an immediate placement shall be effective for no more than five working days. During that period the nursing facility shall submit a preadmission transmittal, and shall begin preparing the complete contact for the applicant. If the nursing facility fails to timely submit the preadmission transmittal, the department may not make any payments until the department receives the preadmission transmittal and the nursing facility again complies with all preadmission requirements.

(7) If a nursing facility accepts a resident who elects not to apply for Medicaid coverage, and the nursing facility can prove that it gave the resident or his legal representative written notice of Medicaid eligibility and preadmission requirements, then the resident or legal representative shall be solely responsible for payment for the services rendered. However, if a nursing facility cannot prove it gave the notice to a resident or his legal representative, then the nursing facility shall be solely responsible for payment for the services rendered during the time when the resident was eligible for Medicaid coverage.

(8) The department shall refer medically ineligible applicants to appropriate health-related agencies when the

preadmission assessment identifies such a need.

(9) The department shall deny payment to a nursing facility for services provided before the earliest of (a) the date of the verbal prior approval, (b) the date postmarked on the envelope containing the written application, or (c) the date the department receives the written application.

#### **R414-501-4. Continued Stay Review.**

(1) The department shall conduct a continued stay review to determine the need for continued stay in a nursing facility and to determine whether the resident has shown sufficient improvement to implement discharge planning and to refer the resident to one or more representatives for follow-up contact with the resident. Within 90 days after the department authorizes Medicaid reimbursement for a Medicaid resident, the department shall commence the continued stay review. This review must be completed no later than the last day of the calendar month in which it is due.

(2) If a question regarding placement or level of care for a Medicaid resident arises, the department may request additional information from the nursing facility. If the question remains unresolved, a department health care professional may perform a supplemental on-site review. The department or the nursing facility can also initiate an interim review because of a change in the Medicaid resident's condition or medical needs.

(3) A nursing facility shall make appropriate personnel and information reasonably accessible so the department can conduct the continued stay review.

(4) A nursing facility shall inform the department by telephone or in writing when the needs of a Medicaid resident change to possibly require discharge, a different level of care, or a change from the findings in the Level I screening or Level II evaluation. A nursing facility shall also inform the department of newly acquired facts relating to the resident's diagnosis, medications, treatments, care or service needs, or plan of care that may not have been known when the department determined medical need for admission or continued stay.

(5) The department shall deny payment to a nursing facility for services provided to a Medicaid resident who, against medical advice, leaves a nursing facility for more than two consecutive days, or who fails to return within two consecutive days after an authorized leave of absence. A nursing facility shall report all such instances to the department. The resident shall complete all preadmission requirements before the department may approve payment for further nursing facility services.

#### **R414-501-5. General Provisions.**

(1) The department is solely responsible for approving or denying a preadmission or continued stay authorization for payment for nursing facility services provided to a Medicaid resident. The department is ultimately responsible for determining the level of care for a Medicaid resident in a nursing facility. If a nursing facility complies with all preadmission and continued stay requirements for a Medicaid resident then the department shall provide coverage consistent with the state plan.

(2) If a nursing facility fails to comply with all preadmission or continued stay requirements, the department shall deny payment to the nursing facility for services provided to the applicant. The nursing facility is liable for all expenses incurred for services provided to the applicant on or after the date the applicant applied for Medicaid. The nursing facility may not bill the applicant or his legal representative for services not reimbursed by the department due to the nursing facility's failure to follow preadmission or continued stay rules.

(3) If the department denies a claim, then the department shall comply with 42 CFR 431.200 through 431.246, and also send written notice to the nursing facility administrator, the

attending physician, and, if possible, the next-of-kin or legal representative of the applicant. If the department denies a claim, then the nursing facility can resubmit additional documentation not later than 60 calendar days after the date the department receives the initial preadmission or continued stay transmittal. If the nursing facility fails to submit additional documentation that corrects the claim deficiencies within the 60 calendar day period, then the denial becomes final and the nursing facility waives all rights to Medicaid reimbursement from the time of admission until the department approves a subsequent request for authorization submitted by the nursing facility.

(4) The department adopts the standards and procedures for conducting a fair hearing set forth in 42 USC 1396a(a)(3) and 42 CFR 431.200 through 431.246, which are incorporated by reference. Those laws are implemented in Title 63G, Chapter 4 and in R410-14.

**R414-501-6. Grace Days.**

The department grants to each nursing facility 30 grace days in each fiscal year (July 1 to June 30). A nursing facility may use these grace days if an otherwise eligible recipient is admitted to the nursing facility or returns to the nursing facility after a hospital admission and the nursing facility fails to comply with preadmission or continued stay rules and is thus denied payment by the department. The nursing facility may use these grace days for one recipient or many recipients. To use these grace days the nursing facility shall contact the department in order to change the payment document in the computer system. The department shall keep a record of the grace days used by each nursing facility and shall provide this information to a nursing facility upon request.

**R414-501-7. Safeguarding Information of Applicants and Residents.**

(1) The department adopts the standards and procedures for safeguarding information of applicants and recipients set forth in 42 USC 1396a(a)(7) and 42 CFR 431.300 through 431.307, which are incorporated by reference.

(2) Standards for safeguarding a resident's private records are set forth in Section 63-2-302.

**R414-501-8. Free Choice of Providers.**

Subject to certain restrictions outlined in 42 CFR 431.51, 42 USC 1396a(a)(23) requires that recipients have the freedom to choose a provider. A recipient who believes his freedom to choose a provider has been denied or impaired may request a hearing from the department, as outlined in 42 CFR 431.200 through 431.221.

**R414-501-9. Alternative Services Evaluation and Referral.**

While reviewing a preadmission assessment for admission to a nursing care facility, other than an ICF/MR, the Department may evaluate the potential for the applicant to receive alternative Medicaid services in a home or community-based setting that are appropriate for the needs of the individual identified in the preadmission submittals. If, in the judgement of the reviewer, there is a potential for alternative Medicaid services, the Department shall refer the name of the applicant to one or more designated Medicaid home and community services program representatives for follow-up contact with the applicant.

**KEY: Medicaid**

**July 18, 2001**

**Notice of Continuation August 20, 2009**

**26-1-5**

**26-18-3**

**63G-3-304(1)(a)**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-502. Nursing Facility Levels of Care.****R414-502-1. Introduction and Authority.**

This rule defines the levels of care provided in nursing facilities.

**R414-502-2. Definitions.**

The definitions in R414-1-1 and R414-501-2 apply to this rule.

**R414-502-3. Approval of Level of Care.**

(1) In determining whether the applicant has mental or physical conditions that can only be cared for in a nursing facility, or equivalent care provided through an alternative Medicaid health care delivery program, the department shall document that at least two of the following factors exist:

(a) Due to diagnosed medical conditions, the applicant requires at least substantial physical assistance with activities of daily living above the level of verbal prompting, supervising, or setting up;

(b) The attending physician has determined that the applicant's level of dysfunction in orientation to person, place, or time requires nursing facility care; or equivalent care provided through an alternative Medicaid health care delivery program; or

(c) The medical condition and intensity of services indicate that the care needs of the applicant cannot be safely met in a less structured setting, or without the services and supports of an alternative Medicaid health care delivery program.

(2) The department shall assign a level of care based upon the severity of illness, intensity of service needed, anticipated outcome, and setting for the service. The department shall not assign a more intense level of care if, as a practical matter, the applicant's care and treatment needs can be met at a less intense level of care. Levels of care, ranked in order of intensity from the least intense to the most intense, are:

- (a) nursing facility III care;
- (b) nursing facility II care;
- (c) nursing facility I care; and
- (d) intensive skilled care.

**R414-502-4. Criteria for Nursing Facility III Care.**

The following criteria must be met before the department may authorize Medicaid coverage for an applicant at the nursing facility III care level:

(1) A physical examination was completed within 30 days before or seven days after admission;

(2) A registered nurse completed, coordinated, and certified a comprehensive resident assessment;

(3) A person licensed as a social worker, or higher degree of training and licensure, completed a social services evaluation that meets the criteria in 42 CFR 456.370;

(4) A physician established a written plan of care;

(5) All less restrictive alternatives or services to prevent or defer nursing facility care have been explored; and

(6) When the department has determined necessary, health care professionals completed and submitted to the department a psychological or psychiatric evaluation in accordance with 42 CFR 483.20(f). If an applicant is diagnosed with a condition related to a code within the International Classification of Diseases, 9th revision, Clinical Modification (ICD-9-CM) psychiatric code range, the inter-disciplinary team shall submit its determinations to the department, including the behavior intervention program if the team determined one to be necessary. If the team determined that behavior intervention is unnecessary, it shall include evidence supporting the determination. All behavior intervention programs shall:

- (a) be a precisely planned systematic application of the

methods and experimental findings of behavioral science with the intent of reducing observable negative behaviors;

(b) incorporate processes and methodologies that are the least restrictive alternatives available for producing the desired outcomes;

(c) be conducted only following identification and, if feasible, remediation of environmental and social factors that are likely to be precipitating or reinforcing the inappropriate behavior;

(d) incorporate a process for identifying and reinforcing a desirable replacement behavior;

(e) include a program data sheet;

(f) include a behavior baseline profile consisting of all of the following: the applicant's name; the date, time, location, and specific description of the undesirable behavior exhibited; the persons present and the conditions existing prior to and at the time of the undesirable behavior; the interventions used and their results; and the recommendations for future action; and

(g) include a behavior intervention plan consisting of all of the following: the applicant's name; the date the plan is prepared and when it will be used; the objectives stated in terms of specific behaviors; the names, titles, and signatures of the persons responsible for conducting the plan; and the methods and frequency of data collection and review.

**R414-502-5. Criteria for Nursing Facility II Care.**

The following criteria must be met before the department may authorize Medicaid coverage for an applicant at the nursing facility II care level:

(1) The applicant meets all the criteria for nursing facility III care;

(2) The required intensity of services needed is less than that for skilled care; and

(3) The applicant has documented service needs for at least one of the following:

(a) Daily rehabilitative or restorative services provided under the direction of licensed professional staff, with documented measurable outcomes of treatment;

(b) Close observation, documentation, and follow-through to establish the impact of specified services, such as services to applicants with neurological involvement, hospice services, diabetes control, or dialysis, any one of which may utilize laboratory services and physician intervention;

(c) Training in personal care services to minimize dependency on staff for completion of activities of daily living;

(d) A behavior intervention program established because of specified aberrant behavior such as wandering, excessive sexual drive, destructive or aberrant acting out, prolonged depression leading to self-isolation or violent acts;

(e) Specialized nursing services for skin and wound care;

(f) Extensive interaction with professional staff to assist the applicant and family through the final three months of his anticipated life expectancy;

(g) Any skilled services ordered and given more frequently than two times each week, but less frequently than required for skilled care;

(h) Alzheimer's disease, senile dementia, organic brain disorder, and other diagnosed disease processes that use specialized documented programs that increase staff intervention in an effort to enhance the applicant's quality of life and functional and cognitive status;

(i) Multi-drug resistant, non-compliant tuberculosis applicants in the active phases of tuberculosis who are court ordered as a public health or communicable disease placement; or

(j) A diagnosis of mental retardation with a Level II determination indicating that the applicant can benefit from specialized rehabilitative services. The department shall pay a provider for services provided for an applicant in this category



an individual add-on rate depending on the specialized rehabilitative services provided to meet his needs.

**R414-502-6. Criteria for Nursing Facility I Care.**

The following criteria must be met before the department may authorize Medicaid coverage for an applicant at the nursing facility I care level:

- (1) The applicant meets all the criteria for nursing facility II care;
- (2) The services are provided by a nursing facility certified pursuant to 42 CFR 409.20 through 409.35, or a swing bed hospital approved by the federal Health Care Financing Administration to furnish nursing facility I care in the Medicare program;
- (3) The applicant has exhausted Medicare benefits or has been denied by Medicare for reasons other than level of care requirements;
- (4) The applicant requires specialized and complex care documented in the applicant's medical record; and
- (5) The criteria in 42 CFR 409.31 through 409.35, requirements for coverage of post-hospital skilled nursing facility care, are satisfied.

**R414-502-7. Criteria for Intensive Skilled Care.**

The following criteria must be met before the department may authorize Medicaid coverage for an applicant for intensive skilled care:

- (1) The applicant meets all the criteria for nursing facility I care. However, the following routine skilled care does not qualify as intensive skilled care under R414-502-6(5) in making a determination under this section:
  - (a) skilled nursing services described in 42 CFR 409.33(b);
  - (b) skilled rehabilitation services described in 42 CFR 409.33(c);
  - (c) routine monitoring of medical gases after a therapy regimen;
  - (d) routine levin tube and gastrostomy feedings; and
  - (e) routine isolation room and techniques.
- (2) The applicant has exhausted Medicare benefits or has been denied by Medicare for reasons other than level of care requirements;
- (3) The applicant requires and receives at least five hours daily of direct licensed professional nursing care, including a combination of specialized care and services, and assessment by a registered nurse and observation on a 24-hour basis;
- (4) The attending physician has made any one of the following determinations:
  - (a) there is presently no reasonable expectation that the applicant will benefit further from any care and services available in an acute care hospital that are not available in a nursing facility;
  - (b) the applicant's condition requires physician follow-up at the nursing facility at least once every 30 days; or
  - (5) An interdisciplinary team may indicate a therapeutic leave of absence from the nursing facility is appropriate either to facilitate discharge planning or to enhance the applicant's medical, social, educational, and habilitation potential;
  - (6) Except in extraordinary circumstances, the applicant has been hospitalized immediately prior to admission to the nursing facility;
  - (7) The applicant has been continuously approved for skilled care, either through Medicare or Medicaid, since admission to the nursing facility;
  - (8) The attending physician has written and signed progress notes at the time of each physician visit reflecting the current medical condition of the applicant; and
  - (9) If an applicant was previously approved for intensive skilled care and later downgraded to a lower care level, then,

even though he was not discharged from a hospital, he may return to intensive skilled care instead of being hospitalized in an acute care setting if:

- (a) a complication occurs involving the condition for which he was originally approved for intensive skilled care; and
- (b) it has been less than 30 days since the termination of the previous intensive skilled care.

**R414-502-8. Criteria for Intermediate Care Facility for Persons with Mental Retardation.**

The following criteria must be met before the Department may authorize Medicaid coverage for an individual in an intermediate care facility for persons with mental retardation:

- (1) The individual must have a diagnosis of:
  - (a) mental retardation in accordance with 42 CFR 483.102(b)(3); or
  - (b) a condition closely related to mental retardation in accordance with 42 CFR 435.1010.
- (2) For individuals seven years of age and older, the presence of a diagnosis alone is not sufficient to qualify for admission to an intermediate care facility for persons with mental retardation. The diagnosis identified in Subsection R414-502-8(1) must result in documented substantial functional limitations in three or more of the following seven areas of major life activity that include:
  - (a) self care;
    - (i) the individual requires assistance, training and supervision to eat, dress, groom, bathe, or use the toilet;
    - (b) receptive and expressive language;
      - (i) the individual lacks functional communication skills, requires the use of assistive devices to communicate, does not demonstrate an understanding of requests, or is unable to follow two-step instructions;
      - (c) learning;
        - (i) the individual has a valid diagnosis of mental retardation based on criteria found in the Diagnostic and Statistical Manual of Mental Disorders (DSM), Fourth Edition, 1994);
        - (d) mobility;
          - (i) the individual requires the use of assistive devices to be mobile and cannot physically self-evacuate from a building during an emergency without an assistive device;
          - (e) self-direction;
            - (i) the individual is seven through 17 years of age and significantly at risk in making age appropriate decisions, or an adult is unable to provide informed consent for medical care, personal safety, or for legal, financial, rehabilitative, and residential issues, and has been declared legally incompetent. The individual is a danger to himself or others without supervision;
            - (f) capacity for independent living;
              - (i) the individual who is seven through 17 years of age is unable to locate and use a telephone, cross the street safely, or understand that it is unsafe to accept rides, food or money from strangers, or an adult who lacks basic skills in the areas of shopping, preparing food, housekeeping, or paying bills;
              - (g) economic self-sufficiency; (not applicable to children under age 18);
                - (i) the individual receives disability benefits, is unable to work more than 20 hours a week, or is paid less than minimum wage without employment support.
        - (3) The Department considers a child under the age of seven to be at risk for functional limitation in three or more areas of major life activity, if the child has a diagnosis of mental retardation or a condition closely related to mental retardation. The Department does not require separate documentation of the limitations defined in Subsection R414-502-8(2) until the child turns seven years of age.
        - (4) To meet the criteria of a condition closely related to

mental retardation, an individual must manifest the condition before the age of 22 and the condition must be likely to continue. A diagnosis will qualify as a condition closely related to mental retardation only if the criteria as defined in 42 CFR 435.1010 is met. The following is a list of diagnoses that the Department considers to be conditions closely related to mental retardation. It includes:

(a) cerebral palsy (the Department does not require individuals to demonstrate an intellectual impairment for this diagnosis, but they must demonstrate that they have functional limitations as described in Subsection R414-502(2));

(b) epilepsy (the Department does not require individuals to demonstrate an intellectual impairment for this diagnosis, but they must demonstrate that they have functional limitations as described in Subsection R414-502(2));

(c) autism or autistic disorder, childhood disintegrative disorder, Rett syndrome, and pervasive developmental disorder, not otherwise specified (only if "atypical autism");

(d) severe brain injury (acquired brain injury, traumatic brain injury, stroke, anoxia, meningitis);

(e) fetal alcohol syndrome;

(f) chromosomal disorders (Down syndrome, fragile x syndrome, Prader-Willi syndrome);

(g) other genetic disorders (Williams syndrome, spina bifida, phenylketonuria).

(5) The following conditions do not qualify as conditions closely related to mental retardation. Nevertheless, a person with any of these conditions is not disqualified if there is a simultaneous occurrence of a qualifying condition as cited in Subsection R414-502-8(1)(a) and (b):

(a) learning disability;

(b) behavior or conduct disorders;

(c) substance abuse;

(d) hearing impairment or vision impairment;

(e) mental illness that includes psychotic disorders, adjustment disorders, reactive attachment disorders, impulse control disorders, and paraphilias;

(f) borderline intellectual functioning, developmental disability that does not result in an intellectual impairment, developmental delay, or "at risk" designations;

(g) physical problems (such as multiple sclerosis, muscular dystrophy, spinal cord injuries, and amputations);

(h) medical health problems (such as cancer, acquired immune deficiency syndrome, and terminal illnesses);

(i) milder autism spectrum disorders (such as Asperger's disorder, and pervasive developmental disorder not otherwise specified if not "atypical autism");

(j) neurological problems not associated with intellectual deficits (such as Tourette's syndrome, fetal alcohol effects, and non-verbal learning disability);

(k) mild traumatic brain injury (such as minimal brain injury and post-concussion syndrome).

(6) Individuals who were admitted to an ICF/MR before August 27, 2009, are eligible for continued stay as long as they continue to meet the requirements in effect before that date. A resident who was admitted to an ICF/MR before August 27, 2009, is only required to meet the revised eligibility criteria when there has been a break in stay wherein the individual resided in a setting that is not a Medicaid certified ICF/MR, nursing facility, or hospital.

(7) Before admission to an ICF/MR, the facility must provide each potential resident with a two-sided fact sheet (Form IFS 10) that offers information about ICFs/MR as well as the Community Supports Waiver for People with Intellectual Disabilities and Other Related Conditions. Each resident's record must contain an acknowledgement (Form IFS 20) signed by the resident or the resident's legal representative, which verifies that the facility provided the Form IFS 10 before admission.

**KEY: Medicaid**

**August 27, 2009**

**Notice of Continuation August 27, 2009**

**26-1-5**

**26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-503. Preadmission Screening and Annual Resident Review.****R414-503-1. Introduction and Authority.**

This rule implements 42 USC 1396r(b)(3) and (e)(7) that require preadmission screening and annual review of nursing facility residents with serious mental illness or mental retardation.

**R414-503-2. Definitions.**

The definitions in R414-1-1 and R414-501-2 apply to this rule.

**R414-503-3. Preadmission Level I Screening for All Persons.**

The purpose of the preadmission Level I screening is to determine if a person seeking admission to a nursing facility has serious mental illness or mental retardation and is therefore subject to a Level II evaluation.

(1) A nursing facility may not admit a person unless a health care professional has completed a Level I screening. The department shall deny reimbursement for a resident if a nursing facility fails to assure that the resident's Level I screening is completed as required.

(2) A health care professional shall complete a Level I screening on a form supplied by the department and shall include the date of the screening and the signature of the health care professional completing the screening.

(3) If the Level I screening identifies a positive response to all of the following three criteria, then the screening shall conclude that the person may have a serious mental illness. The Level I screening criteria for serious mental illness are whether the person has:

(a) A diagnosis falling within the diagnostic groupings of serious mental illness, as described in the Diagnostic and Statistical Manual of Mental Disorders IV, Revised, 1994;

(b) Experienced a functional limitation in a major life activity within the last six months in that the person has serious difficulty on a continuing or intermittent basis in interpersonal functioning, concentration and persistence and pace, or adaptation to change, and which is due to the serious mental illness diagnosis;

(c) A treatment history indicating psychiatric treatment more intensive than outpatient care occurring more than once within the last two years; or experienced, within the last two years, significant disruption to his normal living situation to the degree that he required supportive services to maintain his current level of functioning at home or in a residential treatment environment; or required intervention by housing or law enforcement officials.

(4) If the Level I screening identifies at least one positive response to any of the following criteria then the screening shall conclude that the person may have mental retardation. The Level I screening criteria for mental retardation is whether the person has:

(a) A diagnosis of mental retardation;

(b) A current prescription for anti-convulsant medications for epilepsy with an onset prior to age 22;

(c) A history of mental retardation, or cognitive or behavioral indicators that the person has mental retardation; or

(d) Been referred by any agency specializing in the care of persons with mental retardation;

(5) If the screening does not indicate the person may have serious mental illness or mental retardation, or if the screening determines the person has a diagnosis of dementia (including Alzheimer's disease or an organic mental disorder) based on criteria in the Diagnostic and Statistical Manual of Mental Disorders IV, Revised, 1994, then no further evaluation is necessary.

(6) If the person is admitted to a nursing facility, the nursing facility shall submit a copy of the Level I screening to the department and shall retain a copy of the Level I screening in the resident's medical record.

(7) If the Level I screening indicates the person may have serious mental illness or mental retardation, then the Level I screener shall complete a notice of referral to the state authority that shall conduct the Level II evaluation. The notice shall be on a form provided by the department. The screener shall give the notice to the person, his legal representative, and the nursing facility.

**R414-503-4. Preadmission Level II Evaluation.**

(1) The purposes of the preadmission Level II evaluation are to determine whether a person with serious mental illness or mental retardation who seeks admission to a nursing facility requires the level of services provided by a nursing facility and whether the person requires specialized services.

(2) If a Level I screening indicates a Level II evaluation is required, then a nursing facility may not admit the person unless the Level II evaluation is completed and determines that it is appropriate to place the person in a nursing facility. The Level II evaluation is not required for a person who is any one of the following:

(a) A provisional admission in which the person has delirium where an accurate diagnosis cannot be made until the delirium clears, or in emergency situations where the nursing facility placement will not exceed seven days. However, if the placement exceeds seven days, the Level II evaluation shall be completed;

(b) Readmitted to a nursing facility after being transferred to a hospital, or for a person who is transferred from one nursing facility to another, with or without an intervening hospital stay; or

(c) Admitted to a nursing facility directly from a hospital where the person received acute inpatient care, and the person requires nursing facility services for the condition treated in the hospital, and the attending physician certifies before admission to the nursing facility that the person is likely to require a stay of less than 30 days. If a resident enters a nursing facility through such an exempted hospital discharge and then remains in the nursing facility for more than 30 days, then the resident shall be referred to the state mental health or mental retardation authority for an annual resident review within 40 calendar days of admission.

(3) The department shall deny reimbursement for a resident if the nursing facility fails to assure that the resident's Level II evaluation is completed as required.

(4) If the Level I screening indicates the person may have mental retardation, then the person shall be referred to the Department of Human Services Division of Services for People with Disabilities for the Level II determination. If the Level I screening indicates the person may have a serious mental illness, then the person shall be referred to the Department of Human Services Division of Mental Health for the Level II determination. If the Level I screening indicates the person may have both a serious mental illness and mental retardation, then the person shall be referred to both divisions.

(5) The Level II evaluation shall be based on the criteria established pursuant to 42 USC 1396r(f)(8), and addressing the level of nursing services, specialized services, and specialized rehabilitative services needed. Based on those criteria, the Level II evaluation shall make one of the following seven determinations:

(a) The person does not need nursing facility services. This determination disqualifies the person for placement in a nursing facility and Medicaid reimbursement;

(b) The person does not need nursing facility services but needs specialized services. This determination disqualifies the

person for placement in a nursing facility and Medicaid reimbursement;

(c) The person needs nursing facility services but does not need specialized services. This determination qualifies the person for placement in a nursing facility and Medicaid reimbursement;

(d) The person is not a danger to himself or others and is being released from an acute care setting and requires a medically prescribed period of convalescent care in a nursing facility. This determination qualifies the person for placement in a nursing facility and Medicaid reimbursement for a period not to exceed 120 days with a categorical Level II evaluation. However, if the placement exceeds 120 days, the Level II evaluation shall be completed;

(e) The person is not a danger to himself or others and is certified by a physician to be terminally ill (a medical prognosis of a life expectancy of less than six months) and requires continuous nursing care or medical supervision or treatment due to a physical condition. The nature and extent of the person's need for nursing care, medical supervision, and medical treatment shall be the determining factors, and the existence of a chronic mental or physical disability shall be incidental considerations. This determination qualifies the person for placement in a nursing facility and Medicaid reimbursement with a categorical Level II evaluation; or

(f) The person has a severe physical illness that results in a level of impairment so severe that the recipient could not be expected to benefit from specialized services, like a categorical determination such as coma, ventilator dependence, or functioning at brain stem level, or a diagnosis such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, or congestive heart failure. This determination qualifies the person for placement in a nursing facility and Medicaid reimbursement with a categorical Level II evaluation.

(g) The person has a 14 day or less stay to provide respite to in-home care givers to whom the individual with MI or MR is expected to return following the brief Nursing Facility stay.

(6) If at any time during the Level II evaluation the evaluator determines that the person does not have serious mental illness or mental retardation, or has a primary diagnosis of dementia without mental retardation, then the Level II evaluation may be stopped.

(7) The person or agency doing the evaluation shall provide a copy of the Level II determination and findings to the person evaluated, his legal representative, his attending physician, the discharging hospital, the nursing facility for retention in the person's medical record, if admitted, and to the department prior to Medicaid reimbursement.

#### **R414-503-5. Annual Resident Review.**

(1) As long as a resident who requires a preadmission Level II evaluation continues to reside in a nursing facility, he shall have an annual resident review subject to the same requirements as the preadmission Level II evaluation. The Level II evaluator shall establish the annual review date at the time the preadmission Level II evaluation is completed. For administrative purposes, the annual review shall be defined as occurring within every fourth quarter after the previous preadmission screen or annual resident review. In order to avoid duplicative testing and effort, the annual resident review shall be coordinated with the routine resident assessments that are otherwise required.

(2) If a Level II evaluation determines a resident is no longer qualified for continued placement in a nursing facility, the nursing facility, in consultation with the resident and his legal representative, shall arrange for the safe and orderly discharge of the resident from the nursing facility, and prepare and orient the resident for the discharge.

#### **R414-503-6. Significant Change of Condition.**

(1) The Nursing Facility shall notify the State mental health authority or mental retardation/developmental disability authority, as applicable, after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded when there is a significant change in a resident's health status which has a bearing on his or her active treatment needs.

(2) The State mental health or mental retardation authorities must complete a review and determination after the notification by the Nursing facility of a significant change in the resident's physical or mental condition which has a bearing on his or her active treatment needs.

#### **R414-503-7. Out-of-State Arrangements.**

The state in which the person is a resident (or would be a resident at the time he becomes eligible for Medicaid), as defined in 42 CFR 435.403, shall pay for the Level II evaluation in accordance with 42 CFR 431.52(b).

#### **KEY: medicaid**

**July 18, 2001**

**Notice of Continuation August 20, 2009**

**26-1-5**

**26-18-3**

**63-46a-7(1)(a)**

**R428. Health, Center for Health Data, Health Care Statistics.****R428-12. Health Data Authority Survey of Enrollees in Health Maintenance Organizations.****R428-12-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a (Utah Code Annotated) and in accordance with the Utah Health Plan Performance Measurement Plan.

**R428-12-2. Purpose.**

This rule establishes the process for the collection of Health Insurance Carrier enrollee satisfaction data from Utah licensed health insurance carriers. The data are needed to promote consumer choice in health plan selection and measure the quality of care provided by Utah licensed health maintenance organizations.

**R428-12-3. Definitions.**

These definitions apply to rule R428-12:

- (1) "Office" as defined in R428-2-3A.
- (2) "Carrier" means:
  - (a) "Health Maintenance Organization"(HMO) means any person licensed under Title 31A, Chapter 8.
  - (b) a governmental plan as defined in Section 414 (d), Internal Revenue Code.
  - (c) a non-electing church plan as described in Section 410 (d), Internal Revenue Code.
  - (d) "Preferred Provider Organization (PPO)" means all commercial insurance companies engaged in the business of health care insurance in the state of Utah (as defined in 31A-1-301(75)(a) and (b)), and offers a insurance product where an insured member has the choice of using either an in network provider at a discounted rate, also called preferred providers, or any out of network provider at a higher rate, also called non-preferred provider. Payments to preferred and non-preferred providers are paid according the preferred provider contract provisions as described in 31A-22-617(2)(a)(b).
- (3) "Enrollee" means any individual who has entered into a contract with a health maintenance organization for health care or on whose behalf such an arrangement has been made.
- (4) "Eligible Enrollee" means an enrollee who meets the criteria outlined by HEDIS 2009, Volume 3, Specifications for Survey Measures published by NCQA.
- (5) "Sampling Frame" means the carrier enrollment file as described criteria outlined by HEDIS 2009, Volume 3, Specifications for Survey Measures published by NCQA. The sampling frame includes only records that meet the eligibility criteria in R428-12-3(4).
- (6) "Sample file" means the data file containing records of selected eligible enrollees drawn by the survey agency from the carrier's sampling frame.
- (7) "Aggregate statistics" means the total number of enrollees with the particular carrier by age and sex.
- (8) "Survey agency" means an independent contractor on contract with the Office of Health Data Analysis.

**R428-12-4. Creating the Sampling Frame.**

(1) The sources for enrollment data are health plan carriers licensed in Utah. Each carrier shall include in the sampling frame all eligible enrollees. The carrier may not exclude any record except those that do not meet eligibility criteria as specified in R428-12-3(4).

(2) Each carrier shall create the sampling frame according to the criteria outlined by HEDIS 2009, Volume 3, Specifications for Survey Measures published by NCQA.

(3) The sampling frame and procedures used by the reporting carrier are subject to audit by the Office of Health Data Analysis against aggregate statistics for the submitting carrier.

**R428-12-5. Sampling Frame Submission.**

(1) The carrier shall create the sampling frame according to the eligibility criteria in R428-12-3(4). The carrier shall copy the sampling frame (formatted as described by HEDIS 2009, Volume 3, Specifications for Survey Measures published by NCQA) using a electronic medium acceptable to the survey agency and send to the survey agency.

(2) The carrier shall fill out the "Sample Description" sheet to be provided by the survey agency and send it with the electronic sample file. Each carrier shall submit to the survey agency the sampling frame for each of its carrier products no later than four weeks after the receipt of the sampling memo from the survey agency.

**R428-12-6. Penalties.**

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

**R428-12-7. Administration of Survey.**

Each year, the Utah Department of Health, in consultation with health plans, will determine the target survey population and the scope of the survey.

**KEY: health maintenance organization, performance measurement, health care quality, preferred provider organization**

**August 6, 2009**

**Notice of Continuation April 3, 2007**

**26-33a-104**

**26-33a-108**

**R432. Health, Health Systems Improvement, Licensing.****R432-32. Licensing Exemption for Non-Profit Volunteer End-of-Life Care.****R432-32-1. Purpose and Authority.**

This rule establishes the exemption from licensure requirements for non-profit facilities that provide volunteer end-of-life care pursuant to Utah Code Section 26-21-7(6).

**R432-32-2. Requirements for Designation as a Non-Profit Facility Providing End-of-Life Care Using Only Volunteers.**

A non-profit facility that provides end-of-life care using only volunteers is exempt from licensure if it meets all of the following requirements:

- (1) The facility operates as a non-profit facility with a board of trustees to oversee its direction and operation.
- (2) No more than six unrelated individuals reside in the facility.
- (3) The residents of the facility do not pay for room or board.
- (4) Each facility resident has a terminal illness and contracts with a licensed hospice agency to receive medical care.
- (5) There is no direct compensation for direct care staff at the facility; however, administrative staff to coordinate volunteer staff may be compensated.
- (6) Each resident signs an admission agreement that:
  - (a) indicates the level of service to be provided by volunteers;
  - (b) provides notice that the facility is not a regulated health care facility under Title 26, Chapter 21.
  - (c) provides procedures to report grievances to the Board of Directors
- (8) The facility screens each staff, including volunteer staff, for criminal convictions through the Department of Public Safety and no staff serves who has a conviction for any of the crimes identified in R432-35-4.
- (9) The facility provides in-service training on the reporting requirements for adult abuse, neglect and exploitation to each staff, including volunteer staff.
- (10) Each resident has a self-directed medical care plan for end-of-life treatment decisions.
- (11) The facility provides each resident a form for a Physician Order for Life-Sustaining Treatment.
- (12) The facility complies with local zoning, health and fire inspection requirements.
- (13) The facility offers adult immunizations for staff and residents as required in R432-40.
- (14) The facility has an infection control program, which includes universal precautions, reporting communicable diseases, and OSHA standards.

**KEY: health care facilities**

**September 1, 2004**

**Notice of Continuation August 31, 2009**

**26-21-7(6)**

**R527. Human Services, Recovery Services.****R527-300. Income Withholding.****R527-300-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Sections 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to specify the responsibilities and procedures for the Office of Recovery Services/Child Support Services for income withholding.

**R527-300-2. Income Withholding.**

1. Income withholding is defined as withholding child support from an obligor's income. The payor of income forwards the amount withheld to the Office of Recovery Services/Child Support Services (ORS/CSS).

2. Income withholding may be initiated in a IV-D case, with concurrent notice to the obligor:

a. in a case which has an order issued prior to October 13, 1990, which has not been modified since October 13, 1990, even though the obligor is not delinquent as defined in Section 62A-11-401(6) or R527-300-3, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month, or

b. in a case which has an order issued or modified after October 13, 1990, which found a demonstration of good cause or entered a written agreement that immediate income withholding is not required, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month.

**R527-300-3. Determining Delinquency.**

1. If current support has been ordered but is not presently in effect; for example, the children are 18 years old, the children have been adopted, custody has changed, or the obligor is paying current support to the obligee; delinquency has occurred when the obligor has accrued a debt in an amount equal to or greater than the previously ordered current support for one month.

2. If there was not a previous current support order but there is a judgment for arrears, delinquency has occurred when the obligor fails to pay as agreed, provided the judgment was for at least one month's current support amount used to compute the judgment for arrears. If the judgment was by default and the judgment amount was for at least one month's current support amount used to compute the judgment, income withholding may begin immediately upon entry of the judgment.

3. A delinquency could be the result of an underpayment for several months that totals at least one month's current support.

4. A delinquency can occur prior to the end of the month if the obligor was ordered to pay on specific days of the month and failed to do so.

**R527-300-4. Affidavit of Delinquency.**

The Non-IV-A applicant prepares a month-by-month computation of the support debt, which is referred to as a statement of arrears. The statement of arrears is part of the application packet. As part of the statement of arrears, the applicant attests that the statement is true and accurate to the best knowledge and belief of the applicant. This signed statement shall satisfy the verified statement requirement of Section 62A-11-405.

**R527-300-5. Administrative Review.**

1. Section 62A-11-405(2)(b)(ii)(B) requires the obligor to

file a written request for review with the office within 15 days to contest withholding. This written request for review shall state the obligor's basis for contesting the withholding.

2. If an administrative review is conducted pursuant to Section 62A-11-405(3), the notice of decision required may be mailed or delivered to the obligor in the ordinary course of business.

**R527-300-6. Income Subject To Withholding.**

Section 62A-11-406 limits the total amount of the income withheld for child support to the maximum permitted under Section 303(b) of the Consumer Credit Protection Act as cited in 15 U.S.C. Section 1673(b). In general, income withholding will be limited to withholding 50% of the obligor's disposable income. However, if 50% does not result in withholding enough to cover the current support obligation, the office may review an obligor's circumstances under the provisions of the Consumer Credit Protection Act to determine whether a higher percentage is permitted.

**R527-300-7. Arrears Payments.**

If the obligor owes back child support, ORS/CSS will work with the obligor in an effort to encourage timely payment of the debt by the obligor. If the obligor is unable to pay the debt in full, the office may accept monthly payments towards the back child support debt. The minimum arrears payment will be based on 10% of the current support obligation. Exceptions to the minimum arrears payment will be determined by the ORS or CSS Director.

**R527-300-8. Modification of Withholding Amounts.**

1. Once a Notice to Withhold Income for Child Support has been sent to the obligor's payor of income, any changes to the withholding amount will be made by sending the payor a modified Notice to Withhold Income for Child Support. The obligor will be provided concurrent notice of any changes.

2. If the obligor changes from one payor of income to another payor of income, a new Notice to Withhold Income for Child Support must be sent to the new payor in accordance with ORS/CSS assessment procedures.

**R527-300-9. Income Withholding Termination.**

1. Income withholding should be terminated if:

a. the obligor no longer has an obligation for current child support, and no longer has a debt to Utah or another state on whose behalf Utah is acting or to a Non-IV-A obligee on whose behalf Utah is acting;

b. the Non-IV-A obligee terminates the ORS/CSS case, income withholding was administratively implemented and the obligor no longer owes child support to Utah or other state on whose behalf Utah is acting, and the obligee does not want withholding to continue;

c. the obligor successfully contests the withholding which is currently in effect through the court or administrative review process. If income withholding was terminated based on a court or administrative order and the obligor later becomes delinquent, income withholding will be reinstated.

**R527-300-10. Contesting an Income Withholding Order Issued by Another State.**

The Obligor may contest the validity or enforcement of an income-withholding order issued by another state in this state by registering and filing a contest to that order in the appropriate Utah court.

**KEY: child support, income, wages**

**June 30, 2009**

**Notice of Continuation September 7, 2007**

**62A-11-401**

**62A-11-404**

**62A-11-405**

62A-11-406  
62A-11-413  
62A-11-414  
78B-14-506



**R539. Human Services, Services for People with Disabilities.****R539-2. Service Coordination.****R539-2-1. Purpose.**

(1) The purpose of this rule is to provide standards for the Division service system, including planning, developing and managing an array of services for Persons with disabilities and their families throughout the state as required by Subsection 62A-5-103(1).

**R539-2-2. Authority.**

(1) This rule establishes standards as required by Subsection 62A-5-103(1).

**R539-2-3. Definitions.**

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

(2) In addition:

(a) "Quality Assurance" means the Family, Provider, and Division management's role to assure accountability in areas of fiscal operations, health, safety, and contract compliance.

(b) "Quality Improvement" means the Provider's role to evaluate and improve the internal delivery of services.

(c) "Quality Enhancement" means the Division and the Team members' role in supporting a Person to experience personal life satisfaction in accordance with the Person's preferences.

**R539-2-4. Waiting List.**

(1) Pursuant to Subsection 62A-5-102(3), the Division shall determine a Person's eligibility for service, followed by a determination of that Person's priority relative to others who are also eligible. Each region shall use a standardized Needs Assessment to score and prioritize the Person's level of need. Persons with the highest scores shall receive support first. The Support Coordinator shall assess with the Person the array of services that may be needed. If funding is not immediately available, the Person shall be placed on a waiting list for support. Persons who have been determined eligible for the Division's Medicaid Waivers can choose to wait for Division Support services or seek services available through Medicaid in an approved facility.

(2) If the Person requires, and could use, support services on the day of intake, the Person has an immediate need; otherwise, the Person has a future need.

(3) A Needs Assessment Form 2-2 shall be completed for all Persons with an immediate need for support services. The Needs Assessment calculates the score of each Person by using the following criteria:

- (a) severity of the disabling condition;
- (b) needs of the Person and/or family;
- (c) length of time on the waiting list, if applicable;
- (d) appropriate alternatives available; and
- (e) other factors determined by the Region to reflect accurately on the Person's need:

- (i) family composition;
- (ii) skills and stress of primary caregiver;
- (iii) finances and insurances;
- (iv) ability to be self-directing;
- (v) special medical needs;
- (vi) problem behaviors;
- (vii) protective service issues;
- (viii) resources/supports needed;
- (ix) projected deterioration issues; and
- (x) time on immediate need waiting list.

(4) The Region Needs Assessment Committee determines the Person's score, rank orders the scores, and enters the Person's name and score on the statewide waiting list.

(5) A Person's ranking may change if the Person's needs change or as Needs Assessments are completed for new

Applicants.

(6) No age limitations apply to a Person placed on the waiting list for community living support or family support.

(7) To preserve the Medicaid Waiver and state-wide service infrastructure, exceptions may be made to the person's ranking on the waiting list when authorized by the Division Director and the Department of Health.

**R539-2-5. Person-Centered Process.**

(1) The Division supports Person-Centered Planning, which includes assessing, planning, implementing, and evaluating. This process shall have an individualized focus and incorporate the principles of Person-Centered Planning, self-determination, informed choice, and equity. Input from the Person and the Person's Team should guide and direct this process.

(a) The Person's Team shall work with the Person to identify goals.

(i) The Person receiving supports determines the membership of the Team, which shall include the Support Coordinator.

(ii) The Team meets at least annually within the month in which the previous meeting occurred, or more often as the Person or other members of the Team determine necessary.

(b) The Person, Provider, and Family shall assess, plan, implement, and evaluate goals and supports for which they are responsible, as agreed upon and listed on Division Form 1-16 in the planning meeting.

(c) The Team shall decide the level of detail required to describe the actions involved in the assessing, planning, implementing, and evaluating needs for the supports based on the experience and expertise of the staff providing the Person's supports. The use of the philosophical Person-Centered Planning approach shall be demonstrated and documented in the Person's file.

(d) Any interested party who believes that Person-Centered Planning is not being implemented as outlined or receives a request from the Person, should contact the Support Coordinator immediately to resolve the issue informally, and, if necessary, through the administrative hearing process outlined in R539-3-8 Notice of Agency Action and Administrative Hearings.

**R539-2-6. Entry Into and Movement Within Service System.**

(1) The Division shall assure that an appropriate choice of supports and Providers exist for Persons entering or moving within the support system in accordance with Subsections 62A-5-103(1) and 62A-5-103(12). The Division shall coordinate, approve, and oversee all out-of-home placements.

(2) Entry into Division-funded supports:

(a) Once a Person's application for waiver services is processed by the Division, the Person is referred to the local financial eligibility office.

(b) Prior to the provision of community living supports, a Person may be required to complete a medical examination and, if under the age of 18, provide a current immunization record.

(c) Admission to Division programs from a nursing facility will be coordinated by the Region office with the Person, the nursing facility social worker, the Support Coordinator, and the prospective Provider.

(d) The Division shall provide Persons with a choice of Providers by:

(i) sending Providers notice and invitation to submit offers to provide services via use of Division Form 1-6; and

(ii) assisting the Person to make an informed choice of Provider.

(e) Interested Providers may schedule and coordinate a service entry meeting that involves the Person, the Representative, Support Coordinator, and invited guests, (e.g.,

Developmental Center staff, school representative, and Division staff). The meeting should be held at the prospective site of placement whenever possible.

(f) The Provider shall submit an acceptance or denial letter within ten business days of the service entry meeting to the Support Coordinator and the Person. An acceptance letter shall include a written description of the following:

- (i) services to be provided;
  - (ii) location of the service;
  - (iii) name and address of the primary care physician, or other medical specialists, including, for example, neurologist or dentist, if applicable;
  - (iv) a training and in-service schedule for the staff to meet with the Person;
  - (v) proposed date services will begin; and
  - (vi) agreed upon rate and level of support.
- (g) The physical move of the Person shall be the responsibility of the Provider who is accepting the Person.

(h) The Division shall send the Person's information to the Provider five business days prior to the move.

(3) Any Team Member may initiate a request to change Provider or Developmental Center residence by asking the Support Coordinator to arrange a meeting.

(4) If a Person requests a change of Provider, the Support Coordinator shall arrange a discharge meeting that provides a ten-business-day written notice to the Person, present Provider, and Support Coordinator.

(a) The present Provider may request the opportunity to make changes in the existing relationship to address the concerns that initiated the discharge meeting.

(b) The Region Director shall make the final decision concerning the discharge if the parties cannot come to agreement.

(5) A Provider initiated request for discharge of a Person shall require 90 calendar days prior notification to the Person and the Division.

(6) Emergency Services Management Committee (ESMC):

(a) An Emergency Services Management Committee chairperson shall be appointed by the Division Director. Membership shall include:

- (i) Division Specialists;
- (ii) a representative from each Region who is skilled in crisis intervention and knowledgeable of local resources;
- (iii) a representative from the Developmental Center; and
- (iv) others as appointed by the Division Director.

(b) The Emergency Services Management Committee shall ensure that Persons are placed in the least restrictive most appropriate living situation as per Sections 62A-5-302 through 62A-5-312 and Subsection 62A-5-402(2)(a). Exceptions to the statute requiring children under age 11 to live only in family-like environments, as per Section 62A-5-403, require Emergency Services Management Committee review and recommendation to the Division Director for final written approval.

#### **R539-2-7. Quality Management Procedures.**

(1) The Division will oversee the three distinct functional roles of quality management, which are Quality Assurance, Quality Improvement, and Quality Enhancement.

(a) Necessary quality assurances are specified by contract with the Division. The Division may work with other offices and bureaus of the Department of Human Services and the Department of Health to assure quality.

(b) Providers are responsible to develop and implement an internal quality management system, which shall:

- (i) Evaluate the Provider's programs; and
- (ii) Establish a system of self-correcting feedback.

(c) The implementation of the Person's Action Plan shall be designed to enhance the Person's life. The Person and

Person's Team shall:

- (i) Identify and document the Person's preferences;
- (ii) Plan how to support the Person's life satisfaction; and
- (iii) Implement the plan with supports from the Division, such as;

(A) Technical Assistance, which involves training, mentoring, consultation, and referral through Division staff.

(B) Quality Enhancement Resource Brokerage, which involves identification and compilation of community resources, including other consumers and families, and referral to and prior approval of payment for these supports.

(C) Consumer empowerment, which involves rights education, leadership training.

(D) Team and System Process Enhancement, which involves facilitation and negotiation training, community education, and consumer satisfaction surveys.

(2) The Division shall evaluate the Person's satisfaction and statistical statewide system indicators of life enhancement.

(3) Division staff shall promote enhancement of the Person's life; support improvement efforts undertaken by Providers, Persons, and families; and assure accountability.

#### **R539-2-8. Request for New Support Coordinator.**

(1) A Person may request a new Support Coordinator by submitting a written request to the Region Office Supervisor.

**KEY: services, people with disabilities**

**July 11, 2006**

**Notice of Continuation August 17, 2009**

**62A-5-102**

**62A-5-103**

**R539. Human Services, Services for People with Disabilities.****R539-3. Rights and Protections.****R539-3-1. Purpose.**

(1) The purpose of this rule is to support Persons in exercising their rights as Persons receiving funding from the Division. The procedures of this rule constitute the minimum rights for Persons receiving Division funded services and supports.

**R539-3-2. Authority.**

(1) This rule establishes procedures and standards for the protection of Persons' constitutional liberty interests as required by Subsection 62A-5-103(2)(b).

**R539-3-3. Definitions.**

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

**R539-3-4. Human Rights Committee.**

(1) This rule applies to the Division, Persons funded by the Division, Providers, Providers' Human Rights Committees, and the Division Human Rights Council.

(2) All Persons shall have access to a Provider Human Rights Committee with the exception of the following:

- (a) Persons receiving physical disabilities services.
- (b) Families using the Self-Administered Model.
- (c) Persons receiving only family supports or respite.

(3) The Provider Human Rights Committee approves the services agencies provide relating to rights issues, such as rights restrictions and the use of intrusive behavior supports. In addition, the Committee provides recommendations relating to abuse and neglect prevention, rights training, and supporting people in exercising their rights.

(4) Any interested party may request that the rights of a Person be reviewed by a Provider Human Rights Committee by contacting the Person's Provider agency verbally or in writing.

(5) Any interested party may request an appeal of the Provider Human Rights Committee decision by sending a request to the Division, 120 North 200 West #411, SLC UT 84103. The Division shall make a decision whether there will be a review and shall notify the Person, Provider, and Support Coordinator concerning the decision within eight business days. The notification shall contain a statement of the issue to be reviewed and the process and timeline for completing the review.

**R539-3-5. Representative Payee Services.**

(1) Unless a Person voluntarily signs the Division Voluntary Financial Support Agreement Form 1-3 or a Provider Human Rights Committee has approved restriction on the use and access to personal funds, the Person shall have access to and control over such funds.

(2) The Representative Payee shall follow all Social Security Administration requirements outlined in 20CFR416.601-665.

(3) The Division shall review Provider records for a sample of Representative Payee files on an annual basis.

(4) If the Department does not have guardianship or conservatorship and the Division has not been named as Representative Payee by the Social Security Administration, the Person may sign a Voluntary Financial Support Agreement, Division Form 1-3, allowing the Department to act as Representative Payee.

(5) If the Division is acting as the Representative Payee for a Person, the Division may initiate termination of a Representative Payee relationship through written notification to the Person and the funding agency.

(a) The Division shall initiate termination of a Representative Payee arrangement when:

(i) a Person with a voluntary arrangement requests termination of Representative Payee status;

(ii) a funding agency requests termination of Representative Payee status;

(iii) Person with a Representative Payee becomes ineligible for funding; or

(iv) a Person moves out of the service area.

**R539-3-6. Personal Property.**

(1) Restrictions to property that are implemented by the Division or Provider shall be part of a written plan or as an Emergency Behavior Intervention in accordance with Division Administrative Rule. Restrictions shall be approved by the Team and Provider Human Rights Committee.

**R539-3-7. Privacy.**

(1) Persons shall have privacy, including private communications (i.e. mail, telephone calls and private conversations), personal space, personal information, and self-care practices (i.e. dressing, bathing, and toileting).

(2) Restrictions to privacy that are implemented by the Division or Provider shall be part of a written plan and approved by the Team and Provider Human Rights Committee. Circumstances that require assistance in self-care due to functional limitations do not require a written plan.

**R539-3-8. Notice of Agency Action and Administrative Hearings.**

(1) Persons have the right to receive adequate written Notice of Agency Action and to present grievances about agency action by requesting a formal or informal administrative hearing in accordance with R497-100 for Persons receiving non-Waiver services, and R410-14 for Persons receiving Waiver services.

(2) Pursuant to Utah Code Annotated, Title 63G, Chapter 4, the Division shall notify a Person in writing before taking any agency action, such as changes in funding, eligibility, or services.

(3) At least 30 calendar days before the Division or the Region terminates or reduces a Person's services or benefits, the Division or Region shall send the Person a written Notice of Agency Action.

(4) The Notice of Agency Action shall comply with Subsection 63G-4-201 and R497-100-4(2)(a).

(5) To assist a Person in requesting an administrative hearing, the Division or Region shall send the Person a Hearing Request Form 490S when the Division or Region sends the Notice of Agency Action Form 522.

(6) To request an informal hearing with the Department of Human Services for non-waiver services, the Person must file a Hearing Request Form 490S with the Division within 30 calendar days of the mailing date shown on the Notice of Agency Action Form 522.

(7) To request a formal hearing with the Department of Health for Waiver services, the Person must file the Medicaid Standard Hearing Request Form with the Division and Department of Health, Division of Health Care Finance within 30 calendar days of the mailing date shown on the Notice of Agency Action Form 522.

(8) This 30-day deadline for formal and informal hearings applies regardless of whether the Person also wishes to participate in the Division's conflict resolution process.

(a) If the Person files the Hearing Request within ten calendar days of the mailing date of the Notice of Agency Action, the Person's services shall continue unchanged during the formal or informal hearing process.

(b) If the Person files the Hearing Request Form between 11 and 30 calendar days after the mailing date of the Notice of Agency Action, the Person is entitled to an administrative

hearing, but the Person's services and benefits shall be discontinued or reduced according to the Notice of Agency Action during the formal or informal hearing process.

(9) A Person may file a Request for Hearing Form for a formal or informal hearing and choose to still participate in the Division's conflict resolution process prior to the formal or informal hearing.

(10) If the Person requests an informal hearing and also chooses the conflict resolution process, the conflict resolution process must be completed before the informal hearing can begin, unless the Person submits a written request to the Division to end the conflict resolution process prematurely.

#### **R539-3-9. Participation in Hospice Services.**

(1) Persons expected by their physicians to live fewer than six months have the right to pursue hospice services as their choice of end-of-life care. A Person who is expected by two physicians to live fewer than six months and who receives Division funding for services and supports may request to continue to receive their Division-funded services and supports while participating in hospice services.

(2) If a Person has not executed a Durable Power of Attorney for Health Care and is incapable of making an informed decision about hospice services or signing a Hospice Agreement, choices related to end-of-life care shall be made on behalf of the Person by the Team upon approval of the Provider Human Rights Committee unless a guardian has been appointed by the Court with the legal authority to make end-of-life decisions for the Person.

(3) If a Person receives Waiver services through the Division and elects the Medicaid hospice benefit and meets the program eligibility requirements in accordance with R414-14A-3, hospice shall become the primary service delivery program, including the primary case management program, for the care of the Person. All other Medicaid programs serving the Person at the time of hospice election, including Waivers, shall coordinate with the hospice case management team to determine the full scope of services that shall be provided from that point forward.

(a) Pursuant to R414-14A-7(A), a Person can continue to receive Division services through the Waiver program that are necessary to prevent institutionalization, are not duplicative of services covered by the hospice benefit, and do not conflict with the hospice plan of treatment.

(b) The Medicaid hospice benefit shall determine the actual number of times a Person can revoke and re-elect hospice services, which hospice Providers and services are available, and which Waiver services may continue concurrently with hospice services.

(c) If the Division wishes to initiate disenrollment of a Medicaid-funded Person from the Waiver based on the Person's election of hospice services, it shall be considered an involuntary disenrollment and will be subject to review and approval by the Department of Health, Division of Health Care Finance.

#### **R539-3-10. Prohibited Procedures.**

(1) The following procedures are prohibited for Division staff and Providers, including staff hired for Self-Administered Services, in all circumstances in supporting Persons receiving Division funding:

(a) Physical punishment, such as slapping, hitting, and pinching.

(b) Demeaning speech to a Person that ridicules or is abusive.

(c) Locked confinement in a room.

(d) Denial or restriction of access to assistive technology devices, except where removal prevents injury to self, others, or property as outlined in Section R539-3-6.

(e) Withholding or denial of meals, or other supports for

biological needs, as a consequence or punishment for problems.

(f) Any Level II or Level III Intervention, as defined in R539-4-3(n) and R539-4-3(o), used as coercion, as convenience to staff, or in retaliation.

(g) Any procedure in violation of R495-876, R512-202, R510-302, 62A-3-301 thru 62A-3-321, and 62A-4a-402 thru 62A-4a-412 prohibiting abuse.

**KEY: people with disabilities, rights**

**May 17, 2005**

**Notice of Continuation August 17, 2009**

**62A-5-102**

**62A-5-103**

**R590. Insurance, Administration.**  
**R590-175. Basic Health Care Plan Rule.**  
**R590-175-1. Authority.**

This rule is issued pursuant to Subsection 31A-22-613.5(2) and the general rulemaking authority vested in the commissioner by Section 31A-2-201. Section 31A-22-613.5(2)(a) requires that the commissioner adopt a Basic Health Care Plan.

**R590-175-2. Statement of Purpose and Scope.**

(1) The purpose of this rule is to adopt a Basic Health Care Plan as:

- (a) a conversion plan per Section 31A-22-723; or
- (b) a basic coverage plan per Section 31A-30-109.

(2)(a) This rule applies to all insurers marketing health insurance policies subject to the open enrollment provisions of Chapter 30; and

- (b) to all insurers subject to 31A-22-723.

**R590-175-3. General Requirements.**

(1) Each insurer who is required to offer a health care plan under the open enrollment provisions of Chapter 30 shall file with the department at least one basic health care plan which is specified by the insurer as complying with the provisions of this rule and which must be offered for sale to anyone qualifying for open enrollment under Chapter 30.

(2) The basic health care plan shall not be designed or marketed in a manner that tends to discourage its purchase by anyone under the open enrollment provisions of Chapter 30.

(3) A plan having actuarial equivalence may be considered, at the sole discretion of the commissioner.

(4) Each insurer must use the language in this rule to present covered services, limitations and exclusions.

(5) A plan offered in compliance with the open enrollment provisions of Chapter 30 must contain at least the benefits set forth in the Basic Health Care Plan as adopted by the commissioner.

(6) The basic health care plan is to be offered as a package, in its entirety, and is mutually exclusive of and not comparable on a line by line basis to an insurer's other plans.

(7) If the basic health care plan is offered by a preferred provider organization, PPO, the benefit levels shown in the plan are for contracting providers; benefit levels for non-contracting providers' services may be reduced in accordance with Section 31A-22-617.

(8) Each insurer is to include its usual contracting provisions in its basic health care plan including submission of claims, coordination of benefits, eligibility and coverage termination, grievance procedures general terms and conditions, etc.

(9) Each insurer who is required to offer a group conversion plan under Subsection 31A-33-723 shall file with the department at least one basic health care plan that complies with the provisions of this rule and must be offered for sale to anyone qualifying for conversion.

(10) The form to follow for the Basic Health Care Plan is as follows:

TABLE  
 BASIC HEALTH CARE PLAN

1. MAXIMUM BENEFIT. The maximum benefit per person for the entire period for which this policy coverage is in effect shall be \$1,000,000.
2. ANNUAL MAXIMUM BENEFIT. The maximum annual benefit per person shall not be less than \$250,000.
3. OUT OF POCKET MAXIMUM PER PERSON. The annual out of pocket maximum per person not to exceed \$5,000, including any deductibles, copayments or coinsurances in the plan, for family coverage, not to exceed three times the per person out-of-pocket maximum.
4. PREEXISTING CONDITION LIMITATION.
  - (a) Any preexisting condition limitation shall be in compliance with Utah Code Subsection 31A-22-605.1(4); and

(b) Any waiting period shall not exceed 12 months, or 18 months in the case of a late enrollee, with credit for prior coverage when applicable.

5. GENERAL COST-SHARING FOR MEDICAL BENEFITS.

Cost-sharing shall be based on eligible expenses. The cost-sharing features of the plan shall be the following:

- (a) Annual Deductible.
  - (i) A major medical deductible of not less than \$1,000 per person, for family coverage not to exceed three times the per person deductible for major medical expenses; and
  - (ii) an annual deductible for prescription benefits not to exceed \$1000 per person, for family coverage not to exceed three times the per person deductible.
- (b) Copayment and Coinsurance.
  - (i)(A) A copayment of not less than \$25 per visit for office visits, including preventive care services; and
  - (B) A copayment of not less than \$150 per visit to the emergency room; or
  - (ii) less than 20% coinsurance per visit for office services and 20% per emergency room visits.

6. PREVENTIVE SERVICES. Preventive services covered under a managed care plan shall not be subject to the annual deductible. Covered preventive services shall consist of at least the following:

- (a) childhood immunizations in accordance with guidelines as recommended by the Centers for Disease Control, as directed and modified from time to time;
- (b) well-baby care through age five in accordance with guidelines recommended by the American Academy of Pediatrics, as directed and modified from time to time;
- (c) for adults and adolescents, age, sex and risk appropriate preventive and screening services in accordance with Classification A guidelines recommended by the U.S. Preventive Services Task Force, as directed and modified from time to time.

7. COST SHARING FOR PRESCRIPTION DRUGS. Benefits for prescription drugs, other than self injectable drugs, except insulin, shall be subject to either:

- (a) a copayment of not more than:
  - (i) the lesser of the cost of the prescription drug or \$15 for the lowest level of cost for prescription drugs;
  - (ii) the lesser of the cost of the prescription drug or \$25 for the second level of cost for prescription drugs; and
  - (iii) the lesser of the cost of the prescription drug or \$35 for the highest level of cost for prescription drugs; or
- (b) a coinsurance of not less than:
  - (i) the lesser of the cost of the prescription drug or 25% for the lowest level of cost for prescription;
  - (ii) the lesser of the cost of the prescription drug or 40% for the second level of cost for prescription drugs; and
  - (iii) the lesser of the cost of the prescription drug or 60% for the highest level of cost for prescription drugs.

8. COST SHARING FOR MENTAL HEALTH BENEFITS AND/OR SUBSTANCE ABUSE SERVICES.

Benefits for mental health and substance abuse services shall provide:

- (i) for individual policies:
  - (A) coinsurance of 50% of eligible expenses;
  - (B) inpatient services limited to 10 days annually per person; and
  - (C) benefits for outpatient services limited to 20 visits annually per person;
- (ii) small employer group policies shall be subject to Sections 31A-22-625 and 31A-22-715; and
- (iii) large employer group policies shall be subject to the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

9. OUTPATIENT REHABILITATION SERVICES. Benefits for outpatient rehabilitation services, e.g., physical therapy, occupational therapy, and speech therapy, shall be limited to not less than 10 visits for each illness or injury.

10. HOME HEALTH CARE. Benefits for home health care shall be limited to not less than 30 days in any 12 month period and shall consist of services provided, in accordance with a plan of care, in the home by a licensed community home health agency or an approved hospital program for home health care when the person is physically unable to obtain necessary medical care on an outpatient basis, would otherwise be confined as an inpatient, and is under the care of a physician. A "plan of care" means a written plan that:

- (a) is approved by the physician prior to commencement of treatment, unless it is continuity of care under the same physician;
  - (b) is based on the assessment data or physician orders; and
  - (c) identifies the patient's needs, who will provide needed services, how often, treatment goals, and anticipated outcomes.
- Covered services shall not include health aide services

furnished when the person is not receiving professional services of a registered nurse (RN), licensed practical nurse (LPN), or licensed vocational nurse (LVN), nor shall it include housekeeping services.

11. DURABLE MEDICAL EQUIPMENT. Benefits for durable medical equipment, rental or purchase, at the option of the insurer. Prosthetics and orthotics shall be limited to not less than \$5,000 per person for the entire period for which coverage is in effect.

12. COVERED SERVICES. Subject to medical necessity, provider network, and prior approval criteria established by the insurer, and subject to the limitations and exclusions and other terms and conditions of the policy, the following shall be covered services under the basic health care plan:

- (a) inpatient hospital services:
    - (i) semi-private room accommodations;
    - (ii) ICU;
    - (iii) hospital services and supplies;
  - (b) ambulatory service facility services:
    - (i) birthing center services, when maternity care is covered;
    - (ii) surgical facility services;
  - (c) office preventive services;
  - (d) office medical services:
    - (i) diagnostic services; e.g., x-ray, lab tests;
    - (ii) therapeutic services; e.g., injection of medication;
  - (e) outpatient hospital services:
    - (i) emergency room services;
    - (ii) diagnostic services;
    - (iii) therapeutic services; e.g., chemotherapy, radiation therapy;
    - (iv) surgical facility services;
  - (f) inpatient medical services; e.g., physician visits;
  - (g) surgery;
  - (h) assistant-at-surgery;
  - (i) anesthesia, including children's general anesthesia for dental, if necessary;
  - (j) consultation;
  - (k) dental care for accidental injury to sound natural teeth;
  - (l) limited home health care;
  - (m) emergency ambulance transportation;
  - (n) prescription drugs;
  - (o) durable medical equipment, prosthetics and orthotics, as limited; and medical supplies;
  - (p) maternity services:
    - (i) for employer group conversion plans, maternity benefits are provided on the same basis as benefits for sickness;
    - (ii) for individual plans, there are no maternity benefits;
    - (iii) benefits for complications of pregnancy are provided on the same basis as benefits for sickness. Complications of pregnancy will not be excluded solely because the pregnancy is a preexisting condition. "Complications of pregnancy" means diseases or conditions, the diagnoses of which are distinct from pregnancy but are adversely affected or caused by pregnancy and not associated with a normal pregnancy.
- Complications of pregnancy does not include false labor, occasional spotting, doctor prescribed rest during the period of pregnancy, morning sickness, and conditions of comparable severity associated with management of a difficult pregnancy. In no event will the presence of complications of pregnancy result in benefits being provided for services normal to care and treatment of pregnancy and childbirth. Such normal services include but are not limited to hospitalization for childbirth or termination of pregnancy by any means, anesthesia services, ultrasound examinations, prenatal diagnostic laboratory services, antepartum and postpartum care, vaginal or cesarean delivery, threatened premature termination, premature termination, and routine nursery care of the newborn;
- (iv) newborn and maternity inpatient time limits will conform to Subsection 31A-22-610.2. For conversion plans, maternity will be covered with the lesser of benefits originally on plan prior to conversion or the basic benefit plan. This coverage benefit is only for existing pregnancies, known or unknown at the time of conversion. Additional premium for pregnancy is not allowed;
  - (q) limited outpatient rehabilitation services;
  - (r) limited mental illness/substance abuse services;
  - (s) diabetes as required by Section 31A-22-626.
  - (t) inborn metabolic errors, PKU, nutritional benefits as required by Section 31A-22-623; and
  - (u) mastectomy as required by Sections 31A-22-630 and 31A-22-719.

13. EXCLUSIONS. Benefits will not be provided for any of the following:

- (a) services, supplies, or treatment provided prior to the effective date or after the termination date of coverage;
- (b) charges in connection with a work-related injury or sickness for which coverage is provided under any state or federal workers' compensation, employer's liability, or occupational disease law;

- (c) services, supplies, or treatment for which coverage is provided under any motor vehicle no-fault plan. When the person is required by law to have no-fault insurance in effect, this exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;

- (d) services, supplies, or treatment for injury or sickness resulting from war or any act of war whether declared or undeclared;

- (e) services, supplies, or treatment for injury or sickness resulting from service in the military of any country;

- (f) services, supplies, or treatment for which benefits are provided under Medicare or any other government program except Medicaid;

- (g) services, supplies, or treatment for which no charge is made or for which the person is not required to pay;

- (h) services or supplies not incident to or necessary for the treatment of injury or sickness or which are not medically necessary, as determined by the insurer;

- (i) treatment or prevention of an injury or sickness, including mental illness, by means of treatments, procedures, techniques, or therapy outside generally accepted health care practice;

- (j) services, supplies, or treatment required as a result of an injury or sickness sustained while committing a felony or engaging in an illegal occupation;

- (k) services to the extent benefits are provided by any governmental unit except as required by federal law for treatment of veterans in Veterans Administration or armed forces facilities for non-service related medical conditions;

- (l) examinations, reports, or appearances in connection with legal proceedings; and services, supplies, or accommodations pursuant to a court order, whether or not injury or sickness is involved;

- (m) investigative/experimental technology, treatment, procedure, facility, equipment, drug, device or supply, "technology," which does not, as determined by the insurer on a case by case basis, meet all of the following criteria:

- (i) the technology must have final approval from appropriate governmental regulatory bodies, if applicable;

- (ii) the technology must be available in significant number outside the clinical trial or research setting;

- (iii) the available research regarding the technology must be substantial. For purposes of this definition, "substantial" means sufficient to allow the insurer to conclude that:

- (A) the technology is both medically necessary and appropriate for the person's treatment;

- (B) the technology is safe and efficacious; and

- (C) more likely than not, the technology will be beneficial to the person's health;

- (iv) the regional medical community as a whole must generally recognize the technology as appropriate;

- (n) services in connection with any transplant of any whole organ or part thereof, live or cadaver, bone marrow, either as donor or recipient, or any artificial organ, except for the following:

- (i) cornea transplants;

- (ii) kidney transplants;

- (iii) liver transplants for children under age 18 years;

- (iv) bone marrow transplants for children under age 18 years; and

- (v) evaluation, treatment and therapy involving the use of myeloablative chemotherapy with autologous hematopoietic stem cell and/or colony stimulating factor support for children under age 18 years;

- (o) custodial care;

- (i) "Custodial care" means:

- (A) institutional care, consisting mainly of room and board, which is for the primary purpose of controlling the person's environment; and

- (B) professional or personal care, consisting mainly of non-skilled nursing services with or without medical supervision, which is for the primary purpose of managing the person's disability or maintaining the person's degree of recovery already attained without reasonable expectation of significant further recovery.

- (ii) "Custodial care" does not mean outpatient palliative and supportive care provided by a hospice program to a person who is terminally ill with a life expectancy of not more than six months and is in lieu of institutional or inpatient hospital care;

- (p) services, supplies, or treatment in connection with cosmetic or reconstructive procedures which alter appearance but do not restore or improve impaired physical function or which are performed for psychological or emotional purposes, except when performed while a person is covered under this policy for the following:

- (i) repair of defects resulting from an accident occurring within 90 days of the effective date of this policy under creditable coverage or occurring during this policy;

(ii) replacement of diseased tissue surgically removed for illness occurring within 90 days of this policy under creditable coverage or occurring during this policy;

(iii) treatment of a birth defect in a child who has met the pre-existing conditions requirement since birth or date of placement for adoption; and

(iv) mastectomy reconstruction as required by Sections 31A-22-630 and 31A-22-719;

(q) dental services. This exclusion will not apply if dental services are required as a result of an accidental injury which occurs while coverage is in force, dental services are received within two years following the accidental injury, and the person has been continuously covered from the date of the accidental injury through the date the dental services are provided;

(r) eyeglasses, contact lenses and/or servicing of eyeglasses and/or contact lenses. This exclusion does not apply to contact lenses in the case of keratoconus or post-cataract surgery when the contact lenses are medically necessary in the treatment of the condition;

(s) medical, non-surgical, care of weak, strained, flat, unstable or unbalanced feet routine foot care. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

(t) orthopedic or corrective shoes, foot orthotics, or any other supportive devices for the feet;

(u) drugs and medicines which do not bear the legend "Caution - federal law prohibits dispensing without a prescription" and/or which are not dispensed by a licensed pharmacist;

(v) charges in connection with jaw realignment procedures including, but not limited to, osteotomy, upper or lower jaw augmentation or reduction procedures, and orthognathic surgery; charges in connection with treatment of temporomandibular joint (TMJ) dysfunction, including surgical procedures and injections of the TMJ, physical therapy, splints, and orthodontic appliances. This exclusion will not apply to:

(i) the initial diagnostic evaluation of TMJ dysfunction;

(ii) surgical correction of the TMJ required as a result of an accidental injury which occurs while this coverage is in force; and

(iii) physical therapy services related to and subsequent to covered TMJ surgery;

(w) treatment of obesity by means of surgical, medical or medication services and regardless of associated medical, emotional, or psychological conditions;

(x) services or supplies in connection with genetic studies;

(y) implantable contraceptives (hormonal or other);

(z) reversal of a sterilization procedure;

(aa) any treatment for or diagnosis of infertility, artificial insemination, in vitro fertilization, and any other male or female dysfunction, except as required by Section 31A-8-101;

(bb) vision testing, vision training;

(cc) radial keratotomy, laser and any surgical correction of errors of refraction;

(dd) educational service or counseling, including weight control clinics, stop smoking clinics, cholesterol counseling, exercise programs or other types of physical fitness training, except for those benefits required by Section 31A-22-626;

(ee) marriage counseling; family counseling; counseling for educational, social, occupational, religious, or other similar maladjustment; behavior modification, biofeedback, or rest cures as treatment for mental disorders; sensitivity or stress-management training; self-help training; and residential treatment;

(ff) treatment for mental disorders which are irreversible or for which there is little or no reasonable expectation for improvement, including mental retardation, personality disorders, and chronic organic brain disease. This exclusion does not apply to the initial assessment for diagnosis of the condition;

(gg) psychotherapy, counseling, or other services in connection with learning disabilities, disruptive behavior disorders, conduct disorders, psychosexual disorders, or transsexualism. This exclusion does not apply to the initial assessment for diagnosis of the condition;

(hh) vitamins, special formulas, special diets, and food supplements except as provided by a hospital or skilled nursing facility during a confinement for which benefits are available, except as outlined in Section 31A-22-623;

(ii) any devices used to aid hearing, including cochlear implants, the fitting of such devices and any routine hearing tests;

(jj) acupuncture or acupressure;

(kk) speech therapy for psychosocial speech delays;

(ll) all shipping, handling, or postage charges except as

incidentally provided, without a separate charge, in connection with covered services or supplies;

(mm) interest or finance charges except as specifically required by law;

(nn) charges for missed appointments, telephone consultations, and clerical services for completion of special reports or claim forms;

(oo) travel expenses, whether or not prescribed;

(pp) care, except urgent or emergency care, rendered outside the United States;

(qq) services provided by a member of the person's immediate family or household; and

(rr) autopsy procedures.

(11) The basic health care plan is to be filed with the department before use.

(12) Conversion coverage provided pursuant to Section 31A-22-723, may provide additional benefits in addition to the Basic Health Care Plan.

#### **R590-175-4. Enforcement Date.**

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

#### **R590-175-5. Severability.**

If a provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

**KEY: insurance**

**August 13, 2009**

**Notice of Continuation November 8, 2005**

**31A-22-613.5**

**R592. Insurance, Title and Escrow Commission.**  
**R592-2. Title Insurance Administrative Hearings and Penalty Imposition.**

**R592-2-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-404(2)(e) and (h), to provide the process for conducting or delegating a title administrative hearing and imposing a penalty for a violation of statute or rule.

**R592-2-2. Purpose and Scope.**

(1) The purposes of this rule are:

(a) to establish procedures for the commission:

(i) to delegate to the commissioner's administrative law judge the conduct of an administrative hearing to resolve a title insurance matter; or

(ii) to conduct an administrative hearing to resolve a title insurance matter; and

(b) to establish procedures for the commission,

(i) to impose penalties; and

(ii) for the commissioner to concur with the penalties imposed.

(2) This rule applies to all title licensees, applicants for a title insurance license, unlicensed persons doing the business of title insurance, and continuing education providers submitting title continuing education programs for approval.

**R592-2-3. Definitions.**

For purposes of this rule, the commission adopts the definitions set forth in Utah Code Annotated (U.C.A.) Title 31A and the following:

(1) "Commission" means the Title and Escrow Commission.

(2) "Commissioner" means Utah's insurance commissioner.

(3) "Title insurance matter" means a matter related to:

(a) title insurance; and

(b) an escrow conducted by a title producer.

**R592-2-4. Title Insurance Matters Referred for Enforcement.**

(1) A title insurance matter referred for enforcement will be resolved by:

(i) an informal adjudicative action pursuant to R592-2-5;

(ii) a stipulation and order issued by the commissioner; or

(iii) an administrative hearing conducted either by the commission or the commissioner's administrative law judge pursuant to R592-2-6.

**R592-2-5. Imposition of a Penalty When an Informal Adjudicative Proceeding Is Used to Resolve a Title Insurance Matter.**

(1) If the commissioner uses an informal adjudicative proceeding as set forth in 63G-4-203 and R590-160 to resolve a violation listed in Table 1 below, the commissioner shall use the penalties imposed by the commission in this Section.

(2) The commission shall impose the following penalties on title licensees for the violations listed in Table 1 below when resolved through an informal adjudicative proceeding.

Table 1

| Violation  | 1 <sup>st</sup> Proceeding          | 2 <sup>nd</sup> Proceeding              |
|--|-------------------------------------|---|
| Failure to complete required continuing education hours. | Individual: \$1,000;<br>Agency: n/a | Individual: \$2,000;<br>Agency: n/a     |
| Failure to respond to an inquiry of the commissioner.    | Individual: \$500;<br>Agency: \$750 | Individual: \$1,000;<br>Agency: \$1,500 |
| Failure to file a required rate, form,                   | Individual: n/a;<br>Agency: \$1,000 | Individual: n/a;<br>Agency: \$2,000     |

or report.

Late filing of a required rate, form, or report. Individual: n/a; Agency: \$750 Individual: n/a; Agency: \$1,500

Failure to charge or collect a correct premium or a correct filed fee. Individual: \$1,000; Agency: \$2,500 Individual: \$2,000; Agency: \$5,000

Charging or collecting a non-filed required fee. Individual: \$1,000; Agency: \$2,500 Individual: \$2,000; Agency: \$5,000

Failure to pay assessment when due. Individual: \$500; Agency: \$750 Individual: \$1,000; Agency: \$1,500

**R592-2-6. Use of an Administrative Hearing to Resolve a Title Insurance Matter.**

(1) When the commissioner sets a date for an administrative hearing to resolve a title insurance matter, the commissioner shall inform the commission of the hearing date.

(2) After being informed of a hearing date, the commission shall:

(a) delegate the conduct of the administrative hearing to the commissioner's administrative law judge; or

(b) conduct the administrative hearing.

(3) For an administrative hearing conducted by the commission, the commission shall:

(a) accept the date, time and place set by the commissioner or set a different date, time, and place for the administrative hearing;

(b) cause notification to be sent to the respondent(s), the commissioner's administrative law judge, and the commissioner's enforcement attorney of the date, time, and place of the administrative hearing;

(c) conduct the hearing pursuant to R590-160;

(d) impose penalties in accordance with Sections 31A-2-308, 31A-23a-111, 31A-23a-112, 31A-26-213, and 31A-26-214, subject to the concurrence of the commissioner; and

(e) issue an Order on Hearing.

(4) The commissioner's administrative law judge shall assist the commission in its conduct of an administrative hearing.

**R592-2-7. Imposition of Penalties.**

The commission shall impose a penalty as follows:

(1) for an informal adjudicative proceeding, a penalty shall be imposed in accordance with Table 1 in R592-2-5;

(2) for a stipulation and order issued by the commissioner, the commission shall impose the recommended penalty or a different penalty, subject to the concurrence of the commissioner;

(a)(i) If the commission imposes a penalty other than that recommended by the commissioner, the respondent may:

(A) accept the commission's penalty; or

(B) reject the commission's penalty;

(b) if a respondent rejects the penalty imposed by the commission, the stipulation and order shall be rescinded and returned to the commissioner for resolution;

(3) for an administrative hearing conducted by the commissioner's administrative law judge pursuant to R592-2-6 (2)(a), the commission shall impose the recommended penalty or a different penalty, subject to the concurrence of the commissioner; or

(4) for an administrative hearing conducted by the commission, the commission shall impose a penalty, subject to the concurrence of the commissioner.

**R592-2-8. Severability.**

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can



be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**R592-2-9. Enforcement Date.**

The commissioner will begin enforcing this rule upon the rule's effective date.

**KEY: title insurance**  
**August 10, 2009**

**31A-2-402**

**R602. Labor Commission, Adjudication.****R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.****R602-2-1. Pleadings and Discovery.****A. Definitions.**

1. "Commission" means the Labor Commission.
2. "Division" means the Division of Adjudication within the Labor Commission.
3. "Application for Hearing" means Adjudication Form 001 Application for Hearing Industrial Accident Claim, Adjudication Form 026 Application for Hearing Occupational Disease Claim, Adjudication Form 025 Application for Dependent's Benefits and/or Burial Benefits Industrial Accident, Adjudication Form 027 Application for Dependent's Benefits Occupational Disease, or other request for agency action complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq. filed by an employer of insurance carrier regarding a workers' compensation claim.
4. "Supporting medical documentation" means Adjudication Form 113 Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury or occupational disease.
5. "Authorization to Release Medical Records" is Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.
6. "Supporting documents" means supporting medical documentation, Adjudication Form 307 Medical Treatment Provider List, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information and, when applicable, Adjudication Form 152 Appointment of Counsel.
7. "Petitioner" means the person or entity who has filed an Application for Hearing.
8. "Respondent" means the person or entity against whom the Application for Hearing was filed.
9. "Discovery motion" includes a motion to compel or a motion for protective order.

**B. Application for Hearing.**

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, authorized representative of a deceased worker's estate, dependent of a deceased worker or medical provider, to initiate agency action by filing an appropriate Application for Hearing with the Division. Applications for hearing shall include an original, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information.
2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq.
3. All Applications for Hearing shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.
4. When an Application for Hearing with appropriate

supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Adjudication Form 152 Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

**C. Answer.**

1. The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

**D. Default.**

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63G-4-209(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63G-4-209(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

**E. Waiver of Hearing.**

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

#### F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

#### G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing

consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

#### H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

#### I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than four hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's

native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

**J. Motions-Time to Respond.**

Responses to all motions other than discovery motions shall be filed within ten (10) days from the date the motion was filed with the Division. Reply memoranda shall be filed within seven (7) days from the date a response was filed with the Division.

**K. Notices.**

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

**L. Form of Decisions.**

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

**M. Motions for Review.**

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 10 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

**N. Procedural Rules.**

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding

discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

O. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

**R602-2-2. Guidelines for Utilization of Medical Panel.**

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;

2. Conflicting medical opinion of permanent physical impairment which vary more than 5% of the whole person,

3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;

4. Conflicting medical opinions related to a claim of permanent total disability, and/or

5. Medical expenses in controversy amounting to more than \$10,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

**R602-2-3. Compensation for Medical Panel Services.**

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be \$125 per half hour for medical panel members and \$137.50 per half hour for the medical panel chair.

**R602-2-4. Attorney Fees.**

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after July 1, 2007.

2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than \$125 for time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection

B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after Adjudication Form 152 Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 25% of weekly benefits generated for the first \$25,000, plus 20% of the weekly benefits generated in excess of \$25,000 but not exceeding \$50,000, plus 10% of the weekly benefits generated in excess of \$50,000, to a maximum of \$15,250.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed \$22,000;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 35% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed \$27,000.

D. The following expenses, fees and costs shall be presumed to be reasonable and necessary and therefore reimbursable in a workers compensation claim:

1. Medical records and opinion costs;
2. Deposition transcription costs;
3. Vocational and Medical Expert Witness fees;
4. Hearing transcription costs;
5. Appellate filing fees; and
6. Appellate briefing expenses.

F. Other reasonable expenses, fees and costs may be awarded as reimbursable as the Commission may in its discretion decides in a particular workers compensation claim.

E. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C and D.

**KEY: workers' compensation, administrative procedures, hearings, settlements**

**August 24, 2009**

**34A-1-301 et seq.**

**Notice of Continuation August 15, 2007 63G-4-102 et seq.**

**R657. Natural Resources, Wildlife Resources.****R657-6. Taking Upland Game.****R657-6-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the Upland Game Proclamation of the Wildlife Board for taking upland game.

**R657-6-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "CFR" means the Code of Federal Regulations.

(c) "Falconry" means the sport of taking quarry by means of a trained raptor.

(d) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(e) "Migratory game bird" means, for the purposes of this rule, Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

(f) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(g) "Upland game" means pheasant, quail, Chukar Partridge, Hungarian Partridge, Sage-grouse, Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse, cottontail rabbit, snowshoe hare, White-tailed Ptarmigan, and the following migratory game birds: Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

**R657-6-3. Migratory Game Bird Harvest Information Program.**

(1) A person must obtain a Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person may call the telephone number or register online as published in the proclamation of the Wildlife Board for taking upland game to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current valid hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license type;

(c) name;

(d) address;

(e) phone number;

(f) birth date; and

(g) information about the previous year's migratory game bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory game birds will be required, while in the field, to possess a hunting or combination license with the HIP registration number recorded on the license, demonstrating they have registered and provided information for the HIP program.

**R657-6-4. Permits for Band-tailed Pigeon, Sage-grouse,****Sharp-tailed Grouse and White-tailed Ptarmigan.**

(1)(a) A person may not take or possess:

(i) Band-tailed Pigeon without first obtaining a Band-tailed Pigeon permit;

(ii) Sage-grouse without first obtaining a Sage-grouse permit;

(iii) Sharp-tailed Grouse without first obtaining a Sharp-tailed Grouse permit; or

(iv) White-tailed Ptarmigan without first obtaining a White-tailed Ptarmigan permit.

(b) A person may obtain only one permit for each species listed in Subsection (1)(a), except a falconer with a valid Falconry Certificate of Registration may obtain one additional two-bird Sage-grouse permit beginning on the date published in the proclamation of the Wildlife Board for taking upland game, if any permits are remaining.

(2)(a) A limited number of two-bird Sage-grouse permits are available in the areas published in the proclamation of the Wildlife Board for taking upland game.

(b) A Sage-grouse permit may only be used in one of the open areas as published in the proclamation of the Wildlife Board for taking upland game.

(c) Sage-grouse permits will be issued pursuant to R657-62-21.

(3)(a) A limited number of two-bird, Sharp-tailed Grouse permits are available.

(b) A Sharp-tailed Grouse permit may only be used in one of open areas as published in the proclamation of the Wildlife Board for taking upland game.

(c) Sharp-tailed Grouse permits will be issued pursuant to R657-62-21.

(4) Band-tailed Pigeon and White-tailed Ptarmigan permits are available from Division offices, through the mail, and through the Division's Internet address by the first week in August, free of charge.

**R657-6-5. Application Procedure for Sandhill Crane.**

(1)(a) Sandhill Crane permits will be issued pursuant to R657-62-20.

(b) Residents and nonresidents may apply.

(c) The application period for Sandhill Crane is published in the proclamation of the Wildlife Board for taking upland game.

(2) A person may obtain only one Sandhill Crane permit each year.

**R657-6-6. Firearms and Archery Tackle.**

(1) A person may not use any weapon or device to take upland game except as provided in this section.

(2)(a) Upland game may be taken with archery equipment, a shotgun no larger than 10 gauge, or a handgun. Loads for shotguns and handguns must be one-half ounce or more of shot size between no. 2 and no. 8, except:

(i) migratory game birds may not be taken with a handgun, or a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(ii) cottontail rabbit and snowshoe hare may be taken with any firearm not capable of being fired fully automatic;

(iii) a person hunting upland game on a temporary game preserve as defined in Rule R657-5 may not use or possess any broadheads unless that person possesses a valid big game archery permit for the area being hunted;

(iv) only shotguns, firing shot sizes no. 4 or smaller, may be used on temporary game preserves as specified in Rule R657-5; and

(v) Sandhill Crane may be taken with any size of nontoxic shot.

(b) Crossbows are not legal archery equipment for taking upland game, except as provided in Rule R657-12.

(3) A person may not use:

- (a) a firearm capable of being fired fully automatic; or
- (b) any light enhancement device or aiming device that casts a beam of light.

**R657-6-7. Nontoxic Shot.**

(1) Only nontoxic shot may be used to take Sandhill Crane.

(2) Except as provided in Subsection (3), nontoxic shot is not required to take any species of upland game, except Sandhill Crane.

(3) A person may not possess or use lead shot or any other shot that has not been approved by the U.S. Fish and Wildlife Service while on federal refuges or the following state waterfowl or wildlife management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

**R657-6-8. Use of Firearms and Archery Tackle on State Wildlife Management Areas.**

(1) A person may not possess a firearm or archery tackle, except during the specified hunting seasons or as authorized by the Division on the following wildlife management areas: Bear River Trenton Property Parcel, Bud Phelps, Castle Dale, Huntington, James Walter Fitzgerald, Mallard Springs, Manti Meadows, Montes Creek, Nephi, Pahvant, Redmond Marsh, Richfield, Roosevelt, Scott M. Matheson Wetland Preserve, Vernal, and Willard Bay.

(2) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

**R657-6-9. Use of Firearms and Archery Tackle on State Waterfowl Management Areas.**

(1) A person may not possess a firearm or archery tackle, except during the specified waterfowl hunting seasons or as authorized by the Division on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be held in possession.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

**R657-6-10. Shooting Hours.**

(1)(a) Except as provided in Subsection (b), shooting hours for upland game are as follows:

(i) Band-tailed Pigeon, Mourning Dove, White-winged Dove, and Sandhill Crane may be taken only between one-half hour before official sunrise through official sunset.

(ii) Sage-grouse, Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse, White-tailed Ptarmigan, Chukar Partridge, Hungarian Partridge, pheasant, quail, cottontail rabbit, and snowshoe hare may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official

sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the proclamation of the Wildlife Board for taking upland game.

(2) A person may not discharge a firearm on state owned lands adjacent to the Great Salt Lake, state waterfowl management areas or on federal refuges between official sunset through one-half hour before official sunrise.

**R657-6-11. State Parks.**

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of Parks and Recreation in Rule R651-614-4.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns or archery tackle is prohibited within one quarter mile of the above stated areas.

**R657-6-12. Falconry.**

(1)(a) Falconers must obtain an annual hunting or combination license and a valid falconry certificate of registration or license to hunt upland game and must also obtain:

(b) a Band-tailed Pigeon permit before taking Band-tailed Pigeon;

(c) a Sage-grouse permit before taking Sage-grouse;

(d) a Sharp-tailed Grouse permit before taking Sharp-tailed Grouse;

(e) a White-tailed Ptarmigan permit before taking White-tailed Ptarmigan; or

(f) a Sandhill Crane permit before taking Sandhill Crane.

(2) Areas open and bag and possession limits for falconry are provided in the proclamation of the Wildlife Board for taking upland game.

**R657-6-13. Baiting.**

(1) A person may not hunt upland game by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any upland game, except Sandhill Crane, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

**R657-6-14. Use of Motorized Vehicles.**

Motorized vehicle travel on all state wildlife management

areas is restricted to county roads and improved roads that are posted open.

**R657-6-15. Possession of Live Protected Wildlife.**

A person may not possess live, protected wildlife. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

**R657-6-16. Tagging Requirements.**

(1) The carcass of a Sandhill Crane, sage grouse, or Sharp-tailed Grouse must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue Sandhill Crane, sage grouse, or Sharp-tailed Grouse after any of the notches have been removed from the tag or the tag has been detached from the permit.

**R657-6-17. Identification of Species and Sex.**

One fully feathered wing must remain attached to each upland game bird and migratory game bird taken while it is being transported to allow species identification.

**R657-6-18. Waste of Upland Game.**

A person shall not kill or cripple any upland game without making a reasonable effort to retrieve the animal.

**R657-6-19. Utah Pheasant Project.**

(1) Boy Scouts, Girl Scouts, or youth enrolled in 4-H or FFA may collect and rear pheasants from eggs in nests destroyed by normal hay mowing operations. The 4-H club leader, FFA adviser or Scout Master shall first apply for and obtain a certificate of registration for this activity.

(2) Landowners or operators of mowing equipment may collect the eggs and possess them for no more than 24 hours for pick up by a person with a certificate of registration.

(3) Pheasants must be released by 16 weeks of age.

(4) These pheasants remain the property of the state of Utah.

**R657-6-20. Use of Dogs.**

(1) Dogs may be used to locate and retrieve upland game during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the Division.

(3) State wildlife management and waterfowl management areas are listed under Sections R657-6-9 and R657-6-10.

**R657-6-21. Closed Areas.**

A person may not hunt upland game in any area posted closed by the Division or any of the following areas:

(1) Salt Lake International Airport boundaries as posted.

(2) Incorporated municipalities: Most of the incorporated areas of Alta, a portion of Davis County, Garland City, Layton, Logan, Pleasant View City, South Ogden City, Syracuse City, West Jordan, and West Valley City are closed to the discharge of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.

(3) Wildlife Management Areas:

(a) Waterfowl management areas and federal refuges are open for hunting upland game only during designated waterfowl hunting seasons, including: Bear River National Wildlife Refuge, Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to upland game hunting.

(c) Goshen Warm Springs is closed to upland game hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

**R657-6-22. Live Decoys and Electronic Calls.**

A person may not take migratory game birds by the use or aid of live decoys, recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds.

**R657-6-23. Shipping or Exporting.**

(1) No person may transport upland game by the Postal Service or a common carrier unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds contained therein clearly and conspicuously marked on the outside of the container.

(2) A shipping permit issued by the Division must accompany each package containing upland game within or from the state.

(3) A person may export upland game or their parts from Utah only if:

(a) the person who harvested the upland game accompanies it and possess a valid license or permit corresponding to the tag, if applicable; or

(b) the person exporting the upland game or its parts, if it is not the person who harvested the upland game, has obtained a shipping permit from the Division.

**R657-6-24. Spotlighting.**

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

**R657-6-25. Season Dates, Bag and Possession Limits, and Areas Open.**

Season dates, bag and possession limits, areas open, and number of permits for taking upland game are provided in the proclamation of the Wildlife Board for taking upland game.

**KEY: wildlife, birds, rabbits, game laws**

**August 10, 2009**

**23-14-18**

**Notice of Continuation July 8, 2005**

**23-14-19**



**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 63G-3-201, 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;
- (6) obtain a certificate of registration to hunt with a crossbow or draw-lock; or
- (7) obtain a certificate of registration to use telescopic sights on a weapon when otherwise prohibited.

**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) "Crutches" means a staff or support designed to fit under or attach to each arm, including a walker, which improve a person's mobility that is otherwise severely restricted by a permanent physical injury or disability.
  - (c) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism attached to the device.
  - (d) "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 severely impedes a person's mobility.
  - (e) "Telescopic sights" means an optical or electronic sighting system that magnifies the natural field of vision beyond 1X and is used to aim a firearm, bow or crossbow.
  - (f) "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 any 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 from 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 include:

(i) a five day hunt immediately preceding the general any weapon buck deer season opening date published in the proclamation of the Wildlife Board for taking big game;

(A) the five day extension does not apply to general any weapon deer hunts with seasons less than nine days in duration; and

(ii) a one time, experimental hunt beginning November 7, 2009 and ending November 8, 2009.

(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 and Draw-Locks.**

(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 or draw-lock 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 or draw-lock:

(i) obvious physical disability, as provided in Subsection (1)(a), demonstrating the applicant is eligible to use a crossbow or draw-lock; 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;

(b) a bow with an attached electronic range finding device; or

(c) a bow with an attached telescopic sight, except as provided in R657-12-9.

(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 drawn and cocked crossbow or bow with a draw-lock may not be carried in or on a vehicle.

(6) Conventional bows equipped with a draw-lock and used to hunt big game must conform with the minimum draw weights, and arrow and broadhead restrictions contained in R657-5.

**R657-12-9. Telescopic Sights.**

(1) A person who has a permanent vision impairment leaving them with worse than 20/40 corrected visual acuity in the better eye may receive a Certificate of Registration to use telescopic sights; if in the professional opinion of the eye care provider telescopic sights will sufficiently mitigate the effects of the disability to enable the person to:

(a) adequately discern between lawful and unlawful wildlife species and species genders; and

(b) safely discharge a firearm or bow in the field.

(2) A person with a qualified vision impairment may obtain a Certificate of Registration from the Division to use telescopic sights by submitting a signed statement by a licensed ophthalmologist, optometrist or physician verifying that:

(a) the applicant has a permanent vision impairment resulting in worse than 20/40 corrected visual acuity in the better eye; and

(b) telescopic sights will sufficiently mitigate the effects of the vision impairment to enable the applicant to:

- (i) adequately discern between lawful and unlawful wildlife species and species genders; and
- (ii) safely discharge a firearm or bow in the field.

**KEY: wildlife, wildlife law, disabled persons**

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**63G-3-201**

**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 a reasonable timeframe.
- (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
- (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 by the applicant; and
  - (b) signed by the director or designee.
- (6)(a) The license agent authorization must be received by the Licensing Section in the Salt Lake Office within a reasonable timeframe 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 ten 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; or
  - (e) 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.

(f)(i) The division reserves the right to unilaterally and immediately modify monthly reporting or payment requirements when any License Agent is:

(A) in bankruptcy;

(B) insolvent;

(C) financially distressed;

(D) unable to meet reporting or payment obligations; or

(E) otherwise experiencing events or conditions that may compromise their ability to comply with reporting and payment obligations.

(ii) The division may require license funds to be transferred to the division more frequently than monthly, and may require the use of Automated Clearing House payments, Electronic Funds Transfer payments, or other expedited methods of payment.

**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 4, Title 63G, Utah Administrative Procedures Act, if the presiding officer determines that the license agent:

- (a) violated the terms of the license agent authorization;
- (b) fails to comply with reporting or payments obligations, becomes insolvent, declares bankruptcy, or shows indication of financial instability or any other sign that public funds are in jeopardy or potentially unrecoverable by 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.**

(1) It is unlawful for a license agent to sell wildlife documents in violation of the License Agent Authorization.

**R657-27-15. License Agent Authorization Subject to Change.**

(1) A license agent authorization issued or renewed by the division under this rule is a privilege and not a right. The license agent authorization 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 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.

**KEY: licensing, wildlife, wildlife law, rules and procedures August 10, 2009 23-19-15**

**Notice of Continuation April 4, 2007**

**R698. Public Safety, Administration.****R698-5. Hazardous Chemical Emergency Response Commission.****R698-5-1. Adoption, Title, Purpose, and Prohibitions.**

Pursuant to Section 63K-3-301(2), Utah Code Annotated 1953, the Department of Public Safety adopts minimum rules establishing a state hazardous chemical emergency response commission advisory committee, the creation, modification or dissolving of local emergency planning committees, and supervising the overall planning and direction of the local emergency planning committees.

**R698-5-2. Definitions.**

2.1 "Advisory Committee" means State Emergency Response Commission Advisory Committee.

2.2 "EPCRA" means Emergency Planning and Community Right-to-Know Act of 1986.

2.3 "LEPC" means Local Emergency Planning Committee.

2.4 "SERC" means State Hazardous Chemical Emergency Response Commission.

**R698-5-3. State Emergency Response Commission Advisory Committee.**

3.1 There is created by the Department of Public Safety, the State Hazardous Chemical Emergency Response Commission Advisory Committee, whose duties are to provide direction to the SERC in the following matters: the creation, modification or dissolving of local emergency planning committees; methods and procedures to improve the effectiveness of the LEPC; the review of LEPC hazardous materials emergency response plans; the development of procedures for collection, processing, use and public access to information submitted as required by EPCRA; procedures for the distribution of funding to each LEPC obtained through the US Department of Transportation Hazardous Materials Emergency Preparedness Grant; and assist in stated hazardous materials emergency response planning efforts.

3.2 The Advisory Committee's members shall be appointed by the SERC, shall serve four year terms, and shall consist of the following members:

3.2.1 A member representing the hazardous chemical transportation industry.

3.2.2 Two members representing fixed site regulated industries.

3.2.3 A member representing the environmental cleanup contractors.

3.2.4 A member representing the local health departments.

3.2.5 A member representing the urban LEPC.

3.2.6 A member representing the rural LEPC.

3.2.7 A member representing the Hazardous Materials Advisory Council.

3.2.8 A member representing established environmental interest groups.

3.2.9 Two members from the general public.

3.3 The Advisory Committee shall meet quarterly or as directed, and a majority of the members shall be present to constitute a quorum.

3.4 The Advisory Committee shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the first quarter of each calendar year. If voted upon by the Advisory Committee, the vice chair will become the chair the next succeeding calendar year.

3.5 If an Advisory Committee member has two or more unexcused absences during a 12 month period, from regularly scheduled meetings, it is considered grounds for dismissal pending review by the SERC.

3.6 A member of the Advisory Committee that cannot be in attendance, may have a representative of their respective organization attend and vote by proxy for that member or the member may have another Advisory Committee member vote by proxy, if submitted and approved by the chair prior to the meeting.

3.7 The Chair or Vice Chair of the Advisory Committee shall report to the SERC the activities of the Advisory Committee at regularly scheduled SERC meetings. A member of the Advisory Committee may report to the SERC the activities of the Advisory Committee in the absence of the Chair or Vice Chair.

3.8 The Advisory Committee shall consider all subjects presented to them, subjects assigned to them by the SERC, and shall report their recommendations to the SERC at scheduled SERC meetings.

3.9 One-half of the members of the Advisory Committee shall be reappointed or replaced by the SERC every two years. When a vacancy occurs in the Advisory Committee, a replacement shall be appointed by the SERC to complete the remainder of the term.

3.10 Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3.10.1 Members may decline to receive per diem and expenses for their service.

3.11 State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3.11.1 State government officer and employee members may decline to receive per diem and expenses for their service.

3.12 Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3.12.1 Local government members may decline to receive per diem and expenses for their service.

**R698-5-4. Local Emergency Planning Committee.**

4.1 The creation, modification or dissolving of an LEPC shall be approved by the SERC.

4.2 The LEPC shall coordinate its overall planning and direction with the SERC. The SERC shall supervise the overall planning and direction of the LEPC.

4.3 The LEPC shall submit a copy of their hazardous materials emergency response plan to the SERC for review.

4.4 The SERC shall approve the amount of US Department of Transportation Hazardous Materials Emergency Preparedness Grant funding to be given to each LEPC and shall establish criteria for that funding to be awarded.

**KEY: state emergency response commission**

**August 26, 2009**

**63K-3-301**

**R714. Public Safety, Highway Patrol.****R714-600. Performance Standards for Tow-Truck Motor Carriers.****R714-600-1. Authority and Purpose.**

Pursuant to Subsection 41-6a-1405(1) which directs law-enforcement officers to remove vehicles found upon a road or highway, and Subsection 53-1-106(1) which require that rules set performance standards for towing companies used by the department, this rule sets a procedure for coordinated dispatch services.

**R714-600-2. Definitions.**

As used in this rule:

(1) "Participating Carrier" means a tow-truck motor carrier as defined in Section 72-9-102 and certified under Section 72-9-601, that agrees to accept a rotation-dispatch notification to provide non-preference vehicle towing services, as requested by law-enforcement officers.

(2) "Contractor" means a tow-truck motor carrier owner/operator authorized by the department to operate a rotation-dispatch service to coordinate non-preference vehicle towing service in accordance with this rule.

(3) "Department" means the Utah Department of Public Safety.

(4) "Non-preference vehicle-towing service" means the removal and towing of motor vehicles by tow-truck motor carriers when requested by a law-enforcement officer, at times when a vehicle's owner/operator has not consented to, nor selected a tow-truck motor carrier to provide towing services in response to a:

(a) law-enforcement officer's call for rotation-dispatched non-preference vehicle towing;

(b) call initiated by a governmental entity, in accordance with Chapter 41-1(a), or

(c) notification or call for non-consent towing services.

**R714-600-3. Non-Preference Vehicle Towing.**

(1) The department may authorize rotation-dispatch towing services in specific areas of the state.

(2) The contractor shall operate a rotation-dispatch program by agreement with carriers who agree to accept rotation-dispatch notifications to provide non-preference vehicle towing services.

(3) In addition to fees provided under rules promulgated by the Utah Department of Transportation, the contractor may charge participating carriers a coordinated rotation-dispatch fee of up to \$10 per/call.

(4) The department may rescind this rule at any time as deemed necessary.

**KEY: towing, motor carrier, law enforcement****April 15, 1999****41-6a-1405****Notice of Continuation August 3, 2009****53-1-106(1)**





**R986. Workforce Services, Employment Development.****R986-200. Family Employment Program.****R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.**

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

**R986-200-202. Family Employment Program (FEP).**

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least \$500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

- (a) receipt of disability benefits from SSA;
- (b) 100% disabled by VA; or
- (c) by submitting a written statement from:
  - (i) a licensed medical doctor;
  - (ii) a doctor of osteopathy;
  - (iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(iv) a licensed Advanced Practice Registered Nurse; or  
 (v) a licensed Physician's Assistant.  
 (d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning \$500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

**R986-200-203. Citizenship and Alienage Requirements.**

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

- (a) who is paroled into the United States under section

212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

**R986-200-204. Eligibility Requirements.**

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting and sign a FEP Agreement within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

**R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.**

The amount of financial assistance for an eligible household is based on the size of the household assistance unit

and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as

income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

#### **R986-200-206. Participation Requirements.**

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:

(i) establish the paternity of all minor children; and

(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to

be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

**R986-200-207. Participation in Child Support Enforcement.**

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18;

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;

(c) is emancipated by marriage or court order;

(d) is a member of the armed forces of the United States;

or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits; or

(c) the client is participating in FEPTP.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial

assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, illegal alien, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

**R986-200-208. Good Cause for Not Cooperating With ORS.**

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records; or

(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the

client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

- (a) the client's present emotional health and history;
- (b) the intensity and probable duration of the resulting impairment;
- (c) the degree of cooperation required; and
- (d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

#### **R986-200-209. Participation in Obtaining an Assessment.**

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

- (a) family circumstances including health, needs of the children, support systems, and relationships;
- (b) personal needs or potential barriers to employment;
- (c) education;
- (d) work history;
- (e) skills;
- (f) financial resources and needs; and
- (g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

#### **R986-200-210. Requirements of an Employment Plan.**

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

- (a) an expected outcome;
- (b) an anticipated completion date;
- (c) the number of participation hours agreed upon per week; and
- (d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

- (i) promptly register for work and commence a search for employment for a specified number of hours each week; and
- (ii) regularly submit a report to the Department on:
  - (A) how much time was spent in job search activities;
  - (B) the number of job applications completed;
  - (C) the interviews attended;
  - (D) the offers of employment extended; and
  - (E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the

employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

#### **R986-200-211. Education and Training As Part of an Employment Plan.**

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the

family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the minimum number of hours of participation under this subsection is 20 hours per week and all of those 20 hours must be in priority activities.

(5) Graduate work can never be approved or supported as part of an employment plan.

#### **R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.**

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) The employment counselor will attempt to discuss compliance with the client and explore solutions. If compliance is not resolved the counselor will move to the second phase.

(2) In the second phase, the employment counselor will request a meeting with the client, the employment counselor, the counselor's supervisor and any other Department or allied entity representatives, if appropriate, who might assist in encouraging participation. If the client does not attend the meeting, the meeting will be held in the client's absence. A formal meeting with the client is not required for a third or subsequent occurrence. If a resolution cannot be reached, one of the following will occur:

(a) for the first occurrence, the client's financial assistance payment will be reduced by \$100 for one month. The reduction will occur in the month following the month the determination was made. If the client does not participate during the \$100 reduction month, financial assistance will be terminated beginning the month following the \$100 reduction month.

(b) for the second occurrence, the client's financial assistance payment will be terminated and the client will be ineligible for financial assistance for one month. If the client re-applies during the one month termination period, the new application will be denied for non-participation. If the client re-applies after the one month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(c) for the third and subsequent occurrences the client's financial assistance will be terminated beginning with the month following the determination by the employment counselor that the client is not participating. The client will be ineligible for financial assistance for two months and if the client re-applies during the two month period, the new application will be denied for non-participation. If the client re-applies after the two month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to participate during the two week trial period.

(4) The occurrences are life-time occurrences and it does not matter how much time elapses between occurrences. If a client's assistance was reduced as provided in (2)(a) of this section three years ago, for example, the next occurrence will be treated as a second occurrence.

(5) The two week trial period may be waived only if the

client has cured all previous participation issues prior to re-application.

(6) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(7) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant on the first and all subsequent occurrences. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(8) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(9) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(10) If a client is also receiving food stamps and the client's is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

#### **R986-200-213. Financial Assistance for a Minor Parent.**

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is

included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

#### **R986-200-214. Assistance for Specified Relatives.**

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great- great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated; and

(m) former stepparents.

(2) The Department shall require compliance with Section 30-1-4.5

(3) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated,

(b) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(c) The child must be currently living with, and not just visiting, the specified relative;

(d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(e) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(4) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(5) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(6) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(7) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(8) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

**R986-200-215. Family Employment Program Two Parent Household (FEPTP).**

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household. Eligible refugee households with two able-bodied parents and at least one dependent child, must first exhaust RRP benefits before considering eligibility for FEPTP.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8).

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determined by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP. However, if the client requests a hearing within ten days of the termination, payment of financial assistance based on participation of both parents in eligible activities can continue during the hearing process as provided in R986-100-134.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

**R986-200-216. Diversion.**

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

(a) the applicant's employment history;  
 (b) the likelihood that the applicant will obtain immediate full-time employment;

(c) the applicant's housing stability; and  
 (d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforeseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the

client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment may not exceed three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating the appropriate diversion payment amount.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made and the client later decides to reapply for financial assistance within three months of the date of the original application, the initial application date will be used and the amount of the diversion payment previously issued will be prorated over the three months and subtracted from the payment(s) to which the household unit is eligible.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

**R986-200-217. Time Limits.**

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) the first diversion period in any 12 month period of time is not counted toward the 36 month time limit. A second and all subsequent diversion periods within 12 months will count as one month toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one



of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

**R986-200-218. Exceptions to the Time Limit.**

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTD during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent

claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment;

or

(f) neglect or deprivation of medical care.

(3) An exception to the time limit can be granted for a maximum of an additional 24 months if:

(a) during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage; and

(b) If, at the end of the 24-month extension, the parent client qualifies for an extension under Sections (1) or (2) of this rule, an additional extension can be granted under the provisions of those sections.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions are subject to a review at least once every six months.

**R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.**

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of \$450 for rent on April 1 and requests an additional EA payment of \$300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed \$450 per family for one month's rent payment or \$700 per family for one month's mortgage payment, and \$300 for one month's utilities payment.

**R986-200-220. Mentors.**

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

- (a) develop life skills;
- (b) implement an employment plan; or
- (c) obtain services and support from:
  - (i) the volunteer mentor;
  - (ii) the Department; or
  - (iii) civic organizations.

**R986-200-230. Assets Counted in Determining Eligibility.**

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets.

Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed \$2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

**R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.**

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over \$1,000, then only that item is counted toward the \$2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of \$1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the \$1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at \$1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of \$1,500. Any amount over \$1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as

income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

- (16) any other property exempt under federal law.

**R986-200-232. Considerations in Evaluating Real Property.**

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

**R986-200-233. Considerations in Evaluating Household Assets.**

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

**R986-200-234. Income Counted in Determining Eligibility.**

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

**R986-200-235. Unearned Income.**

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed \$30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Income to tribal members derived from privately owned land is not exempt;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of \$30 can be allowed for:

- (i) taxes;
- (ii) attorney fees expended to make the rental income available;
- (iii) upkeep and repair costs necessary to maintain the current value of the property; and
- (iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;
- (k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;
- (l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;
- (m) federal and state income tax refunds and earned income tax credit payments;
- (n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;
- (o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;
- (p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;
- (q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and
- (r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

**R986-200-236. Earned Income.**

- (1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.
- (2) Countable earned income includes:
  - (a) wages, except Americorps\*Vista living allowances are not counted;
  - (b) salaries;
  - (c) commissions;
  - (d) tips;
  - (e) sick pay which is paid by the employer;
  - (f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;
  - (g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;
  - (h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;
    - (i) training incentive payments and work allowances; and
    - (j) earned income of dependent children.
- (3) Income that is not counted as earned income:
  - (a) income for an SSI recipient;
  - (b) reimbursements from an employer for any bona fide work expense;
  - (c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

- (d) Earned Income Tax Credit (EITC) payments.

**R986-200-237. Lump Sum Payments.**

- (1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.
- (2) The following lump sum payments are not counted as income or assets:
  - (a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and
  - (b) insurance settlements for destroyed exempt property when used to replace that property.
- (3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.
- (4) The net lump sum is the portion of the lump sum that is remaining after deducting:
  - (a) legal fees expended in the effort to make the lump sum available;
  - (b) payments for past medical bills if the lump sum was intended to cover those expenses; and
  - (c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.
- (5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

**R986-200-238. How to Calculate Income.**

- (1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.
- (2) The methods used for estimating income are:
  - (a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and
  - (b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.
- (3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.
- (4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

**R986-200-239. How to Determine the Amount of the Financial Assistance Payment.**

- (1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of \$100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the Department. The current amount is in the table that follows:

TABLE

| Household Size | Payment Amount |
|----------------|----------------|
| 1              | \$288          |
| 2              | \$399          |
| 3              | \$498          |
| 4              | \$583          |
| 5              | \$663          |
| 6              | \$731          |
| 7              | \$765          |
| 8              | \$801          |

Amounts for household sizes larger than 8 are available at all Department offices.

**R986-200-240. Additional Payments Available Under Certain Circumstances.**

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive \$60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of \$15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of \$300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program or who are eligible for TANF non-FEP training under R986-200-245 and who participate in the HS/GED Pilot Program. The payment of these funds is completely discretionary by the Department and may differ from region to region. The payments may continue until the client completes the HS/GED Pilot Program even if the client is no longer receiving FEP.

**R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.**

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the

SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

**R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.**

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

**R986-200-243. Counting the Income of Sponsors of Eligible Aliens.**

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of \$175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

**R986-200-244. TANF Needy Family (TNF).**

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 200% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

**R986-200-245. TANF Non-FEP Training (TNT).**

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency

without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

#### **R986-200-246. Transitional Cash Assistance.**

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a reduction or termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA, and

(b) be employed an average of 30 hours per week for FEP households. The parents in a FEPTP household cannot combine hours for TCA. Each parent must be employed 30 hours per week.

(3) TCA is only available if the customer verifies employment averaging the minimum required in subparagraph (2)(b) of this section.

(4) TCA is available for a maximum of three months.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(6) A client can only receive TCA once in any 24 month period. This time limit applies regardless of how many months of TCA a client received.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

#### **R986-200-250. Basic Education Training Provider.**

(1) Basic education funds can only be provided to training providers approved by the Department.

(2) This section applies to basic education providers receiving funds from the Department including WIA funds under R986-600.

#### **R986-200-251. Types of Basic Education Training Providers and Approval Requirements.**

(1) Public schools governed by the Utah State Office of Education (USOE) must complete and submit Application "A" to the Department.

(2) Individuals offering youth tutoring personally, and not as an employee of another business or school, must be over 18 years of age, submit Application "B" and provide all of the following;

(a) a birth certificate,

(b) a current BCI background check results for Utah, from the Utah Department of Public Safety, paid for by the individual. The BCI report cannot contain:

(i) any matters involving an alleged sexual offense;

(ii) any matters involving an alleged felony or class A misdemeanor drug offense; or

(iii) any matters involving an alleged offense against the person under Utah State Code Title 76 Chapter 5, Offenses Against the Person.

(c) a resume with tutoring-related work history or subject matter knowledge,

(d) three letters of recommendation addressing suitability as a tutor, and

(e) an approved grievance procedure for clients to use in making complaints.

(3) All other providers must submit Application "C" and;

(a) have been in business in Utah for at least one year;

(b) meet all state and local licensing requirements;

(c) have a satisfactory record with the Better Business Bureau;

(d) submit evidence of financial stability prepared by a certified public accountant (CPA) using generally accepted accounting principles. The evidence must include at least one of the following:

(i) balance sheet, income statement and a statement of changes in financial position;

(ii) copy of the most recent annual business audit; or

(iii) copies of each owner's most recent personal income tax return.

(e) submit a current Utah Business License showing at least one year in business, and

(f) submit an approved grievance procedure for clients to use in making complaints.

(g) ESL training providers must also submit documentation of registration as a Postsecondary Proprietary School with the Utah Division of Consumer Protection or show an exemption from such registration.

(h) Providers offering high school credit must also provide documentation of accreditation through Utah State Office of Education and Northwest Association of Accredited Schools.

(4) Training providers submitting Application "B" or "C" must provide the following information for each training program for which the provider is seeking approval:

(a) program completion rates for all individuals enrolled;

(b) the type of certification students completing the program will obtain;

(c) the percentage rate of certification attained by program graduates; and

(d) program costs including tuition, fees and refund policy.

(5) A training provider approved under R986-600-652 can be approved for its basic education curriculum upon submission and approval of the information required in subsection (4) of this section. However, public schools governed by Title IV of the Higher Education Act of 1965 (20 USCA 1070 et seq.) or the Utah State Office of Education (USOE) approved as providers under R986-600-652 do not need to submit the information required in subsection (4) of this section.

#### **R986-200-252. Renewal and Revocation of Approval for Training Providers.**

(1) Once a provider has been approved, the Department will establish a review date for that provider and notify the provider of the review date. The Department will determine at the time of the review if the provider is still eligible for

approved provider status and notify the provider of that determination. At the time of review, the provider is required to provide any and all information requested by the Department which the Department has determined is necessary to allow the provider to continue to be an approved provider. This may include completing necessary forms, providing documentation and verification, and returning the Department's telephone calls. The requests for information must be completed within the time frame specified by the Department. If the Department determines as a result of the review that the provider is no longer eligible for approved provider status, the provider will be removed from the approved provider list.

(2) Providers must retain participant program records for three years from the date the participant completes the program.

(3) A provider who is not on the Department's approved provider list is not eligible for receipt of Department funds. A provider will be removed from the eligible provider list if the provider:

(a) does not meet the performance levels established by the Department including providing training services in a professional and timely manner;

(b) has committed fraud or violated applicable state or federal law, rule, or regulation;

(c) intentionally supplies inaccurate student or program performance information;

(d) fails to complete the review process; or

(e) has lost approval, accreditation, licensing, or certification from any of the following:

(i) Utah Division of Consumer Protection,

(ii) USOE,

(iii) Northwest Association of Accredited Schools, or

(iv) any other required approval, accrediting, licensing, or certification body.

(4) Some providers who have been removed from the eligible provider list may be eligible to be placed back on the list as follows:

(a) a provider who was removed for failure to meet performance levels may reapply for approval if the provider can prove it can meet performance levels;

(b) there is a lifetime ban for a provider who has committed fraud as a provider;

(c) providers removed for other violations of state or federal law will be suspended:

(i) until the provider can prove it is no longer in violation of the law for minor violations;

(ii) for a period of two years for serious violations or supplying inaccurate student or program performance information; or

(iii) for the lifetime of the provider for egregious violations. The seriousness of the violation will be determined by the Department.

**R986-200-253. Training Provider's Right to Appeal a Denial or Revocation of Approval.**

(1) Training providers will be notified in writing of a decision to deny an application for approval as a basic education training provider or a decision to revoke prior approval. The notice will inform the provider of its right to file a written appeal, where the appeal should be sent, and the deadline for filing an appeal.

(2) A hearing on the appeal will be held by the Department's Appeals Unit following the procedure in R986-100.

**KEY: family employment program**

**August 26, 2009**

**35A-3-301 et seq.**

**Notice of Continuation September 14, 2005**



**R986. Workforce Services, Employment Development.****R986-300. Refugee Resettlement Program.****R986-300-301. Authority for the Refugee Resettlement Program (RRP) and Other Applicable Rules.**

(1) The Department provides services to eligible refugees pursuant to 45 CFR 400 and 45 CFR 401 et seq., (2000) which are incorporated herein by reference.

(2) The Department has opted to operate a Publicly-Administered Refugee Cash Assistance Program as provided in 45 CFR 400.65 through 400.68.

(3) Rule R986-100 applies to RRP.

(4) Applicable provisions of R986-200 apply to RRP except as noted in this rule.

**R986-300-302. Refugee Resettlement Program (RRP).**

(1) RRP provides resettlement assistance to refugees to help them achieve economic self-sufficiency within the shortest possible time after entry into the state.

(2) Financial and medical assistance may be provided to eligible refugees who meet the time limit requirements of R986-300-306 as funding permits.

(3) Refugee Social Services as identified in 45 CFR 400.154, and 400.155 may be provided to eligible refugees who meet the eligibility requirements of 45 CFR 400.152.

(4) Refugee child welfare services will be provided to refugee unaccompanied minor children in accordance with 45 CFR 400 Subpart H.

(5) The following definitions apply to RRP:

(a) "Appropriate employment" means employment that pays a wage which meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate.

(b) "Good cause" for quitting or refusing work can be established if the client shows:

(i) the job is vacant due to a strike, lockout, or other genuine labor dispute;

(ii) the client is required to work contrary to his membership in the union governing that occupation;

(iii) the employment was deemed a risk to the health or safety of the worker;

(iv) the employment lacked Workers' Compensation Insurance; or

(v) the individual is unable to engage in employment for physical reasons or lack of child care or transportation.

**R986-300-303. Eligibility, Income Standards, and Amount of Assistance.**

(1) An applicant for RRP must provide proof, in the form of documentation issued by the USCIS, of being or having been:

(a) paroled as a refugee or asylee under Section 212(d)(5) of the INA;

(b) admitted as a refugee under Section 207 of the INA;

(c) granted asylum under Section 208 of the INA;

(d) a Cuban or Haitian entrant, in accordance with the requirements of 45 CFR Part 401;

(e) certain Amerasians from Vietnam who are admitted to the United States as immigrants pursuant to Public Law 100-202 and Public Law 100-461;

(f) a victim of trafficking;

(g) admitted for permanent residence, provided the individual previously held one of the statuses listed in (a) through (f) of this section; or

(h) admitted for permanent residence under Special Immigrant Visas and provided benefits under federal law and in accordance with that federal law.

(2) The following aliens are not eligible for assistance:

(a) an applicant for asylum unless otherwise provided by federal law;

(b) humanitarian parolees;

(c) public interest parolees; and

(d) conditional entrants admitted under Section 203(a)(7) of the INA.

(3) Refugees who are single parents, two parents with one parent who is incapacitated, or specified relatives with dependent children must meet the eligibility and participation requirements, including cooperating with ORS to establish paternity and establish and enforce child support, of FEP and will be paid financial assistance under that program. All other refugees, including refugee households with two able-bodied parents and at least one dependent child, will be paid financial assistance under the RRP and must meet the federal RRP participation requirements.

(4) An applicant for RRP who voluntarily quit or refused appropriate employment without good cause within 30 calendar days prior to the date of application is ineligible for financial assistance for 30 days from the date of the voluntarily quit or refusal of employment. If the applicant is living with a spouse who is ineligible, the income and assets of the ineligible refugee will be counted in determining eligibility but the amount of financial assistance payment will be made as if the household had one less member.

(5) Refugees who are 65 years of age or older will be referred to SSA to apply for assistance under the SSI program.

(6) Income and asset eligibility and the amount of financial assistance available is determined under FEP rules, R986-200-230 through R986-200-240.

(7) If an otherwise eligible client demonstrates an urgent and immediate need for financial assistance, payment will be made on an expedited basis.

**R986-300-304. Participation Requirements.**

(1) All refugee applicants must comply with the assessment and employment plan requirements in R986-200-207 and R986-200-209. If the assessment cannot be completed or an employment plan negotiated and signed within the time proscribed because of a lack of staff with language skills, the application shall be approved, the assessment completed, and employment plan negotiated and signed as soon as possible.

(2) The goal of participation is to promote family economic self-sufficiency and social adjustment within the shortest possible time after entrance to the state to enable the family to become self-supporting through the employment of one or more members of the family.

(3) If a refugee claims an inability to participate due to incapacity, medical proof is required. Acceptable proof is the same as for FEP found in R986-200-202(3).

(4) Refugees 65 years of age or older, blind, or disabled, are exempt from the work participation requirements of FEP or RRP.

(5) In addition to the requirements of an employment plan as found in R986-200-210, a refugee must, as a condition of receipt of financial assistance:

(a) unless already employed full time, register for work with the Department within 30 days of receipt of refugee financial assistance and participate in employment activities as required by the Department and other appropriate agency providing employment services;

(b) accept any and all offers of appropriate employment as determined by the Department or the local resettlement agency which was responsible for the initial resettlement of the refugee; and

(c) participate in any available social adjustment service or targeted assistance activities determined to be appropriate by the Department or the local resettlement agency which was responsible for the initial resettlement of the refugee.

(6) Education and training cannot be approved for any program which cannot be completed within one year.

(7) English language instruction funded under RRP must be provided concurrently with employment or employment related services.

**R986-300-305. Failure to Comply with an Employment Plan.**

(1) If a client who is required to participate in an employment plan consistently fails to show good faith in complying with the employment plan, the client is required to participate in the conciliation process in R986-200-212 with the following exceptions:

(a) the client will be disqualified for a period of three months for the first occurrence and six months for the second occurrence. There is no reduction period as provided in R986-200-212(2),

(b) because the disqualification period for RRP is a time certain, there is no trial period as provided in R986-200-212(2), (3), and (5).

(2) If there are other household members included in the financial assistance payment, the other household members will continue to receive assistance provided those household members are eligible and complying with all of the requirements of RRP.

(3) If eligible, food stamps and medical assistance may be continued for the person who is disqualified for failure to comply with the requirements of an employment plan.

**R986-300-306. Time Limits.**

(1) Except as provided in paragraph (2) below, a refugee is eligible for financial assistance only during the first eight months after entry into the United States, regardless of when the refugee applies for financial assistance. Financial assistance cannot be paid for any months prior to the date of application.

(2) An asylee's entry date is determined to be the date that the individual was granted asylum in the United States.

(3) The date of entry for a victim of trafficking is established by the certification date.

**KEY: refugee resettlement program  
August 26, 2009  
Notice of Continuation September 14, 2005**

**35A-3-103**

**R994. Workforce Services, Unemployment Insurance.****R994-403. Claim for Benefits.****R994-403-101a. Filing a New Claim.**

(1) A new claim for unemployment benefits is made by filing with the Department of Workforce Services Claims Center. A new claim can be filed by telephone, completing an application at the Department's web site, or as otherwise instructed by the Department.

(2) The effective date of a new claim for benefits is the Sunday immediately preceding the date the claim is filed, provided the claimant did not work full-time during that week, or is not entitled to earnings equal to or in excess of the WBA for that week. A claim for benefits can only be made effective for a prior week if the claimant can establish good cause for late filing in accordance with R994-403-106a.

(3) When a claimant files a new claim during the last week of a quarter and has worked less than full-time for that week, the Department will make the claim effective that week if it is advantageous to the claimant, even if the claimant has earnings for that week that are equal to or in excess of the WBA.

(4) Wages used to establish eligibility for a claim cannot be used on a subsequent claim.

**R994-403-102a. Cancellation of Claim.**

(1) Once a weekly claim has been filed and the claimant has been deemed monetarily eligible, the claim is considered to have been established, even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah unless the claim is canceled.

(2) A claim may be canceled if the claimant requests that the claim be canceled and one of the following circumstances can be shown:

(a) no weekly claims have been filed;

(b) cancellation is requested prior to the issuance of the monetary determination;

(c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant returns any benefits that have been paid;

(d) the claimant had earnings, severance, or vacation payments equal to or greater than the WBA applicable to all weeks for which claims were filed;

(e) the claimant meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);

(f) the claimant meets the requirements for cancellation established under the provisions for combined wage claims in R994-106-107; or

(g) the claimant has filed an unemployment compensation for ex-military (UCX) claim, and it is determined the claimant does not have wage credits under Title 5, chapter 85, U.S. Code.

(3) If a claimant is disqualified from the receipt of unemployment benefits because he or she was discharged for a crime in connection with work under R994-405-210, whether the claimant was deemed monetarily eligible or not, the claim will be established for 52 weeks and cannot be canceled even if the requirements of subsection (2) have been satisfied.

**R994-403-103a. Reopening a Claim.**

(1) A claim for benefits is considered "closed" when a claimant reports four consecutive weeks of earnings equal to or in excess of the WBA or does not file a weekly claim within 27 days from the last week filed. In those circumstances, the claimant must reopen the claim before benefits can be paid.

(2) A claimant may reopen the claim any time during the 52-week period after first filing by contacting the Claims Center. The effective date of the reopened claim will be the Sunday immediately preceding the date the claimant requests reopening

unless good cause is established for failure to request reopening during a prior week in accordance with R994-403-106a.

**R994-403-104g. Using Unused Wages for a Subsequent Claim.**

(1) A claimant may have sufficient wage credits to monetarily qualify for a subsequent claim without intervening employment.

(2) Before payment can be made on a subsequent claim using those unused wages, each of the following elements must be satisfied:

(a) the claimant must have performed work in covered employment after the effective date of the original claim, but not necessarily during the benefit year of the original claim;

(b) actual services must have been performed. Vacation, severance pay, or a bonus cannot be used to requalify;

(c) the claimant must have earnings from covered employment, as defined in R994-201-101(9), equal to at least six times the WBA of the original or subsequent claim, whichever is lower;

(d) the claimant must have actually received benefits during the preceding benefit year; and

(e) benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA.

**R994-403-105a. Filing Weekly Claims.**

(1) Claims must be filed on a weekly basis. For unemployment benefit purposes, the week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. The claimant is the only person who is authorized to file weekly claims. The responsibility for filing weekly claims cannot be delegated to another person.

(2) Each weekly claim should be filed as soon as possible after the Saturday week ending date. If the claim has not been closed, the Department will allow 20 days after the week ending date to file a timely claim. A weekly claim filed 21 or more calendar days after the week ending date will be denied unless good cause for late filing is established in accordance with R994-403-106a.

**R994-403-106a. Good Cause for Late Filing.**

(1) Claims must be filed timely to insure prompt, accurate payment of benefits. Untimely claims are susceptible to errors and deprive the Department of its responsibility to monitor eligibility. Benefits may be paid if it is determined that the claimant had good cause for not filing in a timely manner.

(2) The claimant has the burden to establish good cause by competent evidence. Good cause is limited to circumstances where it is shown that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable. Some reasons for good cause for late filing may raise other eligibility issues. Some examples that may establish good cause for late filing are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed;

(b) hospitalization or incarceration; or

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim.

(3) The Department is the only acceptable source of information about unemployment benefits. Relying on inaccurate advice from friends, relatives, other claimants or similar sources does not constitute good cause.

(4) Good cause for late filing cannot extend beyond 65 weeks from the filing date of the initial claim.

**R994-403-107b. Registration, Workshops, Deferrals - General Definition.**

(1) A claimant must register for work with the Department, unless, at the discretion of the Department, registration is waived or deferred.

(2) The Department may require attendance at workshops designed to assist claimants in obtaining employment.

(3) Failure, without good cause, to comply with the requirements of Subsections (1) and (2) of this section may result in a denial of benefits. The claimant has the burden to establish good cause through competent evidence. Good cause is limited to circumstances where it is shown that the failure to comply was due to circumstances beyond the control of the claimant or which were compelling and reasonable. The proof of inability to register or report may raise an able or available issue.

(4) The denial of benefits begins with the week the claimant failed to comply and ends with the week the claimant contacts the Department and complies by either registering for work, reporting as required, or scheduling an appointment to attend the next available workshop or conference. The denial can be waived if the Department determines the claimant complied within a reasonable amount of time.

#### **R994-403-108b. Deferral of Work Registration and Work Search.**

(1) The Department may elect to defer the work registration and work search requirements. A claimant placed in a deferred status is not required to actively seek work but must meet all other availability requirements of the act. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

A claimant who is unemployed due to a labor dispute may be deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, the claimant must register for work immediately.

(b) Union Attachment.

A claimant who is a union member in good standing, is on the out-of-work list, or is otherwise eligible for a job referral by the union, and has earned at least half of his or her base period earnings through the union, may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate a reasonable expectation of obtaining employment through the union.

(c) Employer Attachment.

A claimant who has an attachment to a prior employer and a date of recall to full-time employment within ten weeks of filing or reopening a claim may have the work registration requirement deferred to the expected date of recall. The deferral should not extend longer than ten weeks.

(d) Three Week Deferral.

A claimant who accepts a definite offer of full-time work to begin within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in the claimant's primary base period occupation and other suitable work is not available in the area.

(2) Deferrals cannot be granted if prohibited by state or federal law for certain benefit programs.

#### **R994-403-109b. Profiled Claimants.**

(1) The Department will identify individuals who are likely to exhaust unemployment benefits through a profiling system and require that they participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) In order to avoid disqualification for failure to participate in reemployment services, the claimant must show good cause for nonparticipation. Good cause for nonparticipation is established if the claimant can show:

(a) completion of equivalent services within the 12 month period immediately preceding the date the claimant is scheduled for reemployment services; or

(b) that the failure to participate was reasonable or beyond the claimant's control.

(3) Failure to participate in reemployment services without good cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week the claimant contacts the Employment Center to arrange participation in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

#### **R994-403-110c. Able and Available - General Definition.**

(1) The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other eligibility criteria but, if the claimant cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed.

(2) A claimant must be attached to the labor force, which means the claimant can have no encumbrances to the immediate acceptance of full-time work. The claimant must:

(a) be actively engaged in a good faith effort to obtain employment; and

(b) have the necessary means to become employed including tools, transportation, licenses, and childcare if necessary.

(3) The continued unemployment must be due to the lack of suitable job opportunities.

(4) The only exception to the requirement that a claimant actively seek work is if the Department has approved schooling under Section 35A-4-403(2) and the claimant meets the requirements of R994-403-107b.

(5) The only exception to the requirements that the claimant be able to work and actively seeking full-time work are that the claimant meets the requirements of R994-403-111c(6).

#### **R994-403-111c. Able.**

(1) The claimant must have no physical or mental health limitation which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his or her last employment, there is a presumption of inability to work which the claimant must overcome by competent evidence. The claimant must show that there is a reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(2) For purposes of determining weekly eligibility for benefits, it is presumed a claimant who is not able to work more than one-half the normal workweek will be considered not able to perform full-time work. The normal workweek means the normal workweek in the claimant's occupation. A claimant will be denied under this section for any week in which the claimant refuses suitable work due to an inability to work, regardless of the length of time the claimant is unable to work.

(a) Past Work History.

Benefits will not be denied solely on the basis of a physical or mental health limitation if the claimant earned base period wages while working with the limitation and is:

(i) willing to accept any work within his or her ability;

(ii) actively seeking work consistent with the limitation;

and

(iii) otherwise eligible.

Under these circumstances, the unemployment is considered to be due to a lack of employment opportunities and not due to an inability to work.

## (b) Medical Verification.

When an individual has a physical or mental health limitation, medical information from a competent health care provider is one form of evidence used to determine the claimant's ability to work. The provider's opinion is presumed to be an accurate reflection of the claimant's ability to work, however, the provider's opinion may be overcome by other competent evidence. The Department will determine if medical verification is required.

## (3) Temporary Disability.

## (a) Employer Attached.

A claimant is not eligible for benefits if the claimant is not able to work at his or her regular job due to a temporary disability and the employer has agreed to allow the claimant to return to the job when he or she is able to work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work the claimant is capable of performing with the disability. If a claimant is precluded from working due to Federal Aviation Administration regulations because of pregnancy, and the employer has agreed to allow the claimant to return to the job, the claimant is considered to be on a medical leave of absence and is not eligible for benefits.

## (b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he or she is again able to work, or the temporary disability occurred after becoming unemployed, benefits may be allowed even though the claimant cannot work in his or her regular occupation if the claimant can show there is work the claimant is capable of performing and for which the claimant reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

## (4) Hospitalization.

A claimant is unable to work if hospitalized unless the hospitalization is on an out-patient basis or the claimant is in a rehabilitation center or care facility and there is independent verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation.

## (5) Workers' Compensation.

## (a) Compensation for Lost Wages.

A claimant is not eligible for unemployment benefits while receiving temporary total disability workers' compensation benefits.

## (b) Subsequent Awards.

The Department may require that a claimant who is receiving permanent partial disability benefits from workers' compensation show that he or she is able and available for full-time work and can reasonably expect to obtain full-time work even with the disability.

(c) Workers' compensation disability payments are not reportable as wages.

## (6) Physical or Mental Health Limitation.

(a) A claimant who is not able to work full-time due to a physical or mental health limitation, may be considered eligible under this rule if:

(i) the claimant's base period employment was limited to part-time because of the claimant's physical or mental health limitations;

(ii) the claimant's prior part-time work was substantial. Substantial is defined as at least 50 percent of the hours customarily worked in the claimant's occupation;

(iii) the claimant is able to work at least as many hours as he or she worked prior to becoming unemployed;

(iv) there is work available which the claimant is capable of performing; and

(v) the claimant is making an active work search.

(b) The Department may require that the claimant establish ability by competent evidence.

**R994-403-112c. Available.**

## (1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

## (2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

## (a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

## (i) Travel Which is Necessary to Seek Work.

(A) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(B) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country. An exception to this general rule is that a claimant who travels to a foreign country for the express purpose of applying for employment and is out of the United States for two consecutive weeks or less is eligible for those weeks provided the claimant can prove he or she has a legal right to work in that country. A claimant who is out of the United States for more than two weeks is not eligible for benefits for any of the weeks.

## (ii) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

## (iii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

(A) is a party to the action;

(B) had employment which he or she was unable to continue or accept because of the court service; or

(C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

(i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

(4) Wage Restrictions.

(a) No claimant will be expected, as a condition of eligibility, to accept a wage that is less than the state or federal minimum wage, whichever is applicable, or a wage that is substantially less favorable to the claimant than prevailing wages for similar work in the locality. Benefits cannot be allowed if the claimant is restricting himself or herself to a wage that is not available.

(b) A claimant must be given a reasonable time to seek work that will preserve his or her earning potential. At the time of filing an initial claim, or at the time of reopening a claim following a period of employment, the claimant may restrict his or her wage requirement to the highest wage earned during or subsequent to the base period and prior to filing the claim or the highest wage available in the locality for the claimant's occupation, whichever is lower, but only if there is a reasonable expectation that work can be obtained at that wage.

(i) After a claimant has received 1/3 of the maximum benefit amount (MBA) for his or her regular claim, the claimant must accept any wage that is equal to or greater than the lowest

wage earned during the base period, as long as that wage is consistent with the prevailing wage standard.

(ii) After a claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept the prevailing wage in the locality for work in any base period occupation.

(c) Exception for Deferred Claimants.

The provisions of this section do not apply to those claimants who qualify for deferrals under Subsection 35A-4-403(1)(b) and R994-403-202 during the period of deferral.

(5) Type of Work.

(a) One of the purposes of the unemployment insurance program is to help a claimant preserve his or her highest skill by providing unemployment benefits so the claimant can find work similar to what the claimant had prior to becoming unemployed. A skill is defined as a marketable ability developed over an extended period of time by training or experience which could be lost if not used. It is not the intent of the program to subsidize individuals who are limiting their availability because of a desire to improve their employment status.

(i) At the time of filing an initial claim or reopening a claim following a period of employment, a claimant may restrict availability to the highest skilled employment performed during or subsequent to the base period provided the claimant has a reasonable expectation of obtaining that type of work. A claimant who is not willing to accept employment consistent with work performed during or subsequent to the base period must show a compelling reason for that restriction in order to be considered available for work.

(ii) After the claimant has received 1/3 of the MBA for his or her regular claim, the claimant must be willing to accept work in any of the occupations in which the claimant worked during the base period.

(iii) After the claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept any work that he or she can reasonably perform consistent with the claimant's past experience, training, and skills.

(b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

(i) is actively seeking work outside the restrictions of the noncompete contract;

(ii) has the skills and/or training necessary to obtain that work; and

(iii) can reasonably expect to obtain that employment.

(6) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

(7) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(8) Distance to Work.

## (a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

## (b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

## (9) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

## (10) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) during school hours except as authorized by the proper school authorities;

(b) before or after school in excess of 4 hours a day;

(c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;

(d) in excess of 8 hours in any 24-hour period; or

(e) more than 40 hours in any week.

## (11) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

**R994-403-113c. Work Search.**

## (1) General Requirements.

A claimant must make an active, good faith effort to secure employment each and every week for which benefits are

claimed. Efforts to find work must be judged by the standards of the occupation and the community.

## (2) Active.

An active effort to look for work is generally interpreted to mean that each week a claimant should contact a minimum of two employers not previously contacted unless the claimant is otherwise directed by the Department. Those contacts should be made with employers that hire people in the claimant's occupation or occupations for which the claimant has work experience or would otherwise be qualified and willing to accept employment. Failure of a claimant to make at least the minimum number of contacts creates a rebuttable presumption that the claimant is not making an active work search. The claimant may overcome this presumption by showing that he or she has pursued a job development plan likely to result in employment. A claimant's job development activities for a specific week should be considered in relation to the claimant's overall work search efforts and the length of the claimant's unemployment. Creating a job development plan and/or writing resumes may be reasonable and acceptable activities during the first few weeks of a claim, but may be insufficient after the claimant has been unemployed for several weeks.

## (3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if desirous of obtaining employment. A good faith effort is not necessarily established simply by making a specific number of contacts to satisfy the Department requirement.

## (4) Union Attachment.

(a) Union attachment is sufficient to meet the requirements of an active work search if the claimant is eligible for a deferral as established under Subsection 35A-4-403(1)(b).

(b) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.

**R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.**

The claimant:

(1) has the burden of proving that he or she is able, available, and actively seeking full-time work;

(2) must report any information that might affect eligibility;

(3) must provide any information requested by the Department which is required to establish eligibility;

(4) must keep a detailed record of the employers contacted, as well as other activities that are likely to result in employment for each week benefits are claimed; and

(5) must immediately notify the Department if the claimant is incarcerated.

**R994-403-115c. Period of Ineligibility.**

(1) Eligibility for benefits is established on a weekly basis. If the Department has determined that the claimant is not able or available for work, and it appears the circumstances will likely continue, an indefinite disqualification will be assessed, and the claimant must requalify by showing that he or she is able and available for work.

(2) If the Department has reason to believe a claimant has not made a good faith effort to seek work, or the Department is performing a routine audit of a claim, the Department can only require that the claimant provide proof of work search activities for the four weeks immediately preceding the Department's

request. However, if the claimant admits he or she did not complete the work search activities required under this rule, the Department can disqualify a claimant for more than four weeks.

(3) The claimant will be disqualified for all weeks in which it is discovered that the claimant was not able or available to accept work without regard to the four-week limitation.

**R994-403-116e. Eligibility Determinations: Obligation to Provide Information.**

(1) The Department cannot make proper determinations regarding eligibility unless the claimant and the employer provide correct information in a timely manner. Claimants and employers therefore have a continuing obligation to provide any and all information and verification which may affect eligibility.

(2) Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the claimant's eligibility.

**R994-403-117e. Claimant's Responsibility.**

(1) The claimant must provide all of the following:

(a) his or her correct name, social security number, citizenship or alien status, address and date of birth;

(b) the correct business name and address for each base period employer and for each employer subsequent to the base period;

(c) information necessary to determine eligibility or continuing eligibility as requested on the initial claim form, or on any other Department form including work search information. This includes information requested through the use of an interactive voice response system or the Internet;

(d) the reasons for the job separation from base period and subsequent employers when filing a new claim, requalifying for a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation; and

(e) any other information requested by the Department. This includes requests for documentary evidence, written statements, or oral requests. Claimants are required to return telephone calls when requested to do so by Department employees.

(2) Claimants are also required to report, at the time and place designated, for an in-person interview with a Department representative if so requested.

(3) By filing a claim for benefits, the claimant has given consent to the employer to release to the Department all information necessary to determine eligibility even if the information is confidential.

**R994-403-118e. Disqualification Periods if a Claimant Fails to Provide Information.**

(1) A claimant is not eligible for benefits if the Department does not have sufficient information to determine eligibility. Except as provided in subsection (6) of this section, a claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department.

(2) If insufficient or incorrect information is provided when the initial claim is filed, the disqualification will begin with the effective date of the claim.

(3) If a potentially disqualifying issue is identified as part of the weekly certification process and the claimant fails to provide the information requested by the Department, the disqualification will begin with the Sunday of the week for which eligibility could not be determined.

(4) If insufficient or incorrect information is provided as part of a review of payments already made, the disqualification will begin with the week in which the response to the Department's request for information is due.

(5) The disqualification will continue through the Saturday prior to the week in which the claimant provides the information.

(6) If the disqualification results from the claimant's failure to complete, sign, and return the Direct Deposit or Eppicard Authorization Form, the disqualification will be reversed once the completed and signed form is received by the Department. The claimant does not need to show good cause for his or her failure to provide the Direct Deposit or Eppicard Authorization Form in a timely manner.

**R994-403-119e. Overpayments Resulting from a Failure to Provide Information.**

(1) Any overpayment resulting from the claimant's failure to provide information, or based on incorrect information provided by the claimant, will be assessed as a fault overpayment in accordance with Subsection 35A-4-406(4) or as a fraud overpayment in accordance with Subsection 35A-4-405(5).

(2) Any overpayment resulting from the employer's failure to provide information will be assessed as a nonfault overpayment in accordance with Subsection 35A-4-406(5).

(3) If more than one party was at fault in the creation of an overpayment, the overpayment will be assessed as:

(a) a fraud or fault overpayment if the claimant was more at fault than the other parties; or

(b) a nonfault overpayment if the employer and/or the Department was more at fault, or if the parties were equally at fault.

**R994-403-120e. Employer's Responsibility.**

Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.

**R994-403-121e. Penalty for the Employer's Failure to Comply.**

(1) A claimant has the right to have a claim for benefits resolved quickly and accurately. An employer's failure to provide information in a timely manner results in additional expense and unnecessary delay.

(2) If an employer fails to provide information in a timely manner without good cause, the ALJ will determine on appeal that the employer has relinquished its rights with regard to the affected claim and is no longer a party in interest. The employer's appeal will be dismissed and the employer is liable for benefits paid.

(3) The ALJ may, in his or her discretion, choose to exercise continuing jurisdiction with respect to the case and subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. If, after reaching the merits, the ALJ determines to reverse the initial decision and deny benefits, the employer is not eligible for relief of charges resulting from benefits overpaid to the claimant prior to the date of the ALJ's decision.

(4) In determining whether to exercise discretion and reach the merits, the ALJ may take into consideration:

(a) the flagrancy of the refusal or failure to provide complete and accurate information. An employer's refusal to provide information at the time of the initial Department determination on the grounds that it wants to wait and present its case before an ALJ, for instance, will be subject to the most severe penalty;

(b) whether or not the employer has failed to provide complete and accurate information in the past or on more than one case; and



(c) whether the employer is represented by counsel or a professional representative. Counsel and professional representatives are responsible for knowing Department rules and are therefore held to a higher standard.

**R994-403-122e. Good Cause for Failure to Comply.**

If the employer or claimant has good cause for failing to provide the information in the time frame requested, no disqualification or penalty will be assessed. Good cause, as it applies to this section of the rule, may be established if the claimant or employer:

- (1) made reasonable attempts to provide the information within the time frame requested, or
- (2) was prevented from complying due to circumstances which were compelling or beyond their control.

**R994-403-123. Obligation of Department Employees.**

Employees of the Department are obligated, regardless of when the information is discovered, to bring to the attention of the proper Department representatives any information that may affect a claimant's eligibility for unemployment insurance benefits or information affecting the employer's contributions.

**R994-403-201. Department Approval for School Attendance - General Definition.**

(1) Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. Even though the claimant is granted Department approval, the claimant must still be able to work. With Department approval, a claimant meets the availability requirement based on his or her school attendance and successful performance. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

(2) If a claimant is ineligible under 35A-4-403(1)(c) due to school attendance, Department approval will be considered.

(3) Department approval will be granted when required by state or federal law for specific training programs.

**R994-403-202. Qualifying Elements for Approval of Training.**

All of the following nine elements must be satisfied for a claimant to qualify for Department approval of training. Some of these elements will be waived or modified when required by state or federal law for specific training programs.

(1) The claimant's unemployment is chronic or persistent, or likely to be chronic or persistent, due to any one of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i)(A) has a history of repeated unemployment attributable to lack of skills and has no recent history of employment earning a wage substantially above the federal minimum wage or

(B) qualifies for Department sponsored training because the claimant meets the eligibility requirements for public assistance;

(ii) has had no formal training in occupational skills;

(iii) does not have skills developed over an extended period of time by training or experience; and

(iv) does not have a marketable degree from an institution of higher learning; or

(b) a change in the marketability of the claimant's skills has resulted due to new technology, or major reductions within an industry; or

(c) inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) a claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 18 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

**R994-403-203. Extensions of Department Approval.**

Initial approval shall be granted, for the school term beginning with the week in which the attendance began, or the effective date of the claim, whichever is later. The Department may extend the approval if the claimant establishes proof of:

(1) satisfactory attendance;

(2) passing grades;

(3) continuance of the same course of study and classes originally approved; and

(4) compliance with all other qualifying elements.

**R994-403-204. Availability Requirements When Approval is Granted.**

(1) If Department approval is granted, the claimant will be placed in deferred status once the training begins and will not be required to register for work or to seek and accept work. The deferral also applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of training, even if the claimant has been advised that the training has been approved. Benefits will not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the act.

(2) Absences from school will not necessarily result in a denial of benefits during those weeks the claimant can demonstrate he or she is making up any missed school work and is still making satisfactory progress in school. Satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing, or certification, as appropriate.

(3) A disqualification will be effective with the week the claimant knew or should have known he or she was not going to receive a passing grade in any of his or her classes or was otherwise not making satisfactory progress in school. It is the claimant's responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress.

(4) The claimant must attend school full-time as defined

by the educational institution. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status will not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, the claimant is again attending class regularly and making satisfactory progress.

(5) Notwithstanding any other provisions of this section, if the claimant was absent from school for more than one-half of the workweek due to illness or hospitalization, the claimant is considered to be unable to work and unemployment benefits will be denied for that week. A claimant has the responsibility to report any sickness, injury, or other circumstances that prevented him or her from attending school.

(6) A claimant is ineligible for Department approval if the claimant is retaking a class that was originally taken while receiving benefits under Department approval. However, if Department approval was denied during the time the course was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if the claimant can demonstrate satisfactory progress.

**R994-403-205. Short-Term Training.**

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-202 if the entire course of training is no longer than eight weeks and will enhance the claimant's employment prospects. A claimant will not be granted a waiver for training that is longer than eight weeks even if the claimant needs only eight weeks or less to complete the training. This is intended as a one-time approval per benefit year and may not be extended beyond eight weeks.

**R994-403-301. Requirements for Special Benefits.**

Some benefit programs, including Extended Benefits, have different availability and work search requirements. The rule governing work search for Extended Benefits is R994-402. Other special programs are governed by the act or federal law.

**KEY: filing deadlines, registration, student eligibility, unemployment compensation**

**August 26, 2009**

**35A-4-403(1)**

**Notice of Continuation June 26, 2007**